

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

GLOBAL INDEMNITY, INC. and	:	MAY TERM, 2016
DIAMOND STATE INSURANCE CO.,	:	
	:	NO. 03250
Plaintiff,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 16081771
ERIC G. FOSMIRE and THE FOSMIRE	:	
LAW FIRM, LLC.,	:	
	:	
Defendant.	:	

OPINION

Plaintiffs, Global Indemnity, Inc. and Diamond State Insurance Co. (“G&D”), are insurance companies that retained defendant, The Fosmire Law Firm, to represent their insureds in litigation pending in South Carolina. Defendant Eric G. Fosmire was the attorney who acted for the Fosmire Law Firm and who performed, and allegedly failed to perform, legal work for G&D.

G&D filed a legal malpractice Complaint in this court asserting claims against the firm and Mr. Fosmire for breach of contract and professional negligence. G&D alleged that Mr. Fosmire and the firm agreed to settle an action against one of G&D’s insured’s with a promise to pay \$200,000, but without any actual authority to do so. G&D ended up paying that settlement amount, plus attorneys’ fees, for a total of \$206,686.49 in damages.

Mr. Fosmire filed an Answer to the Complaint on behalf of himself and the law firm. G&D then filed a Motion for Judgment on the Pleadings claiming the Answer is deficient. Neither Mr. Fosmire nor the law firm filed a Response to that Motion.

Mr. Fosmire does not claim to be admitted to practice in the Commonwealth of Pennsylvania and the law firm is a limited liability company. He may not represent the law firm *pro se*.¹ Therefore, the Answer he filed on behalf of the law firm is a nullity, and the law firm is deemed to have admitted all the facts asserted in the Complaint.

Even if the Answer were valid with respect to both defendants, it does not contain denials specific enough to create a dispute of material fact. Mr. Fosmire specifically denies some of the allegations in Paragraphs 1 through 10, but then he simply “Denies the allegations of Paragraph 11 through 70 and Plaintiffs’ prayer for relief.”² Paragraphs 11 through 70 of the Complaint contain a multitude of specific factual allegations, which, if true, support G&D’s legal malpractice claims.

Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof, except as provided by [inapplicable rules,] shall have the effect of an admission.³

The specific denials of portions of the first 10 paragraphs of the Complaint assert that Mr. Fosmire did not sign the retainer agreement in his individual capacity, but only in his corporate

¹ A corporation or limited liability company must be represented by legal counsel in judicial proceedings and may not appear *pro se*. See The Spirit of the Avenger Ministries v. Commonwealth, 767 A.2d 1130 (Pa. Cmwlth. 2001); Walacavage v. Excell, 331 Pa. Super. 137, 480 A.2d 281 (1984) (“a corporation may appear in court only through an attorney at law admitted to practice before the court. The reasoning behind the rule is that a corporation can do no act except through its agents and that such agents representing the corporation in Court must be attorneys at law who have been admitted to practice, are officers of the court and subject to its control. . . . [T]he purpose of the rule was not the protection of stockholders but the protection of the courts and the administration of justice. . . . [A] person who accepts the advantages of incorporation for his or her business must also bear the burdens, including the need to hire counsel to sue or defend in court.”) Cf. In re Lawrence Cty. Tax Claim Bureau, 998 A.2d 675, 680 (Pa. Cmwlth. 2010) (Court found general partner could represent limited partnership because: “A partnership is not a natural person, but a partner is a natural person. [The general partner] in his individual capacity, can be held liable for all the rights and obligations of [the limited partnership] because he is the general partner. Further, he is expressly authorized by the Pennsylvania Rules of Civil Procedure to prosecute a partnership matter in his own name or in the name of the partnership.”)

² Answer, Para. 11.

³ Pa. R. Civ. P. 1029(b).

capacity.⁴ Those few, sufficiently specific, denials preclude the court from finding Mr. Fosmire individually liable for breach of contract, although the law firm may still be found so liable. However, Mr. Fosmire's remaining blanket denial is not sufficient to defeat his, and the law firm's, liability for negligent performance of their professional duties.

Since Mr. Fosmire and the law firm did not specifically deny the factual allegations in Paragraphs 11 through 70, those facts are deemed admitted. Those admitted facts form the basis for G&D's claims for legal malpractice. Therefore, G&D's Motion for Judgment on the Pleadings must be granted, and judgment must be entered against Mr. Fosmire and the firm with respect to G&D's claims.

BY THE COURT,



RAMY C. DJERASSI, J.

⁴ The retainer agreement attached to the Complaint bears out Mr. Fosmire's denials. *See* Complaint, Ex. D.