

Iannuccilli v Killerlane
2015 NY Slip Op 32972(U)
June 12, 2015
Supreme Court, Westchester County
Docket Number: 71171/2014
Judge: Lester B. Adler
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To commence the 30-day statutory time period for appeals as of right under CPLR 5513(a), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
THOMAS IANNUCILLI, ESQ.,

Plaintiff,

vs.

DECISION AND ORDER
Index No.: 71171/2014

TRACI COLLINS KILLERLANE, as Executrix of the Estate of James J. Killerlane, THE LAW OFFICES OF JAMES J. KILLERLANE. P.C., d/b/a KILLERLANE LAW OFFICES, CHRISTINA M. KILLERLANE, ESQ., MEAGHER & MEAGHER, P.C., and CHRISTOPHER B. MEAGHER, ESQ.;

Defendants.

-----X

ADLER, J.

The motions numbered 001, 002, and 003 are consolidated for joint disposition.

Plaintiff Thomas Iannuccilli, a former associate at a law firm that closed after its principal died, brought this action for (1) a declaratory judgment as to his rights and obligations under a 2000 fee-sharing agreement between Iannuccilli and the principal and (2) claims sounding in tort against the principal's estate and its attorneys. In lieu of answering the verified complaint, defendants Meagher & Meagher, P.C. (the Meagher P.C.), its principal, Christopher B. Meagher, Esq., and Christina M. Killerlane, Esq., a Meagher P.C. associate, separately move under CPLR 3211 for orders dismissing the

claims as against them and also seek to have sanctions imposed against Iannuccilli.¹

For the reasons set forth below, the motions to dismiss by Christopher B. Meagher, Esq., and Christina M. Killerlane, Esq. are granted; the motion to dismiss by the Meagher P.C. is granted in part and denied in part.

In connection with the motions, this Court reviewed the following papers:

Number 001:

Notice of Motion

Affirmation in Support of Christopher B. Meagher, Esq. With Exhibits

Affirmation in Opposition of Thomas Iannuccilli, Esq. With Exhibits

Reply Affirmation of Christopher B. Meagher, Esq. With Exhibits

Number 002:

Notice of Motion

Affirmation in Support of Christina M. Killerlane, Esq. With Exhibits

Affirmation in Opposition of Thomas Iannuccilli, Esq. With Exhibits

Reply Affirmation of Christina M. Killerlane, Esq. With Exhibits

Number 003:

Notice of Motion

Affirmation in Support of Christopher B. Meagher, Esq. With Exhibits

Affirmation in Opposition of Thomas Iannuccilli, Esq. With Exhibits

Reply Affirmation of Christopher B. Meagher, Esq. With Exhibits

Allegations – In the verified complaint, Iannuccilli alleges the following: In February 1998, he began working as an associate for the law offices of James J. Killerlane. In October 2000, Iannuccilli and Killerlane executed a written “Agreement for Sharing of Legal Fees” applying to (1) cases that Iannuccilli referred to Killerlane and (2) cases whose clients changed their counsel from Killerlane to Iannuccilli once Iannuccilli had left Killerlane’s employ. The 2000 Agreement, which is attached as an

¹Defendants (1) Traci Collins Killerlane, as Executrix of the Estate of James J. Killerlane, and (2) The Law Offices of James J. Killerlane, P.C., d/b/a Killerlane Law Offices, P.C., filed answers with counterclaims.

exhibit to the verified complaint, provides that once a case was concluded Iannuccilli and Killerlane were entitled to fixed percentages of the net legal fees received. The specific percentage a party would receive for a case depended on, among other things, the total fee amount for the case, whether Iannuccilli was still working for Killerlane when the case was concluded, and whether Iannuccilli had originally referred the case to Killerlane. The 2000 Agreement also provided that it constituted the parties' entire contract with respect to fee sharing, but did not provide that its terms could only be amended in writing.

The complaint further alleges that, in December 2004, Killerlane re-organized his practice by forming the Law Offices of James J. Killerlane, P.C. (the Killerlane P.C.) as a New York professional corporation. In September 2006, Iannuccilli left the Killerlane P.C.'s employ, but in November 2008, he returned to work as an associate. According to Iannuccilli, when he left the Killerlane P.C. in 2006, the 2000 Agreement terminated, but when he returned in 2008 Killerlane and Iannuccilli orally entered into a new agreement providing that they would act as joint venturers for all personal injury cases Iannuccilli referred to the Killerlane P.C. Iannuccilli alleges that, under the joint venture agreement, he would prepare referred cases for trial in exchange for one-third of the legal fees. Between Iannuccilli's return to the Killerlane P.C. and his separation from the firm in 2014, he referred four personal injury cases.

In November 2013, James Killerlane died, and the next month his widow, defendant Traci Collins Killerlane, was appointed executrix of his decedent's estate (the Estate). Traci Killerlane engaged defendant Meagher & Meagher, P.C. (the Meagher P.C.) to represent the Estate's interests.

The Killerlane P.C. office closed on February 21, 2014. Iannuccilli alleges that, on or before that date, the Meagher P.C. had acquired the Killerlane P.C.'s assets and assumed its liabilities from the Estate, without defendants giving him advance warning that the Killerlane P.C. offices would close thereafter and he would lose his job. According to Iannuccilli, defendant Christopher Meagher, the Meagher P.C.'s principal, met with Iannuccilli on February 21, 2014, and told him that (1) effective immediately, his position at the Killerlane P.C. was terminated and (2) the Meagher P.C. would neither hire Iannuccilli nor honor his prior fee-sharing arrangements with the Killerlane P.C. with respect to cases he had referred.

After Iannuccilli established his own law practice, the plaintiffs in six personal injury lawsuits (the Lawsuits), who had been the Killerlane P.C.'s clients, engaged Iannuccilli as counsel. The Lawsuits include the four cases that Iannuccilli had referred to the Killerlane P.C. after he returned to the firm in 2008.

According to Iannuccilli, the Estate asserts that, under the 2000 Agreement, it is entitled a share of Iannuccilli's legal fees for the Lawsuits. Iannuccilli claims that the Estate has no right to fees because either the 2000 Agreement was terminated in 2006 or because the Meagher P.C. succeeded to the Killerlane's P.C.'s rights under its arrangement with him.

Iannuccilli further alleges that, out of malice, defendants, acting as outgoing counsel or the Estate's representatives, were uncooperative and unreasonably delayed their consent to the change of counsel and the transfer of the client files to Iannuccilli's office. According to Iannuccilli, defendants' recalcitrance cost him needless time and expense.

The complaint asserts four causes of action. First, Iannuccilli seeks a declaratory judgment that the 2000 Agreement terminated when Iannuccilli left the Killerlane P.C. in 2006 and its terms do not apply to fee sharing in connection with the Lawsuits. Second, Iannuccilli asserts a cause of action sounding in prima facie tort. Iannuccilli claims that defendants are liable for maliciously wasting 36.5 hours of his time, whose value he calculates \$12,775 (\$350 per hour), by maliciously (1) keeping from him that the Killerlane P.C. was about to close and (2) failing to cooperate with the transfer of the Lawsuits to his office.

The third cause of action sounds in "breach of joint venture/fiduciary duty." Iannuccilli alleges that his 2008 oral agreement with the Killerlane P.C. created a joint venture between the parties that applied to the four case referrals. He further alleges that, when the Meagher P.C. acquired the Killerlane P.C.'s assets and liabilities, it succeeded the Killerlane P.C. as his joint venturer. Therefore, Iannuccilli claims, when Meagher told Iannuccilli in 2014 that the Meagher P.C. would not honor Iannuccilli's alleged oral agreement with the Killerlane P.C., he was repudiating the joint venture in bad faith and breaching defendants' fiduciary duty to Iannuccilli.

In the alternative, Iannuccilli claims as his fourth cause of action that, if the 2000 Agreement remained in effect when he returned to the Killerlane P.C. in 2008, then Meagher's alleged statement in February 2014 that the Meagher P.C. would not honor that Agreement constituted an anticipatory repudiation which relieved Iannuccilli of his obligations under the contract. He seeks a declaration that the 2000 Agreement's fee-sharing terms do not apply to the Lawsuits.

Motions – Seeking dismissal, the moving defendants deny that the Meagher P.C.

acquired the assets or assumed the liabilities of the Killerlane P.C. from the Estate. Defendants submit affidavits from Meagher, Traci Killerlane, and others rebutting Iannuccilli's allegation that the Meagher P.C. is the Killerlane P.C.'s successor in interest to any contract or joint venture with Iannuccilli or that they have any independent privity or fiduciary relationship with him. According to the moving defendants, the Meagher P.C.'s role in the Killerlane P.C.'s affairs is limited to (1) representing former Killerlane P.C. clients at their request and (2) representing the Estate. Therefore, the movants argue, the first, third, and fourth claims, which are predicated on their contractual or fiduciary relationship with Iannuccilli, fail to state claims.

At this stage of the lawsuit, however, Iannuccilli's claims as against the Meagher P.C., insofar as they are based on an alleged contract or joint venture, are sufficiently pleaded to withstand motions to dismiss. Iannuccilli alleges that Meagher told him the Meagher P.C. had assumed the Killerlane P.C.'s obligations. In the context of these motions under CPLR 3211, where the parties have not joined issue or conducted discovery, this Court must assume the truth of Iannuccilli's factual allegations. Iannuccilli, however, does not allege that he was in privity or a joint venturer with Meagher or Christina Killerlane. Accordingly, the first, third, and fourth causes of action are dismissed as against those defendants.

The second cause of action sounding in prima facie tort is dismissed as against all the moving defendants for failure to state a claim. Iannuccilli does not allege that he suffered compensable damages. He merely asserts that defendants' alleged wrongdoing wasted his time, to which he assigns an economic value. A plaintiff who

claims economic loss without injury to person or property cannot recover in tort (see *Atlas Air, Inc. v General Elec. Co.*, 16 AD3d 444, 445 [2d Dept 2005], *lv denied* 6 NY3d 701 [2005]).

That branch of defendants' motions seeking sanctions is denied.

Accordingly, it is

ORDERED that the motions by defendants Meagher & Meagher, P.C., Christopher B. Meagher, Esq., and Christina M. Killerlane, Esq. for orders dismissing the complaint as against them is granted to the extent that it is

ORDERED that the first, second, third, and fourth causes of action as against defendants Christopher B. Meagher, Esq., and Christina M. Killerlane, Esq. are severed and dismissed; and it is further

ORDERED that the second cause of action as against defendant Meagher & Meagher, P.C. is severed and dismissed; and it is further

ORDERED that the remainder of the action shall continue; and it is further

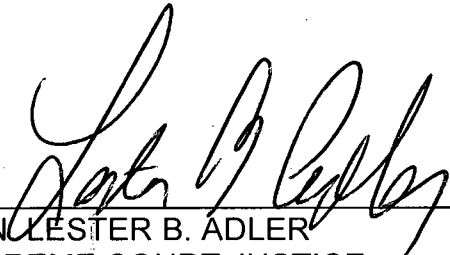
ORDERED that defendant Meagher & Meagher, P.C. is directed to serve an answer within 20 days of the date of this order; and it is further

ORDERED that the parties are directed to appear in the Hon. Richard J. Daronco Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White

Plains, New York, at the Preliminary Conference Part (PCP), Courtroom 811, on July 13, 2015, at 9:30 a.m. for a preliminary conference

The foregoing constitutes the Order of the Court.

Dated: White Plains, New York
June 12, 2015



HON LESTER B. ADLER
SUPREME COURT JUSTICE