

JONES & ASSOCIATES, P.C.	*	IN THE
Plaintiff,	*	CIRCUIT COURT
v.	*	FOR
BLANK ROME, LLP, et al.	*	BALTIMORE CITY
Defendants.	*	Part 20
	*	Case No.: 24-C-07-004164
* * * * *		

MEMORANDUM AND OPINION

I. Background

This action was initially filed on June 12, 2007 and, on December 31, 2007, plaintiff, Jones & Associates, P.C., filed a First Amended Complaint (“FAC”). Defendants Blank Rome, LLP (“Blank Rome”) and William R. Martin (“Martin”) filed a motion to dismiss Counts IV through VI of the FAC on February 26, 2008. Defendant Patrick O. Cavanaugh (“Cavanaugh”) filed a motion to dismiss for lack of personal jurisdiction on the same date. After reviewing these motions and hearing oral arguments on April 2, 2008, this Court issued an Order and a Memorandum and Opinion on April 8, 2008 granting Defendants’ motions to dismiss with leave to amend.

Plaintiff timely filed a Second Amended Complaint (“SAC”) on April 28, 2008. Blank Rome and Martin filed a motion to dismiss Counts IV through VI of the SAC on May 23, 2008. On the same day, Cavanaugh filed a motion to dismiss the SAC for lack of personal jurisdiction. On June 19, 2008, plaintiff filed separate memoranda in opposition to both motions.¹ Defendants filed a consolidated reply to plaintiff’s Opposition Memoranda on July 2, 2008. The issues were

¹ On June 25, 2008, plaintiff filed a corrected Opposition Memorandum with respect to the Blank Rome and Martin Motion to Dismiss Counts IV through VI of the SAC. On June 30, 2008, plaintiff filed a Supplemental Memorandum to both of their previous Opposition Memoranda.

fully briefed and this Court heard arguments on July 9, 2008. The Court is filing this Memorandum and Opinion to set forth its reason for granting both motions.

II. Defendant Blank Rome, LLP's, and Defendant William R. Martin's Motion to Dismiss Counts IV, V and VI of the Second Amended Complaint Must be Granted.

The primary issue *sub judice* is whether plaintiff has alleged new facts in the SAC that satisfy the sufficiency of the pleadings requirement to warrant denial of defendants' motion to dismiss. "In considering a motion to dismiss for failure to state a cause of action pursuant to Maryland Rule 2-322(b)(2), a trial court must assume the truth of all well-pleaded relevant and material facts in the complaint, as well as all inferences that reasonably can be drawn therefrom." *Bobo v. State*, 346 Md. 706, 708 (1997) (citing *Stone v. Chicago Title Ins. Co.*, 330 Md. 329, 333 (1993); *Odyniec v. Schneider*, 322 Md. 520, 525 (1991)).

Plaintiff's SAC runs nearly 100 pages in length more than its FAC and contains an additional 95 paragraphs of numbered allegations. The significant increase in volume, however, is attributable to repetition rather than to supplementation. As discussed hereinafter very few new facts are alleged to support plaintiff's claims of fraud and/or conspiracy. Md. Rule 1-201(a) expresses a preference for simplicity in pleadings. When the Court granted defendants' motion to dismiss Counts IV, V and VI of the FAC with leave to amend, it was not for the purpose of merely reciting the same allegations *ad nauseam* under each challenged count. Md. Rule 2-303(b) requires plaintiff to set forth the facts necessary to establish each of its claims but insufficient factual allegations are not cured by simple repetition. Despite its length, the SAC does not overcome the pleading deficiencies noted in the Court's dismissal of the FAC.

Plaintiff, in Count IV of the SAC, purports to set forth a cause of action against Martin and Blank Rome for a series of allegations of fraud. Maryland law has long established that "characterizations of acts, conduct or transactions as fraudulent . . . without alleging facts [that]

make them such, are conclusions of law insufficient to state a cause of action.” *Greenbelt Homes, Inc. v. Board of Ed. of Prince George’s County*, 248 Md. 350, 360 (1968) (citations omitted). Merely because a plaintiff uses the word “fraudulent” does not mean that the facts are sufficiently pled. *Brack v. Evans*, 230 Md. 548, 553 (1963) (citations omitted). “There are no strict guidelines for the Court to determine how well facts and circumstances must be pled. As long as the allegations of fraud are supported by specific facts and circumstances, the Court must deny a motion to dismiss for failure to state a claim” *Agbeba v. Sigma Aldrich, Inc.*, 2003 W.L. 24258219, at *8 (Md. Cir. Ct. June 24, 2003).

On initial review of this case, the Court indicated that the fundamental question to be answered was who, if anyone, is responsible for reimbursing plaintiff for the legal services rendered to Nathan A. Chapman, Jr. during his defense of criminal charges in 2004. In the SAC plaintiff contends that this responsibility lies with Blank Rome because, through the actions of Martin and Cavanaugh, Blank Rome fraudulently induced plaintiff to render legal services by representing 1) that an engagement agreement existed; 2) that Blank Rome would directly pay for the legal services; 3) that Blank Rome would pay in full for those services; and 4) that Martin had the authority to enter into said engagement agreement. Plaintiff alleges additional misrepresentations of fact—defendants’ acknowledgment of rendered services pursuant to the alleged agreement, defendants’ willingness to “‘cut the time’ of several of the [Blank Rome] attorneys . . . working on the [Chapman] case” in order to assure plaintiff’s payment in full, and plaintiff’s May 26, 2004 letter to Martin summarizing the agreement—that purport to show, independently and collectively, Blank Rome’s responsibility. (SAC ¶ 118.)

In dismissing Count IV of the FAC, this Court identified three specific allegations—the letter dated June 23, 2006 in which Blank Rome denied the existence of any agreement, Blank

Rome's alleged un-preparedness with respect to the Chapman trial, and the insufficiency of funds—that plaintiff used to support the fraud claims. In the SAC, plaintiff presents a series of allegations in support of the fraud claims in an attempt to overwhelm the Court but fails to hide the fact that there are no new substantive allegations that warrant denial of defendants' motion to dismiss.²

The additional allegations presented in the SAC are insufficient to overcome the Court's previous determination that plaintiff has failed to raise an inference of fraud.³ The SAC simplifies, in relevant part, to the same allegations as the FAC. Specifically, plaintiff continues to suggest as the primary source of an inference of fraud 1) that defendants' first denial of an agreement occurred two years after repeated requests for payment, 2) that defendants were behind in their preparation, and 3) that defendants' were aware of the insufficient resources to pay additional counsel. In *Tufts v. Poore*, 219 Md. 1 (1959), the Court of Appeals noted that “under certain conditions, a failure or refusal to perform is strong evidence of an intent not to perform the promise at the time it was made, as where only a short period of time elapses between the making of the promise and the failure or refusal to perform it, and there is no change in the circumstances.” *Tufts v. Poore*, 219 Md. at 10 (citations omitted). Here, defendants' refusal to pay occurred two years after the alleged agreement. Thus, the strong evidence of intent not to perform is absent and plaintiff cannot support that critical aspect of its claim.

Plaintiff would have the Court infer intent to deceive from allegations that defendant was behind in its preparation for the Chapman trial, was aware of the insufficient funds, acknowledged plaintiff's value in Chapman's defense, was aware of plaintiff's willingness to

² Plaintiff's counsel failed to identify during oral argument a single specific allegation that is unique to the SAC when this Court challenged him to do so.

³ For example, plaintiff now alleges a joint defense agreement with Blank Rome for the purpose of client information sharing. (SAC ¶ 127(v), 128.) This allegation does not, however, bolster its claim of intentional misrepresentation with respect to its fee arrangement.

render services only if Blank Rome paid directly and in full, and that Martin represented that he had authority to enter into the agreement. Even taking these allegations as true, they are insufficient to suggest “a pre-existing intent not to perform a promise” or the requisite conduct to indicate an inference of fraud. *Id.* Thus, plaintiff has failed 1) to suggest more than mere inconsistency in defendants’ position with respect to its responsibility to pay and 2) to allege with particularity defendants’ intention to induce plaintiff’s actions fraudulently.

Plaintiff has also failed to plead the justifiable reliance element of a claim for fraud with sufficient particularity. Plaintiff alleges that it relied on Blank Rome’s “national stature and reputation” in assuming that defendants would not engage in egregious behavior, that defendants’ conduct is prohibited by ethical rules and that the lack of a written agreement supports plaintiff’s belief that defendants would not act in bad faith. Plaintiff’s counsel argued that plaintiff’s relationship with Martin, and their respective reputations, fortified the belief in Blank Rome’s commitment to back the arrangement. Blank Rome’s “stature and reputation” is not sufficient to warrant plaintiff’s assumption that an agreement existed to which Blank Rome would be bound.⁴ Because plaintiff failed to present facts and circumstances that support the fraud claims and to show justifiable reliance, Count IV will be dismissed with prejudice.

⁴ The suggestion that ethical rules prohibit defendants’ conduct is irrelevant because plaintiff failed to offer sufficient facts and circumstances to support the other essential elements of a fraud claim. Rule 4.1 of the Maryland Lawyers’ Rules of Professional Conduct states that “a lawyer shall not knowingly . . . make a false statement of material fact or law. . . .” Md. Lawyers’ Rules of Prof’l Conduct R. 4.1(a) (2008). In certain circumstances, fraudulent activities can be professional misconduct, subjecting the misfeasor to disciplinary sanctions. *Id.* at R. 8.4. See *Att’y Griev. Comm’n v. Willis*, 348 Md. 633, 647 (1998) (ruling that “intentionally deceptive or misleading testimony, even if it does not relate to a material matter” constitutes misconduct); *Att’y Griev. Comm’n v. Glenn*, 341 Md. 448 (1996) (holding that specific intent to defraud need not be shown to establish deceptive conduct in a disciplinary proceeding). These ethical rules, and the potential for disciplinary actions, indicate “to members of the legal profession the type of conduct [that] will not be tolerated”. *Att’y Griev. Comm’n v. Hamby*, 322 Md. 606, 611 (1991). Thus, in certain circumstances, it *might* be reasonable for plaintiff to rely on compliance with these ethical standards when assuming that defendants would not act in bad faith. Justifiable reliance, however, is not the only element necessary in pleading a fraud claim. Failure to plead sufficiently fraudulent conduct obviates this justifiable reliance argument.

In Counts V and VI of the SAC, plaintiff claims that Martin and Cavanaugh conspired to commit breach of contract and fraud and, thus, Blank Rome is responsible for reimbursement of plaintiff for legal services rendered based on a theory of *respondeat superior*. Under Maryland law, civil conspiracy requires “1) [a] confederation of two or more persons by agreement or understanding; 2) some unlawful or tortious act done in furtherance of the conspiracy or use of unlawful or tortious means to accomplish an act not in itself illegal; and 3) [a]ctual legal damage resulting to the plaintiff.” *Lloyd v. General Motors Corp.*, 397 Md. 108, 154 (2007) (citing *Van Royen v. Lacey*, 262 Md. 94, 97-98 (1971); *Damazo v. Wahby*, 259 Md. 627 (1970); *Green v. Washington Suburban Sanitary Comm'n*, 259 Md. 206, 221 (1970)) (internal quotations omitted). Civil conspiracy requires “other tortious injury to the plaintiff” and, hence, is not an independent cause of action. *Id.* (citations omitted). Although some authority exists for alleging a breach of contract as the “unlawful act” in a civil conspiracy action, there is a dearth of authority on this point. *See Columbia R.E. Title Ins. Co. v. Caruso*, 39 Md.App. 282, 289 (1978).

Assuming, for purposes of the present motion, that an agreement to render services was created with plaintiff and that Martin and Cavanaugh knew about the agreement, plaintiff suggests that a reasonable inference can be drawn from the denial of the existence of the agreement after plaintiff rendered services that Martin and Cavanaugh entered into a conspiratorial agreement not to pay for plaintiff’s services. Plaintiff indicates that there is no direct evidence of a conspiratorial agreement, but that the facts and circumstances alleged are sufficient to raise such an inference. The facts and circumstances suggest, at best, however, that defendants breached a contract. Moreover, plaintiff fails to address the legal impossibility for Martin and Cavanaugh—partners in the Blank Rome law firm acting within the scope of their employment—to enter into a civil conspiracy with the law firm. *Marmott v. Maryland Lumber*

Co., 807 F.2d 1180, 1184 (4th Cir. 1986), *cert. denied*, 482 U.S. 929 (1987); *see also* *BEP, Inc. v. Atkinson*, 174 F.Supp.2d 400, 409 (D.Md. 2001) (citing *Kairys v. Douglas Stereo, Inc.*, 83 Md.App. 667, 683 (1990), *overruled on other grounds*, *Montgomery Ward v. Wilson*, 339 Md. 701 (1995)).

Plaintiff is stuck between a rock and a hard place in its attempt to argue conspiracy to commit breach of contract and to show liability based on a theory of *respondeat superior*. For Blank Rome to be liable via *respondeat superior*, the alleged conspiratorial actions must fall within the scope of employment. If the actions fall within the scope of employment, however, then defendants cannot be liable for conspiracy. On oral argument, plaintiff attempted for the first time to argue that Blank Rome is liable for those actions that were outside the scope of employment based on an apparent authority theory. The apparent authority theory of liability was not alleged in the SAC. Thus, plaintiff failed to allege adequately facts to support an appropriate cause of action for civil conspiracy to breach a contract. Accordingly, Count V will be dismissed with prejudice.

Plaintiff depends on the same allegations presented in Count IV to support its claim for conspiracy to commit fraud. Having failed to plead the claim of fraud adequately, plaintiff has not stated a claim for conspiracy to commit fraud, which cannot stand on its own. Accordingly, Count VI will be dismissed with prejudice.

III. Defendant Cavanaugh's Motion to Dismiss for Lack of Personal Jurisdiction Must be Granted.

Cavanaugh filed a motion to dismiss the SAC for lack of personal jurisdiction on the basis that 1) Cavanaugh is not domiciled in, has never been a citizen of, nor has ever transacted business in the State of Maryland; and 2) Maryland's long-arm statute fails to grant specific jurisdiction for lack of factual allegations of business transactions or tortious injury in or out of the State. *See* Md. Code Ann., Cts. & Jud. Proc. §§ 6-102 and 6-103. Plaintiff does not assert that Cavanaugh is a citizen of, maintains a place of business in, or regularly conducts business in the State of Maryland. Plaintiff claims, however, that this Court has personal jurisdiction over Cavanaugh based on the conspiracy theory of personal jurisdiction, which has been described as follows:

Under [the conspiracy theory of jurisdiction] doctrine, when (1) two or more individuals conspire to do something (2) that they could reasonably expect to lead to consequences in a particular forum, if (3) one co-conspirator commits overt acts in furtherance of the conspiracy, and (4) those acts are of a type which, if committed by a non-resident, would subject the non-resident to personal jurisdiction under the long-arm statute of the forum state, then those overt acts are attributable to the other co-conspirators, who thus become subject to personal jurisdiction in the forum, even if they have no direct contacts with the forum.

Cawley v. Bloch, 544 F.Supp. 133, 135 (1982).

In *Mackey v. Compass Marketing*, 391 Md. 117 (2006), the Court of Appeals concluded that Maryland's long-arm statute authorizes the exercise of personal jurisdiction where "the defendant's actions satisfy the minimum contacts required by due process so that 'maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Mackey*, 391 Md. at 130 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). The Court stated that "the conspiracy theory of personal jurisdiction is consistent with the Due Process Clause of the

Fourteenth Amendment” and that “the acts of a co-conspirator in furtherance of the conspiracy may be attributed to other co-conspirators if the requirements of the conspiracy theory are met.” *Id.* at 130-31. Thus, “a court [can] exercise jurisdiction over nonresidents involved in a conspiracy when a co-conspirator performs jurisdictionally sufficient acts in furtherance of the conspiracy.” *Id.* at 131. In other words, “a co-conspirator can be subjected to the personal jurisdiction of a particular forum only if the co-conspirator had a reasonable expectation, at the time the co-conspirator agreed to participate in the conspiracy, that acts to be done in furtherance of the conspiracy by another co-conspirator would be sufficient to subject that other co-conspirator to personal jurisdiction in the forum.” *Id.* at 134.

Allegations of conspiracy are integral to the exercise of jurisdiction based on the conspiracy theory of personal jurisdiction. The Court has indicated above its intent to dismiss Counts V and VI (conspiracy counts) of the SAC for failure to state cognizable claims. Without facts and circumstances to support a claim of conspiracy between Martin and Cavanaugh, plaintiff cannot establish jurisdiction over Cavanaugh based upon acts by Martin in Maryland. Without a factual basis for conspiracy to commit breach of contract or fraud, this Court cannot exercise personal jurisdiction over Cavanaugh for those claims. Accordingly, the application of personal jurisdiction over Cavanaugh for Count VII (aiding and abetting) of the SAC is unsupported. Hence, the claims against Cavanaugh must be dismissed.

IV. Conclusion

For the reasons stated herein, the Court will enter an order this 12th day of August, 2008, granting defendants’ motions to dismiss, with prejudice.

/s/ ajm
ALBERT J. MATRICCIANI, JR.
Judge

cc: All Counsel (via LexisNexis E-Serve)