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

THOMAS MORE MARRONE, ESQUIRE,	:	April Term 2021	DOCKETED
	:		
Plaintiff	:		JAN - 6 2023
v.	:	No. 2548	R. POSTELL
	:		COMMERCE PROGRAM
THE LOFTS AT 1234 CONDOMINIUM	:		
ASSOCIATION,	:	Commerce Program	
	:		
Defendant.	:	Control Nos. 22082810/22052747	

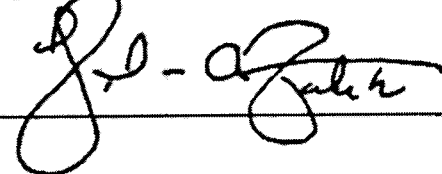
ORDER

AND NOW, this 6th day of January 2023, upon consideration of Defendant Lofts at 1234 Condominium Association's Motion for Summary Judgment (cn 22082810) and Plaintiff Thomas More Marrone, Esquire's Partial Motion for Summary Judgment (cn 22052747), all Responses in Opposition, all matters of record and in accord with the attached Opinion, it hereby is **ORDERED** and **DECREED** that:

1. Defendant The Lofts at 1234 Condominium Association's Motion for Summary Judgment is **GRANTED** and
2. Plaintiff Thomas More Marrone, Esquire's Partial Motion for Summary Judgment is **DENIED**.

Judgment is entered in favor of Defendant The Lofts at 1234 Condominium Association and against Plaintiff Thomas More Marrone, Esquire on all claims set forth in the Amended Complaint.

BY THE COURT:


J.

210402548: Marrone Vs The Lofts At 1234 Condominium Associati



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	:	
Defendant.	:	
	:	Control Nos. 22082810/22052747

OPINION

This is an action for indemnification and unjust enrichment. Plaintiff Thomas More Marrone, Esquire (“Marrone”) claims a right to indemnification and *quantum meruit* for professional time he allegedly diverted from his law practice and provided to defend himself and Defendant the Lofts at 1234 Condominium Association (“Association”) in two actions captioned *Cooley v. Lofts at 1234 Condominium Association, et. al.*, 1604-3513 and *Dana v. Lofts at 1234 Condominium Association, et. al.*, 1702-6522 (hereinafter referred to as *Cooley and Dana* Actions). For the reasons set forth below, Marrone’s claims fail.

BACKGROUND

The Association is an unincorporated non-profit association located at 1234 Hamilton Street, Philadelphia, Pennsylvania 19123 which consists of individual owners of condominium loft units created by the recording of a Declaration of Condominium on November 15, 2005.¹ The

¹ Plaintiff’s Amended Complaint ¶¶ 5-9, Plaintiff’s Motion for Summary Judgment ¶ 1.

Pennsylvania Uniform Condominium Act, 68 Pa. C. S. § 3101, *et. seq.*, the Declaration of Condominium, and the Association ByLaws set forth the rights and responsibilities of the Association, its members, and the Association's Executive Board.²

Particular to Marrone's claims in this matter, the Condominium Act provides as follows:

(a) General rule- Subject to the provisions of the declaration, the association, even if unincorporated, may:.....

(13) Provide for the indemnification of its officers and executive board and maintain director's and officer's liability insurance.

(14) Exercise any other powers conferred by the declaration or by laws.³

Additionally, the Association's Condominium Declaration § 14.4 provides that each member of the Board in his or her capacity as a Board Member, Officer, or both shall be indemnified by the Association as follows:

14.4 Indemnification. To the extent permitted under the Pennsylvania law, each member of the Executive Board, in his capacity as an Executive Board member, officer or both, shall be Indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Executive Board.⁴

The Association's ByLaws § 7.4 and § 7.5 also provide the following with respect to indemnification:

Section 7.4 Indemnification. To the extent permitted under Pennsylvania law, each member of the Executive Board, in his capacity as an Executive Board member, officer, or both, shall be indemnified by the Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Executive Board...whether or

² Plaintiff's Amended Complaint ¶¶ 3 and 4.

³ 68 Pa. C. S. § 3302.

⁴ Plaintiff's Amended Complaint Exhibit "1" -Declaration of Condominium p. 27 § 14.4.

not he is an Executive Board member, officer or both at the time such expenses are incurred.⁵

Section 7.5. D & O Insurance. The Executive Board may obtain insurance to satisfy the indemnification obligation of the Association and all Unit Owners set forth in Section 7.4 above, if and to the extent available at reasonable costs.⁶

The Association procured a Director's and Officer's insurance policy pursuant to §7.5 of the Bylaws.⁷

The Association's ByLaws further provide at § 4.9 with respect to compensation of officers the following:

Section 4.9. Compensation of Officers. No officer who is also a member of the Executive Board shall receive any compensation from the Association for acting as such officer, but may be reimbursed for any out-of-pocket expenses incurred in performing such officer's duties; provided, however, the Secretary and Treasurer may be compensated for their By-Laws [sic "services"] if the Executive Board determines such compensation to be appropriate.⁸

Marrone, an attorney with a private practice, has been a member of the Association since December 2014 when he purchased two condominium units and served as a member and President of the Association's Executive Board from January 28, 2015 until September 2017.⁹

Cooley and Dana Actions

⁵ Plaintiff's Amended Complaint Exhibit "2" - Bylaws, p. 21 § 7.4.

⁶ Id. p. 22 § 7.5.

⁷ Defendant's Motion for Summary Judgment and Plaintiff's Response in Opposition ¶ 33.

⁸ Plaintiff's Amended Complaint Exhibit "2" - Bylaws, p. 12 § 4.9.

⁹ Defendant's Motion for Summary Judgment and Plaintiff's Response in Opposition ¶¶ 1, 41.

On April 29, 2016, Ronald P. Cooley, a member of the Association, commenced an action against the individual members of the Association's Executive Board including Marrone and Yang Shi "Echo" Vollo ("Vollo"), and the Association in an action captioned *Cooley v. Lofts at 1234 Condominium Association*, April Term 2016 No. 3513 (the "*Cooley Action*") filed the Court of Common Pleas of Philadelphia County-Civil Trial Division. The *Cooley* action alleged that Marrone and Vollo committed wrongful acts and omissions as members of the Association's Executive Board.¹⁰

On October 1, 2016, Marrone emailed Association members with a litigation update regarding outstanding litigation against the Association. In the email, Marrone acknowledged receipt of the *Cooley* action and stated the following:

...On Friday, Ron Cooley filed the attached complaint against the Association, me and Echo Volla.
I will have to spend substantial time and effort defending Association from these claims.
Under these circumstances, I will no longer have sufficient available time to donate my professional services and assistance to the law firm we just retained to prosecute the lawsuit against the neighboring developer...¹¹

On February 24, 2017, Jason Dana, another member of the Association, filed a separate action against Marrone, Vollo and the Association in the Court of Common Pleas Philadelphia County captioned *Dana v. Lofts at 1234 Condominium Association*, February Term 2017, No.

¹⁰ Plaintiff's Motion for Summary Judgment ¶¶13-15.

¹¹ Plaintiff's Amended Complaint Exhibit "4"- Email from Marrone dated October 2, 2016 to litigation committee of the Association.

065622 (The *Dana* Action).¹² The *Dana* action also alleged that Marrone and Vollo committed wrongful acts and omissions as Association Executive Board members.¹³

Marrone, Vollo and the Association were represented throughout the *Cooley* and *Dana* actions by insurance defense counsel retained through the Association's Directors and Officer's policy of insurance.¹⁴ Marrone never entered his appearance in the *Cooley* and *Dana* actions for the Association nor for himself.¹⁵

After the conclusion of discovery in the *Cooley* and *Dana* actions, summary judgment motions were filed by the respective parties and the trial court granted summary judgment in favor of Marrone, Vollo, and the Association and against Cooley and Dana. Cooley and Dana appealed the grant of summary judgment to the Commonwealth Court. On March 12, 2020 and March 13, 2020, respectively, the Commonwealth Court affirmed the trial courts orders granting summary judgment. Cooley and Dana filed Petitions for Allowance of Appeal in the Supreme Court of Pennsylvania which were denied on December 30, 2020. Cooley and Dana also filed petitions for reconsideration of the denials of their Petitions for Allowance of Appeal in the Supreme Court of Pennsylvania which were subsequently denied on February 10, 2021.

Thereafter, Marrone filed motions seeking to recover his attorneys' fees and costs he allegedly incurred in defending himself, the same attorney fees and costs Marrone seeks to recover

¹² In addition to the *Cooley* and *Dana* actions, Marrone also filed two actions related to the *Cooley* and *Dana* actions. These action are filed in this court and are captioned *Marrone v. Lofts at 1234 Hamilton St Condominium Ass'n and Steven James Dana*, 2004-189 and *Marrone v. Cooley et. al.*, 1903-45.

¹³ Plaintiff's Motion for Summary Judgment ¶¶ 18-19.

¹⁴ Id. ¶¶ 63, 64.

¹⁵ Defendant's Motion for Summary Judgment and Plaintiff's Response in Opposition ¶34.

in this action. On April 26, 2021, the trial court denied Marrone's motions for attorneys' fees and costs finding no legal or factual basis existed to make such an award.^{16/17}

This Action

On April 27, 2021, Marrone commenced this action by Complaint seeking indemnification. Marrone seeks \$350,000 from the Association for his professional time diverted from his law practice when he provided alleged legal services in his defense and that of the Association in the *Cooley* and *Dana* actions. The Complaint did not attach any agreements between Marrone and the Association for the provision of legal services, nor invoices to support the claim for legal services provided in the *Dana* and *Cooley* actions.

On June 15, 2021, after the filing of Preliminary Objections by the Association, Marrone filed an Amended Complaint, adding a claim of unjust enrichment to the Complaint. The Amended Complaint did not attach any agreements between Marrone and the Association for the provision of legal services, nor invoices to support the claim for legal services provided in the *Dana* and *Cooley* actions. On September 13, 2021, the court overruled the Association's Preliminary Objections to Marrone's Amended Complaint. On April 1, 2022, the court denied Marrone's Motion for Judgment on the Pleadings. On June 9, 2022, the court denied the Association's Motion for Judgment on the Pleadings. Now, the parties have filed Cross Motions for Summary Judgement which are ripe for disposition.

¹⁶ Defendant's Motion for Summary Judgment -Exhibit "V" Opinion dated August 11, 2021, pg. 1.

¹⁷ Marrone's request for reimbursement of attorney fees is also a claim for damages in an action captioned *Marrone v. Cooley et. al*, 1903-45 for wrongful use of civil process. Additionally, the failure to indemnify Marrone for attorney's fees was also one of the claims of nonfeasance in the action captioned *ArsTechnoProperties, LLC v. Thompson*, 1905-2093. Both actions were filed in this court.

DISCUSSION

I. Marrone is not entitled to Indemnification for his alleged professional time expended in the Dana and Cooley actions.

In count I of the Amended Complaint, Marrone alleges the Association has a duty to indemnify him for professional time he diverted from his law practice and allegedly expended in the *Cooley* and *Dana* actions. “An agreement to indemnify is an obligation resting upon one person to make good a loss which another has incurred or may incur by acting at the request of the former, or for the former's benefit.”¹⁸ To establish the right to indemnification, the indemnitee must establish the scope of the indemnification agreement; the nature of the underlying claim; its coverage by the indemnification agreement; the reasonableness of the alleged expenses; and, where the underlying action is settled rather than resolved by payment of a judgment, the validity of the underlying claim and the reasonableness of the settlement.¹⁹

Here, the Association satisfied and exhausted its duty to indemnify Marrone. The Association's Condominium Declaration § 14.4 and the Association's Bylaws § 7.4 expressly state the Association has a duty to indemnify its Officers and Directors “against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him.”²⁰ Additionally, §7.5 of the Association's Bylaws, expressly states, that the “Executive Board may obtain insurance to satisfy the indemnification obligation of the Association and all Unit Owners set forth in Section 7.4 ...”. A reasonable interpretation of these provisions giving effect to §§

¹⁸ *Burlington Coat Factory of Pennsylvania, LLC v. Grace Const. Mgmt. Co., LLC*, 126 A.3d 1010, 1022 (Pa. Super. Ct. 2015) (quotations and citations omitted).

¹⁹ *Id. quoting McClure v. Deerland Corp.*, 585 A.2d 19, 22 (Pa. Super. 1991) (emphasis added).

²⁰ When examined under the umbrella of general contract law, these provisions are unambiguous and are the best reflection of the intent of the parties. See, *MetroClub Condominium Ass'n v. 201-59 North Eighth Street Associates, L.P.*, 47 A.3d 137, 145 (Pa. Super. 2012).

7.4 and 7.5 is that the Association's duty to indemnify Executive Officers is satisfied if the Executive Board purchases insurance. This is what happened here.

Pursuant to §7.5 of the Bylaws, the Association's Executive Board elected to purchase Director's and Officer's insurance to satisfy its indemnification obligations to Marrone and the other Executive Board Members. As a result, Marrone was represented throughout the *Cooley* and *Dana* actions by defense counsel retained by and paid by the Association's Directors and Officer's policy of insurance.²¹ Since, the Association opted to purchase insurance which provided Marrone with a defense in the *Cooley* and *Dana* actions, Marrone's claim for indemnification fails as Marrone was provided with a defense through an Officer's and Director's policy purchased by the Association.

Notwithstanding the foregoing, Marrone's claim for indemnification also fails for a different reason. While Marrone states he spent "countless hours revising pleadings, motions and briefs, responding to discovery, conducting legal research and reviewing the tens of thousands of pages of documents produced"²², there is no evidence to support such a claim. Noticeably absent from the record is any evidence, including but not limited to affidavits, time records, work product, court filings, records of lost business opportunities, that Marrone used his professional time, knowledge, and experience to defend the Association and himself in the *Cooley* and *Dana* actions. Also absent is a retainer agreement or any evidence that Marrone and the Association reached an agreement on the scope of any legal services to be provided by him to the Association in the *Cooley* and *Dana* actions or the rate to be charged.²³

²¹ The court docket in the *Cooley* and *Dana* actions reflects that Marrone and the Association were represented by Marshall Dennehey Warner Coleman & Goggin and Swartz Campbell.

²² Plaintiff's brief in opposition to Defendant's Motion for Summary Judgment p. 11.

²³ Defendant's Motion for Summary Judgment and Plaintiff's Response in Opposition ¶ 68.

Court dockets in the *Cooley* and *Dana* actions confirm that Marrone was not *pro se* and never entered an appearance for himself or the Association. Additionally, the dockets show that Marrone did not file any pleadings, motions or briefs in the matters. Instead, the evidence, shows that Marrone and the Association were represented by competent counsel who filed pleadings, motions, briefs and responded to discovery and reviewed documents. At best, if any assistance was provided by Marrone, it was in his capacity as a client and as President of the Association for which compensation is precluded by § 4.9 of the Association ByLaws.²⁴ Moreover, Marrone's reliance on the October 1, 2016 email does not support his claim for indemnification as it fails to delineate the scope of services to be provided to the Association and the fees to be charged for said services. If anything, the email shows that Marrone volunteered his professional time to the Association on a *pro bono* basis on occasion and at best anticipated providing assistance to counsel retained by the Insurance Company in defending the *Cooley* action, an action in which he had a personal interest as a defendant and as a member of the Association.

At this stage in the proceedings, Marrone may not rest on mere allegations contained in his Amended Complaint or bald statements in a Motion for Summary Judgment. The "mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for a trial."²⁵ Here, there is no proof to consider because none has been provided.²⁶ Based on the foregoing, Marrone's claim for indemnification in count I of the Amended Complaint fails.

²⁴ Plaintiff's Amended Complaint Exhibit "4"-email October 1, 2016.

²⁵ *Curran v. Philadelphia Newspapers, Inc.*, 497 Pa. 163, 176, 439 A.2d 652, 658 (1981)

²⁶ Marrone relies upon *Cowan v. Ernest Codelia, P.C.*, 2001 WL 3051 (S.D. N.Y. 2001), an unreported decision outside our jurisdiction, and *Board of Managers of Foundry at Washington Park Condominium v. Foundry Development Co., Inc.*, 988 N.Y.S. 2d. 442, 44 Misc. 3d 550 (2014), a decision

II. Marrone's claim for unjust enrichment also fails as a matter of law.

As an alternative to the claim for indemnification, Marrone also purports to state a claim for unjust enrichment in count II of the Amended Complaint. To succeed on an unjust enrichment claim, the plaintiff must prove: “(1) benefits [were] conferred on [the] defendant by [the] plaintiff; (2) appreciation of such benefits by [the] defendant; and (3) acceptance and retention of such benefits under such circumstances that it would be inequitable for [the] defendant to retain the benefit without payment of value.”²⁷ In determining if the doctrine applies, the court's focus is not on the intention of the parties, but rather on whether the defendant has been unjustly enriched.

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Here, other than the mere allegations in the Amended Complaint²⁹, there is no evidence in the record that Marrone conferred any benefit upon the Association. The record here shows that

outside our jurisdiction, to support his claim for indemnification. These cases are unpersuasive and distinguishable. In each of these cases, the attorney litigants produced evidence that they were *pro se* and used their professional time to defend themselves. In *Cowan*, the attorneys performed legal work on their behalf before the insurance company became involved. In *Board of Managers of Foundry*, the attorneys submitted affidavits from its counsel retained to represent them in the action stating that the attorney “performed the lion's share of the research ...andhad he not done this work, then [the firm retained to represent them] would have been required to spend the time ...researching and drafting the papers that were submitted.” *Id.* at 447. No such evidence exists here.

Moreover, cases are not uniform as to whether a party is entitled to recover fees where a party appearing for himself is an attorney. In *Zucker v. Westinghouse Elec.*, 374 F.3d 221, 228 (3d Cir. Pa. 2004), the court denied attorney's fees to *pro se* attorneys under a variety of fee shifting statutes. In any event, whether Marrone as a *pro se* attorney litigant may recover fees for his time spent defending himself and the Association is not before the court as there is no evidence that Marrone was acting *pro se* or that he spent time defending the matters.

²⁷ *Liberty Mutual Group, Inc. v. 700 Pharmacy, LLC*, 270 A.3d 537, 554 (Pa. Super. 2022)(citations omitted).

²⁸ *Id.*

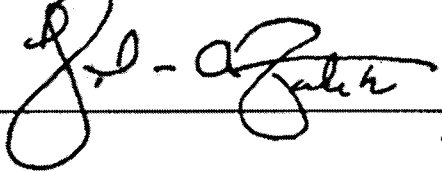
²⁹ Pa. R. Civ. P. 1035.3 (a) (“...adverse party may not rest upon mere allegations or denial of the pleadings but must file a response within thirty days after service of the motion...”).

Marrone may have anticipated or intended to provide legal services to the Association in the *Cooley* actions³⁰, but there is no evidence that he in fact provided any legal services to benefit the Association. Since Marrone failed to show he conferred a benefit on the Association, his unjust enrichment claim fails as a matter of law.

CONCLUSION

For the foregoing reasons, the Association's Motion for Summary Judgment is granted and judgment is entered in favor of the Association and against Marrone on the claims set forth in the Amended Complaint. Marrone's Partial Motion for Summary Judgment is denied.

BY THE COURT:



J.

³⁰Plaintiff's Amended Complaint- Exhibit "4"- Email dated October 2, 2016.