

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

THE LAW OFFICE OF DOUGLAS T. HARRIS,	:	JUNE TERM, 2007
And DOUGLAS T. HARRIS, ESQUIRE,	:	
	:	NO. 02576
Plaintiffs,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 086287
PHILADELPHIA WATERFRONT PARTNERS,	:	
L.P., CHARLES L. KAMPS, III, SCOTT A.	:	
BLOW, PATRICK T. HANLEY and TODD	:	
KAMPS,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 26th day of January, 2009, it is further **ORDERED** that defendants' Motion for Summary Judgment with respect to Count V is held under advisement. In their Response to the Motion, plaintiffs state that "Messrs. Kaplan and Blumstein are available for trial and are expected to testify in support of the allegations" of the Amended Complaint. This response is insufficient.¹ Plaintiffs may file a supplemental Response with respect to Count V on or before February 26, 2009.

The remainder of the Motion is **DENIED**.²

BY THE COURT,

MARK I. BERNSTEIN, J.

¹ Pa. R. Civ. P. 1035.3(a)(2).

² The court notes that 1 Chitty's Pleading 411, which appears to have been published in England during the early 19th Century, is no longer good authority in 21st Century Pennsylvania.

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

THE LAW OFFICE OF DOUGLAS T. HARRIS,	:	JUNE TERM, 2007
And DOUGLAS T. HARRIS, ESQUIRE,	:	
	:	NO. 02576
Plaintiffs,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 086222
PHILADELPHIA WATERFRONT PARTNERS,	:	
L.P., CHARLES L. KAMPS, III, SCOTT A.	:	
BLOW, PATRICK T. HANLEY and TODD	:	
KAMPS,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 26th day of January, 2009, for the reasons set forth in the Opinion issued simultaneously, it is **ORDERED** that plaintiffs' Motion for Summary Judgment is **GRANTED**, and all of defendants' counterclaims are **DISMISSED**.

BY THE COURT,

MARK I. BERNSTEIN, J.

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

THE LAW OFFICE OF DOUGLAS T. HARRIS,	:	JUNE TERM, 2007
And DOUGLAS T. HARRIS, ESQUIRE,	:	
	:	NO. 02576
Plaintiffs,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 086222
PHILADELPHIA WATERFRONT PARTNERS,	:	
L.P., CHARLES L. KAMPS, III, SCOTT A.	:	
BLOW, PATRICK T. HANLEY and TODD	:	
KAMPS,	:	
	:	
Defendants.	:	

OPINION

Plaintiffs, the Law Office of Douglas T. Harris and Douglas T. Harris, Esquire (collectively, “Harris”), brought this action against their former clients, defendants Philadelphia Waterfront Partners, L.P. (“PWP”), and Charles L. Kamps, III, Scott A. Blow, and Patrick T. Hanley (collectively, the “Partners”) to recover amounts due Harris as attorneys’ fees under certain Promissory Notes executed by the Partners. The Notes were executed in connection with the transfer to non-party Joseph F. Logue, Jr. and entities controlled by Logue (collectively “Logue”) of the Partners’ interests in PWP and a related entity. PWP’s only assets were two options to purchase certain real property.

In this action, Harris asserts breach of contract and equitable estoppel claims against the Partners based on the Promissory Notes, as well as an unjust enrichment claim based on the legal work he performed for them. He also asserts libel, slander, intentional infliction of emotional distress, and civil conspiracy claims against PWP, the Partners, and defendant Todd Kamps based on false statements they allegedly made about Harris and harassing emails they allegedly

sent him. Defendants assert counterclaims against Harris for violation of the Unauthorized Practice of Law (“UPL”) and Unfair Trade Practices and Consumer Protection (“UTP”) statutes. Defendants also assert claims against Harris for fraud, breach of fiduciary duty, and unjust enrichment based on his representation of them in connection with the transfer of their partnership and real property interests.

In a related action, PWP and the Partners sued Harris and Logue for fraud and breach of fiduciary duty.³ Harris filed a Motion for Summary Judgment in the related action, which this court granted in part. Harris filed a Motion for Summary Judgment in this action asking that all counterclaims against him be dismissed. Defendants’ counterclaims for fraud and fiduciary duty in this action are dismissed for the reasons those same claims were dismissed in the Related Action. The main reason for their dismissal is that PWP and the Partners failed to proffer expert testimony regarding the professional breaches of duty that Harris allegedly committed as their attorney.

The unjust enrichment claim asserted by defendants in this action must be dismissed for the same reasons. Defendants allege that Harris was unjustly enriched by the monthly retainer they paid him because he breached his fiduciary duties of confidentiality and loyalty to them by secretly working against them and for their adversary, Logue, in connection with the transfer of their interests in PWP and the real property. These allegations are, in substance, a claim that Harris committed legal malpractice. Although not all claims of legal malpractice require proof by expert opinion, the allegation that an attorney drafted documents poorly and failed to have important documents executed in connection with a real estate transaction clearly requires expert testimony.

³ Philadelphia Waterfront Partners, L.P. v. Douglas Harris, Esq., June Term, 2007, No. 03811 (Phila. Co.) (the “Related Action”).

Generally, the determination of whether expert evidence is required or not will turn on whether the issue of negligence in the particular case is one which is sufficiently clear so as to be determinable by laypersons or concluded as a matter of law, or whether the alleged breach of duty involves too complex a legal issue so as to warrant explication by expert evidence. The only exception to the requirement that expert testimony must be produced is where the matter under investigation is so simple, and the lack of skill or want of care so obvious, as to be within the range of the ordinary experience and comprehension of even nonprofessional persons.

Here, the underlying question of whether legal malpractice occurred revolves around a lawyer's duty and responsibility in connection with representing a client in a real estate transaction. . . . [T]he sale of real estate is [not] an elementary and non-technical transaction which requires only simple common sense. At issue is not the simplicity of the transaction but the duty and degree of care of the attorney. Whether an attorney failed to exercise a reasonable degree of care and skill related to common professional practice in handling a real estate transaction is a question of fact outside the normal range of the ordinary experience of laypersons.⁴

Defendants have offered no expert opinion regarding the breaches of professional duties that form the basis for their unjust enrichment counterclaim, so summary judgment is granted with respect to that claim.

Defendants' counterclaims brought under the UPL and UTP must also be dismissed.

Harris did not violate the statute prohibiting unauthorized practice of law. That statute provides:

[A]ny person . . . who within this Commonwealth shall practice law, or who shall hold himself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney at law, attorney and counselor at law, counselor, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law *of any jurisdiction*, without being an attorney at law . . . commits a misdemeanor of the third degree upon a first violation.⁵

There is no dispute that Harris is admitted to practice as an attorney in New Jersey. Since he is an attorney in at least one jurisdiction, he cannot be guilty of falsely claiming to be an attorney.

⁴ Storm v. Golden, 371 Pa. Super. 368, 377, 538 A.2d 61, 75 (1988).

⁵ 42 Pa. C. S. § 2524(a) (emphasis supplied).

Defendants also do not have standing to bring a claim against Harris for damages for unauthorized practice of law. The UPL statute provides that a violation of it “is also a violation of . . . the Unfair Trade Practices and Consumer Protection Law.”⁶ The UTP provides a cause of action for consumers only:

Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages.⁷

The defendants’ purchase of Harris’ legal services in connection with the sale of their interests in certain business entities and real property was not “for personal, family, or household purposes.” They purchased Harris’ services for commercial purposes, which is not a protected activity under the UTP. Summary judgment is, therefore, granted with respect to defendants’ UPL and UTP counterclaims.

CONCLUSION

For all the foregoing reasons, Harris’ Motion for Summary Judgment is granted, and defendants’ counterclaims are dismissed.

BY THE COURT,

MARK I. BERNSTEIN, J.

⁶ 42 Pa C. S. § 2524(c).

⁷ 73 P.S. § 201-9.2.