DISTRICT OF COLUMBIA COURT OF APPEALS

No. 21-CV-0814

HOWARD T. TYSON, SR., APPELLANT,

V.

KRIS Y. LEE, *et al.*, APPELLEES.

Appeal from the Superior Court
of the District of Columbia
(2021-CA-003212-B)

(Hon. Hiram E. Puig-Lugo, Trial Judge)

(Submitted September 27, 2022 Decided November 30, 2023)

Before DEAHL and HOWARD, *Associate Judges*, and GLICKMAN,* *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant Tyson, proceeding pro se, filed a complaint in Superior Court against his lawyers, appellees Lee, Huang, and their law firm Woehrle Dahlberg Yao PLLC (hereinafter "Woehrle").[1] His complaint charges appellees with fraud, criminal conspiracy in violation of 18 U.S.C. §§ 241 and 371, and legal malpractice in their handling of his federal court lawsuit against his employer, the United States Postal Service, for religious discrimination. In the present appeal, appellant contends that the trial judge erred in granting appellees' motion pursuant to Super. Ct. Civ. R. 12(b)(6) to dismiss the complaint for failure to state a claim on which relief can be granted.

This court reviews that order de novo, applying the same standard the trial court was required to apply. We have summarized the standard of review as follows:

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* Judge Glickman was an Associate Judge of the court at the time this appeal was submitted. He began his service as a Senior Judge on December 21, 2022.

[1] Formerly known as Woehrle Dahlberg Jones Yao, PLLC.

Appendix - A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

HOWARD T. TYSON :
: Case No.: 2021 CA 003212 B
: Judge Hiram E. Puig-Lugo
v. :
:
ATTORNEY Y. KRIS LEE *et al* :

ORDER

This matter comes before the Court upon (1) Defendants' Motion to Dismiss, filed on October 13, 2021; and (2) Plaintiff's Opposition, filed on November 5, 2021. Upon consideration of the parties' pleadings, the relevant law, and the entire record herein, Defendants' motion is granted.

Background

Plaintiff filed a Complaint on August 12, 2021, alleging fraud, criminal conspiracy, and negligence (legal malpractice) against Defendants. Plaintiff retained Defendant Y. Kris Lee's ("Lee") legal services on November 17, 2017 to file suit against his employer for religious discrimination in the U.S. District Court for the District of Columbia. Compl. ¶ 1; Ex. 3. At the time, Defendant Lee was a member of Woehrle, Dahlberg, Jones & Yao PLLC before her departure on April 18, 2018. Compl. ¶ 1; Defs.' Mot. to Dismiss at 5. Plaintiff's claims arise from the following incidents: Defendant Lee's alleged failure to inform Plaintiff that she had a separate law practice in addition to her work for the law firm at the time of her representation; Defendant Jeremy Huang's ("Huang") appearance as attorney for Plaintiff, rather than Defendant Lee on January 12, 2018; and settlement discussions, which Plaintiff was allegedly excluded from, between Defendant Lee and Attorney Joshua Kolsky ("Kolsky") (opposing counsel in Plaintiff's religious discrimination case).

Appendix-A

First, Plaintiff challenges Defendant Lee's nondisclosure of her personal law firm, claiming that "Plaintiff hired her based on the firm she worked for." *Id.* ¶ 1. Next, Plaintiff challenges Defendant Huang's representation, alleging incompetency; for instance, during Plaintiff's representation, Defendant Huang filed a notice of appearance on the Pacer system as Plaintiff's attorney and an amended complaint, as ordered by the Court. Compl. ¶ 5. Plaintiff claims Defendant Huang "did not follow the [court's] order" because he titled the amended complaint as a first amended complaint, rather than a second amended complaint. *Id.* Additionally, Plaintiff asserts that Defendant Huang "changed the argument" from religious discrimination to employment discrimination "and added three new complaints[.]" *Id.*

The last incident arises from settlement discussions between Defendant Lee and Attorney Kolsky. On July 12, 2018, the Court stayed the proceedings to allow time for settlement discussions until July 31, 2018. *Id.* ¶ 7-8. During this period, Plaintiff alleges that counsel exchanged "telephone calls and email[s]" regarding the settlement without Plaintiff's involvement. *Id.* ¶ 10. Plaintiff further alleges that he "was supposed to decide what amount would be acceptable[,]" but instead, Defendant Lee proposed a higher settlement amount than what Plaintiff would have accepted. Pl.'s Opp'n ¶ 8. In the parties' joint status report to the Court, Attorney Kolsky claimed that "Defendant's counsel engaged in a lengthy telephone conversation with [Defendant Lee]" and "exchanged several emails concerning settlement[,]" but Defendant Lee allegedly "demanded essentially the entire monetary relief that Plaintiff theoretically could recover were he to prevail at trial." Compl., Ex. 3. Consequently, Attorney Kolsky expressed his unwillingness to proceed with mediation but stated that he "remains willing to consider any settlement offer that Plaintiff may make." *Id.* Plaintiff currently requests that "a settlement take place where Plaintiff would ask for less than mentioned." Pl.'s Opp'n ¶ 8.

Defendants contest Plaintiff's three claims, requesting their dismissal for ripeness, or in the alternative, for failure to state a claim under Rule 12(b)(6). Defs.' Mot. to Dismiss at 10-11.

DISCUSSION

To survive a Motion to Dismiss, a Complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543-44 (D.C. 2011); *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). Dismissal of a Complaint for failure to state a claim upon which relief can be granted should only be awarded if "it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *See* Super. Ct. Civ. R. 12(b)(6); *Fingerhut v. Children's Nat'l Med. Ctr.*, 738 A.2d 799, 803 (D.C. 1999).

When considering a Motion to Dismiss, a Court must "construe the facts on the face of the Complaint in the light most favorable to the non-moving party, and accept as true the allegations in the Complaint." *Fred Ezra Co. v. Pedas*, 682 A.2d 173, 174 (D.C. 1996). A Court should not dismiss a Complaint merely because it "doubts that a Plaintiff will prevail on a claim." *See Duncan v. Children's Nat'l Med. Ctr.*, 702 A.2d 207, 210 (D.C. 1997). However, the Court need not accept inferences if such inferences are unsupported by the facts set out in the Complaint. *See Kowal v. MCI Comm. Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994). Nor must the Court accept legal conclusions cast in the form of factual allegations. *Id.*

A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *See* Super. Ct. Civ. R. 8(a); *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). To survive a Motion to Dismiss under Super. Ct. Civ. R. 12(b)(6), a Plaintiff must provide "enough facts to state a claim to relief that is plausible on its face." *See Bell Atl. Corp. v.*

Twombly, 550 U.S. 544, 570 (2007). A claim is plausible on its face "when the Plaintiff pleads factual content that allows the Court to draw the reasonable inference that the Defendant is liable for the misconduct alleged." *Id.* Lastly, as to ripeness, "[c]onstitutional ripeness turns on whether the plaintiff has established an injury-in-fact that is imminent or certainly impending." *Common Cause v. Trump*, 506 F. Supp. 3d 39 (D.D.C. 2020)

I. **Fraud**

Plaintiff pleads fraud, claiming that he had "no for[e]sight to the fraudulent actions the contract bound attorney was to perform later." Compl. ¶ 6. To prevail on its fraud claim, Plaintiff must show that a person or entity: (1) "made a false representation of or willfully omitted a material fact"; (2) "had knowledge of the misrepresentation or willful omission"; (3) "intended to induce another to rely on the misrepresentation or willful omission"; (4) "the other person acted in reliance on that misrepresentation or willful omission"; and (5) Plaintiff "suffered damages as a result of that reliance." *Schiff v. AARP*, 697 A.2d 1193, 1198 (D.C. 1997).

Plaintiff claims that Defendant Lee "did not disclose that she had her own law firm," Pl.'s Opp'n at 6, nor included Plaintiff in the settlement discussions, "show[ing] her intent to do unrepa[i]rable damage[.]" Pl.'s Opp'n ¶ 6. Lastly, Defendant Lee did not notify Plaintiff that Defendant Huang would represent Plaintiff. *Id.* ¶ 4.

Here, Plaintiff has failed to show that he suffered any damages from Defendant Lee's alleged nondisclosure that she had a separate law firm. As to the settlement discussions, as will be further discussed below, failure to include a client in settlement discussions can give rise to legal malpractice; however, Plaintiff has failed to show that settlement discussions have ended. In fact, Attorney Kolsky "remains willing to consider any reasonable settlement offer that

Plaintiff may make." Ex. 3. Therefore, if Plaintiff chooses to settle for a lesser amount than proposed, then this amount can be communicated to Attorney Kolsky[1]. Lastly, as the Virginia State Bar informed Plaintiff, "[i]t is not unethical for members within the same law firm to assign client matters to other members within the same firm." Compl., Ex. 5. Therefore, finding no legally cognizable harm, the Court finds that Plaintiff's fraud claim fails to state a claim for which relief can be granted.

II. Conspiracy

Next, Plaintiff requests relief under two criminal conspiracy statutes, 18 U.S.C. §§ 371 and 241. As Defendants assert, a criminal conspiracy "does not give rise to a civil cause of action." *See Fiorino v. Turner*, 476 F. Supp. 962, 963 (D. Mass. 1979) ("[w]ith regard to the alleged violations of 18 U.S.C. §§ 241, 242, 371 [. . .], plaintiff has failed to cite, and the court has been unable to locate, any authority which would support implying a civil cause of action for violations"). Therefore, the Court finds that Plaintiff's criminal conspiracy claims fail to state a claim upon which relief can be granted.

III. Negligence (Legal Malpractice)

Defendants claim that Plaintiff's reliance on the alleged violation of the ABA Model Rules lack legal merit. Defendant argues that the "ABA Model Rules explicitly state" that a violation of the Rules do not give rise to civil liability nor does "a violation of a state's rule of professional conduct." Def.'s Mot. to Dismiss at 8-9. Here, the ABA model rules are not binding authority in the District of Columbia. Under D.C. law, a legal malpractice claim

[1] D.C. Code of Ethics Rule 1.4(c) requires that, "A lawyer who receives an offer of settlement in a civil case or proffered plea bargain in a criminal case shall inform the client promptly of the substance of the communication." Comment two states: "The lawyer must be particularly careful to ensure that decisions of the client are made *only after* the client has been informed of all relevant considerations." (emphasis added).

requires the plaintiff to show: (1) "an applicable standard of care"; (2) a breach of that care; and (3) "a causal relationship between the violation and the harms enumerated in the complaint." *Jones v. Lattimer*, 29 F.Supp. 3d 5, 9 (D.D.C. 2014) (quoting *In re Estate of Curseen*, 890 A.2d 191, 193 (D.C. 2006)).

Although the Court finds that Plaintiff's claims are sufficient to survive a motion to dismiss as to the first two elements, Plaintiff's claim is not ripe for ruling. As to the first two elements, the plaintiff generally "must present expert testimony establishing the standard of care" unless the attorney's "lack of care and skill is so obvious" that a reasonable jury "can find negligence as a matter of common knowledge." *Carranza v. Fraas*, 763 F.Supp. 2d 113, 122 (D.D.C. 2011). In *Carranza*, the D.C. District Court found that a failure to promptly inform the client about a settlement offer falls under the "common knowledge" exception, removing the requirement for an expert testimony. *Id.* at 124 ("[w]ithout question, an attorney has a duty to inform his client of meaningful offers made in the course of civil litigation.").

Here, Plaintiff asserts that "telephone calls and email[]" exchanges were made between Defendant Lee and Attorney Kolsky without Plaintiff's participation. Compl. ¶ 13; See Ex. 3 ("Defendant's counsel engaged in a lengthy telephone conversation with Plaintiff's counsel regarding Plaintiff's proposed settlement offer and exchanged several emails concerning settlement."). Defendants do not dispute that Defendant Lee suggested the settlement amount, but that Plaintiff "does not allege that he was not advised or did not agree with Lee's proposed course of action . . ." Defs.' Mot. to Dismiss at 19. Here, the Court finds that Plaintiff has sufficiently plead the first two elements of a legal malpractice claim. *See Duncan*, 702 A.2d at 210 ("A complaint should not be dismissed because the court doubts that a plaintiff will prevail on a claim.").

As to the last element, Plaintiff claims that "the settlement failed"; however, the Court finds that the claim is not ripe given that settlement discussions have not concluded. In fact, Attorney Kolsky "remains willing to consider any reasonable settlement offer that Plaintiff may make." Ex. 3. Further, although Plaintiff alleges that Defendant Lee "denied Plaintiff's reply" as to the settlement offer, Plaintiff does not plead a settlement amount that was allegedly lost, thereby rendering the amount speculative. Therefore, the Court finds that Plaintiff's claim for legal malpractice fails to state a claim for which relief can be granted.

Accordingly, it is this 15th day of November 2021, hereby:

ORDERED that Defendants' Motion to Dismiss is **GRANTED**; and it is further

ORDERED that Plaintiff's Complaint is **DISMISSED**; and it is further

ORDERED that the Initial Scheduling Conference on December 17, 2021 is **VACATED**; and it is further

ORDERED that this case is now closed.

IT IS SO ORDERED.

Honorable Hiram Puig-Lugo
Associate Judge
Signed in Chambers

Copies to all counsel of record via Casefile Xpress.

Copies by mail:
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Plaintiff

District of Columbia
Court of Appeals

No. 21-CV-0814

HOWARD T. TYSON, SR.,
Appellant,

v.

2021-CA-003212-B

KRIS Y. LEE, *et. al.*,
Appellees.

BEFORE: Deahl and Howard, Associate Judges, and Glickman,* Senior Judge.

ORDER

On consideration of appellant's petition for rehearing, it is

ORDERED that appellant's petition for rehearing is denied.

PER CURIAM

* Judge Glickman was an Associate Judge of the court at the time this appeal was submitted. He Began his service as a Senior Judge on December 21, 2022

Copies emailed to:

Honorable Hiram E. Puig-Lugo

Director, Civil Division

Copy mailed to:

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APPENDIX - B.

No. 21-CV-0814

Copy e-served to:

William Gogoel, Esquire

Additional material from this filing is available in the Clerk's Office.