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3315 (Rev. 6/11/02) CCG N015
Memorandum of Judgment



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KAREN A. YARBROUGH
COOK COUNTY RECORDER OF DEEDS
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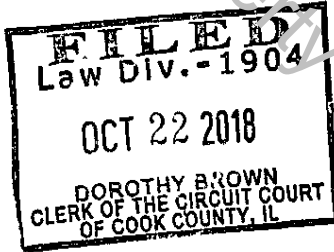
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IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
JOHNSON & BELL, LTD. an Illinois
Professional Corporation,

Plaintiff/Counter-Defendant,
v.

FUTURECARE FINANCIAL, INC. and
GREGORY R. JANSEN,

Defendants/Counter-Plaintiffs.



No. 16 L 8143

MEMORANDUM OF JUDGMENT

On September 19, 2018, judgment was entered in this court

in favor of the plaintiff JOHNSON & BELL, LTD.

and against defendant GREGORY R. JANSEN

whose address is 196 Peregrine Lane, Hawthorn Woods, Illinois 60047

in the amount of \$ 55,108.22.

Atty. No.: 06347

Name: Ava L. Caffarini

Atty. for: Johnson & Bell, Ltd.

Address: 33 W. Monroe, Suite 2700

City/State/Zip: Chicago, Illinois 60603

Telephone: 312-372-0770

Judge

Judge's No.

Judge Daniel J. Kubasiak

OCT 22 2018

Circuit Court - 2077

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

UNOFFICIAL COPY**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Johnson & Bell, Ltd.,)	
)	
Plaintiff/Counter-Defendant,)	No. 2016 L 8143
)	
v.)	Commercial Calendar T
)	
Futurecare Financial, Inc. and Gregory)	Judge Daniel J. Kubasiak
R. Jansen,)	
)	
Defendants/Counter-Plaintiffs.)	

OPINION

This cause is before the court on plaintiff/counter-defendant Johnson & Bell, Ltd.'s ("Johnson & Bell") motion for summary judgment against defendant/counter-plaintiffs Futurecare Financial, Inc. ("Futurecare") and Gregory R. Jansen ("Jansen") pursuant to section 2-1005.

The court reviewed the pleadings, the parties' briefs, and the depositions and exhibits attached thereto. After reviewing these materials, and after applying summary judgment motion standards, the court grants Johnson & Bell's motion for summary judgment. Futurecare and Jansen have not presented any arguments or evidence that would show raising sections 3113.40(c) and (e) would have affected the outcome of the underlying case. Futurecare and Jansen have also not raised any arguments concerning the amount of damages Johnson & Bell's verified complaint alleges. Summary judgment is entered in favor of plaintiff Johnson & Bell and against defendants Futurecare and Jansen as to the verified complaint and counterclaim, in the amount of \$55,108.22.

BACKGROUND

The following allegations are contained in the pleadings. Johnson & Bell's verified complaint alleges that Futurecare and Jansen failed to pay fees and costs for legal services. Johnson & Bell had previously represented the defendants

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following the revocation of their licenses by the Illinois Department of Insurance ("IDI"). In their answer, Futurecare and Jansen filed an affirmative defense and counterclaim alleging legal malpractice. The defendants' legal malpractice counterclaim alleges that Johnson & Bell's attorneys failed to timely argue that Jansen had complied with section 3113.40(c) and (e) of the Illinois Administrative Code.

STANDARD OF REVIEW

Summary judgment is proper when the pleadings, affidavits, depositions, admissions, and affidavits on file fail to establish a genuine issue of material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c); *N. Ill. Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005). A genuine issue of material fact exists when the material facts are disputed or when reasonable persons might draw different inferences from the undisputed facts. *Adams v. N. Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. *Adams v. N. Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). A defendant may be granted summary judgment in two instances: "(1) when the movant affirmatively disproves the nonmovant's case by introducing evidence that, if uncontroverted, would entitle the movant to judgment as a matter of law ... or (2) when the movant can establish the nonmovant lacks sufficient evidence to prove an essential element of the cause of action." *Rice v. AIA Aerostar*, 294 Ill. App. 3d 801, 805 (4th Dist. 1998), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

The burden of making a prima facie showing that there are no genuine issues of material fact is on the moving party. *Williams v. Covenant Med. Ctr.*, 316 Ill. App. 3d 682, 689 (4th Dist. 2000). Once the movant has met this initial burden, the non-movant must produce facts that would arguably entitle it to a favorable judgment. *Helpers-Beitz v. Degelman*, 406 Ill. App. 3d 264, 267-68 (3rd Dist. 2010). Summary judgment is considered a "drastic means of disposing of litigation," and

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“should be allowed only when the right of the moving party is clear and free from doubt.” *Adams*, 211 Ill. 2d 32 at 43; *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001). The trial court cannot make credibility determinations or weigh the evidence at the summary judgment stage. *Pietruszynski v. McClier Corp.*, 338 Ill. App. 3d 58, 67-68 (2003).

DISCUSSION

Futurecare and Jansen’s Counterclaim

To state a sufficient cause of action for legal malpractice in tort or contract, the plaintiff must plead facts establishing that the breach was the proximate cause of the alleged damages. *Kadtke v. Murphy*, 312 Ill. App. 3d 657, 665 (1st Dist. 2000). The basis of a legal malpractice claim is that the “plaintiff would have been compensated for an injury caused by a third party, absent negligence on the part of plaintiff’s attorney.” *Cedeno v. Gumbiner*, 347 Ill. App. 3d 169, 174 (1st Dist. 2004). A legal malpractice plaintiff must therefore litigate a “case within a case.” *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218 (2006).

Johnson & Bell argues that Futurecare and Jansen cannot establish proximate cause for purposes of their legal malpractice counterclaim because they did not have a meritorious defense. The court must therefore determine whether the defendants would have had a meritorious defense had their counsel raised section 3113.40(c) and (e) of the Illinois Administrative Code in the underlying case (“IDI Case”).

In the IDI Case, the IDI alleged that Futurecare and Jansen: (1) withheld insurance premiums in violation of 215 ILCS 5/500-115(a), 215 ILCS 5/500-70(a)(2), and 215 ILCS 5/500-70(a)(4); (2) violated Stipulation and Consent Orders by improperly withholding premiums of two consumers in violation of 215 ILCS 5/500-70(a)(2); and (3) failed to maintain books and records in violation of 50 Ill. Adm. Code 3113.50(c). According to the IDI’s allegations, the defendants had collected \$1,723.20 from a client, Antoinette Feinendagen, in the form of a personal check made payable to National States Insurance Company (“Insurance Company”). The

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defendants allegedly deposited this check into their Pension Trust Fund Account ("PFTA") but the Insurance Company only received \$951.35. Futurecare and Jansen allegedly kept the remaining \$771.85 in premium monies. The IDI further claimed that Futurecare and Jansen had collected \$7,490.00 from a second client, Ruth Berger, in the form of a personal check made payable to the Insurance Company. The defendants allegedly likewise deposited this check into their PFTA, the Insurance Company received \$3,894.80 from the defendants, and Futurecare and Jansen kept the remaining \$3,595.20 in premium monies.

Sections 3113.40(c) and (e) of the Illinois Administrative Code, which Futurecare and Jansen claim would have provided a meritorious defense, state:

c) A PFTA must be established and maintained if a licensee:

1) Holds any premiums for 15 days or more before remitting to an insurer or other licensee.

2) Deposits any collected premiums into a financial institution account or other account or uses the premiums, even though the premiums are remitted within 15 days.

e) All licensees who maintain or are required to maintain a PFTA must deposit all premiums received into the PFTA.

50 Ill. Adm. Code 3113.40(c); 50 Ill. Adm. Code 3113.40(e). From the plain language of sections 3113.40(c) and (e), maintaining a PFTA, and placing premiums in said PFTA, would not have defeated the IDI's allegations against the defendants, if the defendants had withheld premiums in violation of other statutory provisions or regulations.

As stated, on a summary judgment motion, the burden of making a prima facie showing that there are no genuine issues of material fact is on the moving

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party. *Williams*, 316 Ill. App. 3d at 689. Once the movant has met this initial burden, the non-movant must produce facts that would arguably entitle it to a favorable judgment. *Helfers-Beitz*, 406 Ill. App. 3d at 267-68.

Johnson & Bell has met its initial burden as to the defendants' counterclaim in making a prima facie showing that there are no genuine issues of material fact. *Williams*, 316 Ill. App. 3d at 689. Specifically, Johnson & Bell has asserted that the failure to raise sections 3113.40(c) and 3113.40(e) in the IDI Case would not have provided Futurecare and Jansen with a meritorious defense, given the nature of the IDI's claims against the defendants. Therefore, Johnson & Bell asserts that the defendants have not established proximate cause for purposes of their legal malpractice counterclaim.

Johnson & Bell has met its initial burden in making a prima facie showing that no genuine issue of material fact exists as to the defendants' counterclaim. *Williams*, 316 Ill. App. 3d at 689. The burden of proof thus shifts to Futurecare and Jansen, who must present facts that would arguably entitle them to a favorable judgment. *Helfers-Beitz*, 406 Ill. App. 3d at 267-68.

The defendants argue that the stipulation and consent order signed by Jansen, and attached to the response brief as Exhibit E, specifically stated that the defendants were alleged to have violated section 3113.40. Thus, according to the defendants, raising the defendants' compliance with sections 3113.40(c) and (e) would have been material to the IDI Case's outcome. Yet Exhibit E does not stipulate that any allegations against the defendants concerned section 3113.40(c) and (e). Rather, the stipulation and consent order only stipulates that the IDI alleges the following regarding section 3113.40:

C. Thirteen commission withdrawals were sampled during the course of examination and with regards to those commission withdrawals by [Jansen and Futurecare], five were not matched and identified with a prior corresponding premium deposit into the PFTA as required by 50 Ill. Adm. Code 3113.40(b)(3) and 50 Ill. Adm. Code 3113.50(e)(7), nor was any additional

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supporting documentation included for those commission withdrawals as required by 50 Ill. Adm. Code 3113.50(e)(6).

Furthermore, [Jansen and Futurecare] withdrew more commissions than were due on one occasion which demonstrates financial irresponsibility and untrustworthiness which are grounds for revocation pursuant to Section 505.1(a)(6) of the Illinois Insurance Code (215 ILCS 5/505.1(a)(6)).

Section B of the order of revocation, which was based upon violation of the stipulation and consent order, was specifically grounded in Order "G" of the stipulation and consent order. Order "G" states that the defendants "[s]hall not improperly withhold monies that are required to be forwarded to insurance companies."

The defendants also argue that the act of depositing insureds' premiums into a PFTA constitutes "remitting funds to an insurance company." Yet the defendants cite no legal authority supporting such an interpretation.

Ultimately, Futurecare and Jansen were not charged with violating sections 3113.40(c) and (e), which only set forth the circumstances in which licensees must maintain a PFTA and deposit premiums into them. Rather, the defendants were charged with improperly withholding premiums that were not fully remitted to the Insurance Company. Thus, whether these improperly withheld monies were placed in a PFTA would not necessarily have affected the outcome of the IDI Case, and the defendants do not explain how sections 3113.40(c) and (e) would have overcome the allegations against them. There are no provisions in sections 3113.40(c) and (e) allowing Futurecare and Jansen to withhold premiums indefinitely or in ways that would otherwise be improper under other statutory provisions and regulations.

Therefore, Futurecare and Jansen have not shown that raising their compliance with sections 3113.40(c) and (e) would have resulted in a favorable outcome for them in the IDI Case. The court finds that the defendants have not met

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their shifted burden in presenting facts that would arguably entitle them to a favorable judgment as to their counterclaim.

The court grants Johnson & Bell's motion for summary judgment as to the counterclaim of Futurecare and Jansen. Summary judgment is entered in favor of plaintiff Johnson & Bell and against defendants Futurecare and Jansen as to the counterclaim.

Johnson & Bell's Verified Complaint

Johnson & Bell next moves for summary judgment as to its verified complaint against Futurecare and Jansen, arguing that the defendants have presented no meritorious defense to its claims. Futurecare and Jansen raise one affirmative defense against Johnson & Bell's complaint, which essentially mirrors their counterclaim. As the court has found, Futurecare and Jansen have not shown that Johnson & Bell's alleged failure to raise sections 3113.40(c) and (e) would have affected the outcome of the IDI Case. Futurecare and Jansen have not raised any other arguments against Johnson & Bell's verified complaint, and they have not challenged the amount of damages that Johnson & Bell claims to have suffered.

Therefore, the court grants Johnson & Bell's motion for summary judgment as to the verified complaint. Summary judgment is entered in favor of plaintiff Johnson & Bell and against defendants Futurecare and Jansen as to the verified complaint, in the amount of \$55,108.22.

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ORDER

It is ordered:

(1) Plaintiff/counter-defendant Johnson & Bell, Ltd.'s motion for summary judgment against defendant/counter-plaintiffs Futurecare Financial, Inc. and Gregory R. Jansen is granted; summary judgment is entered in favor of plaintiff Johnson & Bell and against defendants Futurecare and Jansen as to the verified complaint and counterclaim, in the amount of \$55,108.22;

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8301

(2) The pretrial conference set for October 1, 2018, at 10:00 a.m. is stricken;

4304

(3) The trial set for October 9, 2018, at 10:00 a.m. is stricken;

4304

(4) This is a final order disposing of this case in its entirety. Judge Daniel J. Kubasiak

SEP 19 2018

(Handwritten initials)

ENTERED,

Circuit Court-2072

(Handwritten signature: D. J. Kubasiak 2018)
 Judge Daniel J. Kubasiak, No. 2072

I hereby certify that the document to which this certification is affixed is a true copy.

Date **DOROTHY BROWN** SEP 28 2018

Dorothy Brown
 Clerk of the Circuit Court
 of Cook County, IL

