

**Csutkai v Baisley**

2024 NY Slip Op 32884(U)

August 15, 2024

Supreme Court, New York County

Docket Number: Index No. 151083/2020

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

*Justice*

-----X

DANIEL CSUTKAI, as Administrator of the Estate of EDIT  
DEAK, Deceased,

Plaintiff,

INDEX NO. 151083/2020MOTION DATE 07/23/2020MOTION SEQ. NO. 001

- v -

MARGARET BAISLEY and BAISLEY LAW GROUP, P.C.,

Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14,  
15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33

were read on this motion to/for

DISMISSALORDER

Upon the foregoing documents, it is

ORDERED that the motion pursuant to CPLR 3211 of the defendants Margaret Baisley and Baisley Law Group, P.C., to dismiss the complaint of plaintiff Daniel Csutkai, as Administrator of the Estate of Edit Deak, Deceased, is granted, and the complaint is dismissed in its entirety, with costs and disbursements to such defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of such defendants.

DECISION

This action arises out of a promissory note, dated August 17, 2007, executed by non-party Donald Baechler ("Baechler") to memorialize a debt of \$250,0000 owed by Baechler to Edit Deak, now deceased (the "Note"). (NYSCEF Doc. No. 004.) Non-party

Baechler does not deny the existence of the Note, and it is undisputed that the Note was not paid.

The plaintiff Daniel Csutkai, as Administrator of the Estate of Edit Deak ("Csutkai"), commenced this action against the defendants Margaret Baisley and Baisley Law Group, P.C. (collectively, "Baisley") seeking damages arising from the non-payment of the Note. Baisley represented both Baechler and Deak on the Note transaction. Despite the conflict, Deak agreed to the representation, pursuant to a conflict waiver executed by Deak (the "Waiver"). (NYSCEF Document Number 013).

Prior to his filing of the instant action, Csutkai commenced an action entitled Csutkai v Baechler, Index No. 651615/2018, in which he sought payment of the Note (the "Baechler Action"). The Baechler Action was discontinued, with prejudice, by stipulation dated March 26, 2021. (Csutkai v Baechler, Index No. 651615/2018, NYSCEF Document Number 032.)

Csutkai's complaint at bar (the "Complaint") asserts causes of action for breach of contract, legal malpractice, violation of Judiciary Law § 487, and the Rules of Professional Conduct 1.7. The Complaint's causes of action are premised on the theory that Baisley willfully delayed enforcement of the Note on behalf of Deak against Baechler to permit the statute of limitations to expire.

In an action to recover damages for legal malpractice, a plaintiff must demonstrate that the attorney failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession and that the attorney's breach of this duty proximately caused plaintiff to sustain actual and ascertainable damage. See Pellegrino v File, 291 AD2d 60, 63 (1<sup>st</sup> Dept 2002).

The allegations of legal malpractice fail to identify how Baisley was negligent. Cstukai fails to allege that Baisley was ever instructed by Deak to enforce the Note or to seek recovery of the amount due thereunder, or that Baisley otherwise had a duty to do so under the legal engagement. Furthermore, to the extent that Cstukai alleges that Baisley willfully allowed the statute of limitations to expire, this court ruled in the Baechler Action, by Order dated November 1, 2019, that the claim for payment of the Note was still viable and not time-barred under General Obligations Law § 17-101. (Csutkai v Baechler, Index No. 651615/2018, NYSCEF Document Number 016.) Thus, Cstukai fails to allege any factual basis for tort liability against Baisley. Accordingly, the first cause of action for legal malpractice must be dismissed. See Gopstein v Bellinson Law, LLC, 227 AD3d 465 (1<sup>st</sup> Dept 2024).

As plaintiff's breach of contract claim is duplicative of his claim of legal malpractice, such cause of action fails as well. See Pellegrino, supra, p. 64.

Plaintiff's third cause of action that alleges that Baechler colluded to willfully delay enforcement of the Note, resulting in the expiration of the statute of limitations, must also be dismissed, as conclusory and lacking any factual predicate.

Finally, as a matter of irrefutable documentary proof, the fourth cause of action for violation of Judicial Law § 487 and 1.7 of the NYS Code of Professional Conduct must be dismissed in light of the Waiver. By such Waiver, Deak acknowledged and waived any objection to the dual representation, as permitted pursuant to the Rules of Professional Conduct 1.7. See Macy's Inc v J.C. Penny Corporation, 107 AD3d 615, 616 (1<sup>st</sup> Dept 2013):

"Supreme Court providently exercised its discretion in denying defendant's motion to disqualify Jones Day from representing plaintiffs in this action because Jones Day informed defendant about potential conflicts, and defendant waived its right to protest thereto."

*Debra A. James*

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8/15/2024

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION

GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE