SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2732-20

JET LEASING SUPPORT SERVICES USA, INC., and UWA S. AMADASU,

Plaintiffs-Appellants,

v.

CURCIO MIRZAIAN SIROT, LLC, ARISTOTLE G. MIRZAIAN, and INSURED AIRCRAFT TITLE SERVICE, INC.,

Defendants-Respondents.

Submitted April 4, 2022 – Decided May 2, 2022

Before Judges Sumners and Petrillo.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-0845-18.

Kessler, DiGiovanni & Jesuele, LLC, attorneys for appellants (Vincent Jesuele, on the briefs).

Tressler LLP, attorneys for respondents Curcio Mirzaian Sirot, LLC and Aristotle G. Mirzaian

(Timothy M. Jabbour and Lauren DiSarno, on the brief).

PER CURIAM

Plaintiffs Uwa S. Amadasu and Jet Leasing Support Services USA, Inc. (Jet Leasing)[1] appeal two orders of the Law Division, both dated June 2, 2021, granting summary judgment to defendants Curcio Mirzaian Sirot LLC and Aristole G. Mirzaian, Esq.[2] and denying plaintiffs' cross-motion for summary judgment. Plaintiffs alleged defendants committed legal malpractice and negligence while representing Amadasu's estranged wife, Gloria Asuelimhense, for whom they arranged Federal Aviation Administration (FAA) deregistration of a $4.6 million jet aircraft owned by Jet Leasing Support Services, USA and Amadasu which supposedly caused damage to plaintiffs. We see no basis for any such claims and find no reason to disturb the trial court's orders. Plaintiffs fail to demonstrate the trial court made any legal error or that there is any factual dispute. We therefore affirm.

[1] Although the record does not support that Amadasu is an employee, shareholder, or owner of Jet Leasing Support Services USA, Inc., he claims it is his "alter ego" and has sued in both his own name and the corporation's name.

[2] Defendants are a law firm and one of its partners respectively.

I.

In February 2016, Asuelimhense retained defendants to provide her legal services. Among these services was a request by Asuelimhense to aid her in deregistering a Bombardier Challenger 604 jet aircraft with the FAA. In connection with the deregistration process, defendants obtained an FAA Aircraft Bill of Sale, indicating that the registered owners of the subject aircraft were Jet Leasing and Amadasu.[3]

In furtherance of the deregistration, defendants prepared a document entitled "Unanimous Written Consent" dated September 17, 2016, signed by Asuelimhense, as sole shareholder of Jet Leasing and appointing her as a director of the corporation. To complete the deregistration process, defendants were advised that the FAA deregistration documents needed the signature of the registered owners, Jet Leasing and Amadasu. Asuelimhense, in her capacity as director and sole shareholder of Jet Leasing, executed the deregistration request on behalf of the entity. Amadasu was asked by Asuelimhense to execute the document and did so. Asuelimhense then provided the fully executed

[3] The purchase agreement for the aircraft at issue was executed on May 11, 2013, by Asuelimhense as the representative of Jet Leasing. While the record supports that Amadasu may be, or may have been, an owner of the aircraft, there is nothing to support the contention that he was a buyer of the aircraft.

deregistration document to defendants with instructions that the document be submitted to the FAA to complete the deregistration process. On March 31, 2017, the deregistration request was submitted to the FAA. The aircraft was deregistered with the FAA effective, May 8, 2017. At some point thereafter, the whereabouts of the aircraft became unknown. As per the record, it is still missing and is likely outside the United States, perhaps, though not certainly, in Nigeria.[4]

According to the FAA, the last U.S. registered owners of the aircraft following the deregistration are Jet Leasing and Amadasu. Nothing in the record supports that ownership changed or, if it did, that the deregistration had anything to do with it. To the contrary, documents required to change ownership are different than what is required for deregistration. Defendants here did not do anything to effectuate a change in ownership of the aircraft. Even assuming

[4] In plaintiffs' cross-motion for summary judgment they state that the aircraft was removed from the United States in 2017 after the deregistration process was complete and that to date its whereabouts are unknown. At deposition, Amadasu testified that the aircraft had never been in the United States between March 2014 and 2017, when he learned of its deregistration and that during that time it had "mostly" been in Nigeria. Later in that same deposition, he said that the aircraft may have been in the United States at "different times" that he could not specify or recall.

Amadasu was an owner of the subject aircraft, the aircraft deregistration documents submitted by defendants to the FAA had no impact on his interest.

At no time throughout the process of aiding their client, Asuelimhense, did defendants speak to or interact with Amadasu. Nothing exists to support the existence of any attorney-client relationship. No retainer was ever executed. No other indicia of any such relationship is contained in the record. There is no evidence in the record that defendants made any representations, be they accurate, inaccurate, misleading, or otherwise, that induced, or even had the potential to induce, any reliance by Amadasu thereon. Based on the record, there is no basis for defendants to have contemplated, in any way, that the narrow task of deregistration for which they were retained to assist would induce reliance by a non-client for any purpose.

On March 8, 2018, plaintiffs filed this lawsuit. The first two counts alleged professional malpractice and negligence. An amended complaint was filed on April 27, 2018, which added a new second count for punitive damages and bumped the negligence count to the third count.[5] Plaintiffs generally allege that the disappearance of the aircraft, a purported change in its ownership, and

[5] An additional count in both complaints asserts a claim against defendant Aircraft Title Service, Inc. The claim against Aircraft Title Service, Inc., was dismissed on June 12, 2018, for lack of personal jurisdiction.

all the associated financial consequences are a direct and proximate results of the defendants' actions take on behalf of their client and they are therefore liable for these losses. Defendants filed one answer to both of plaintiffs' complaints on June 22, 2018.

After discovery was complete, defendants filed a motion for summary judgment. Plaintiffs opposed the motion and filed a cross motion for summary judgment. The trial court heard oral argument on June 2, 2021, and immediately thereafter issued its oral opinion and entered the two orders at issue in this appeal.

The trial court found that there were no genuine issues of material fact; that there was no proof of an attorney-client relationship; that absent an attorney-client relationship no duty was owed by defendants to plaintiffs; and absent a duty, no claim could be sustained. The trial court further concluded that defendants had no cause to have foreseen that any person other than their client would rely on their work and that the showing required to maintain a claim for punitive damages was not met if for no other reason than the fact that the alleged negligence and malpractice claims could not be proven on the record at issue.

On appeal, plaintiffs broadly argue that the trial court erred in granting defendants' summary judgment motion as to the negligence and legal malpractice counts and further erred in denying the cross-motion. We disagree.

II.

"Because these matters were adjudicated by way of summary judgment, our review is based upon the same standard which bound the motion judge. In the absence of any genuine issues of material fact, we must determine whether the judge's legal conclusions are correct." Seaview Orthopaedics ex rel. Frances Fleming v. Nat'l Healthcare Res., Inc., 366 N.J. Super. 501, 505 (App. Div. 2003). This de novo review requires that we consider, as the motion judge did, "whether 'the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.'" Holmes v. Jersey City Police Dep't, 449 N.J. Super. 600, 602-03 (App. Div. 2017) (citation omitted) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). "If there is no genuine issue of material fact, we must then 'decide whether the trial court correctly interpreted the law.'" DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007)). In undertaking our

de novo review, we accord no deference to the trial judge's legal conclusions. Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

The parties conceded before the trial court that the matter was ripe for summary judgment, the motion judge agreed, and we are likewise satisfied that there are no material factual disputes. The issues raised on appeal require that we, like the trial court, simply apply well-established principles of law to the facts before us for the purpose of reaching a purely legal conclusion.

Application of this standard of review, on this record, leads us to the same conclusion as the trial court. It is undisputed that defendants never had any sort of lawyer-client relationship with plaintiffs. There is no record evidence that plaintiffs were ever induced to rely upon, or ever actually did rely upon, anything said or done by the defendant. The FAA deregistration process had no effect on the ownership of the aircraft. Any argument to the contrary is unsupported by the record. Defendants had nothing to do with the aircraft after its deregistration by the FAA. Plaintiffs have no proof of damages under any view of the evidence. The trial court correctly noted that plaintiffs' response to defendants' statement of undisputed material facts and its own statements of fact were almost entirely without support in the record.

All of this leads to a single conclusion: plaintiffs' claims are without basis in law and were properly dismissed.

III.

We begin our review by noting the interconnection between the two causes of action against defendants: negligence and legal malpractice. A legal-malpractice action derives from the tort of negligence. Grunwald v. Bronkesh, 131 N.J. 483, 492 (1993). For either cause of action to be cognizable, defendant must owe a duty to plaintiffs be it a general duty of care, or a professional duty. In this case there is proof of neither.

Negligence

To prevail on a negligence claim, "a plaintiff must establish four elements: '(1) a duty of care, (2) a breach of that duty, (3) proximate cause, and (4) actual damages.'" Townsend v. Pierre, 221 N.J. 36, 51 (2015) (quoting Polzo v. Cnty. of Essex, 196 N.J. 569, 584 (2008)). Whether a defendant owes a duty of care to another is a question of law to be determined by the trial court. Carvalho v. Toll Bros. & Devs., 143 N.J. 565, 572 (1996). If there is no duty owed, there can be no claim.

Courts must analyze a defendant's duty of care to an individual based on the totality of the circumstances, and considerations of public policy and

fairness. Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993); see also Acuna v. Turkish, 192 N.J. 399, 414 (2007). There are four factors that must be analyzed when determining whether an individual owes a duty of care toward another: "the relationship of the parties[;] the nature of the attendant risk[;] the opportunity and ability to exercise care[;]" and public policy considerations. Hopkins, 132 N.J. at 439. This "analysis is both very fact-specific and principled; it must lead to solutions that properly and fairly resolve the specific case and generate intelligible and sensible rules to govern future conduct." Ibid. Whether a duty should be imposed in a particular situation "is a question of fairness and public policy. Foreseeability of injury to another is important, but not dispositive. Fairness, not foreseeability alone, is the test." Kuzmicz v. Ivy Hill Park Apts., 147 N.J. 510, 515 (1997) (citations omitted).

Imposing a duty of care "based on foreseeability alone could result in virtually unbounded liability." Est. of Desir ex rel. Estiverne v. Vertus, 214 N.J. 303, 319 (2013). While acknowledging the four-part test for determining a duty of care, our Supreme Court has "carefully refrained from treating questions of duty in a conclusory fashion, recognizing that '[w]hether a duty exists is ultimately a question of fairness.'" Id. at 322 (alteration in original) (quoting Weinberg v. Dinger, 106 N.J. 469, 485 (1987)).

In analyzing whether to impose a duty of care, appellate courts in particular must proceed with caution because any resolution of the duty analysis will apply not only in the case before it, but to all cases in the future. Hopkins, 132 N.J. at 439. In Estate of Desir, the Court wrote:

> [T]he function of the common law is not to achieve a result in a particular case, but to establish generally applicable rules to govern societal behaviors. Craft a rule that is inherently fact-specific and we risk creating an outcome that reaches only the particular circumstances and the parties before the Court . . . ; create a broadly worded duty and we run the risk of unintentionally imposing liability in situations far beyond the parameters we now face.
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> [214 N.J. at 323.]

Plaintiffs here appear to be asking the court to impose a fact-specific duty of care, given that there is no relationship between the parties. Without exactly saying so, plaintiffs, by virtue of how they have presented their negligence claim, and how they have presented their motion for summary judgment, seem to be arguing that the facts of this case somehow support a finding that it was foreseeable that defendants' legal work on behalf of their client, Asuelimhense, would, or could, cause economic harm to plaintiffs. This theory lacks any sort of evidence to support it. There is no history of the parties interacting and there is no proof that plaintiffs' alleged interest in the aircraft has

been harmed by anything done by defendants; indeed, there is barely proof of any harm at all other than Amadasu's testimony.

In analyzing the duty factors under Hopkins, there was no relationship between the parties. The fact that defendant represented Amadasu's spouse, Asuelimhense, in deregistering an aircraft that her company owned with him, a transaction he signed off on, does not create a relationship between plaintiffs and defendants. Nor could defendants have foreseen what plaintiffs allege, namely that Asuelimhense might somehow impair Amadasu's interest in the aircraft at issue, when no aspect of the deregistration process was in any way connected to the tile or ownership of the aircraft, a wholly separate process.

In a similar vein, the ability and opportunity to exercise care in this case is at best vague if not outright impossible. This is an unusual scenario. Lawyers represented a client who obtained written consent from the co-owner of an aircraft to deregister it. The co-owner, Amadasu, now claims that the lawyers' client, his spouse, has absconded with the aircraft and demands the lawyers be held accountable. Nothing the lawyers did changed the degree of control over the aircraft by their client or Amadasu. Neither did the lawyers do anything to change who owned the aircraft. That their client might go missing with the aircraft was no more or less likely before the lawyers' involvement than after.

Moreover, if Amadasu was concerned about the effect deregistration might on have on the possibility of his wife absenting herself with the aircraft he need not have executed the deregistration documents as he did.[6]

Contrary to Amadasu's assertions, there was no reason for defendants to contact him in connection with the deregistration of the aircraft. They were not acting on his behalf and they relied, as they were entitled, upon the information provided to them by their client. As noted by the trial court in its oral opinion, "all the defendants did was notify Asuelimhense that the deregistration paperwork required the signature of the purported owners of the aircraft." The possibilities related to defendants' ability and opportunity to exercise care in this case are so far-flung "as to make identification of the duty impossible." Est. of Desir, 214 N.J. at 325.

We discern no broad public interest identified in this case. Nothing in this record supports any claim that defendants either acted or failed to act in any manner that resulted in plaintiffs' claimed economic injuries. Analyzing the undisputed facts of the transaction under the totality of the circumstances does not require the imposition of any new or expanded duty of care. The trial court

[6] Amadasu acknowledged his signature at deposition, though he could not specifically recall signing the document.

correctly determined that the negligence claim should be dismissed as a matter of law.

Legal Malpractice

A. Duty owed to a client

"Legal malpractice is negligence relating to an attorney's representation of a client." Sommers v. McKinney, 287 N.J. Super. 1, 9 (App. Div. 1996). A legal malpractice action accrues when an attorney's breach of professional duty proximately causes a plaintiff's damages. Gautam v. DeLuca, 215 N.J. Super. 388, 397 (App. Div. 1987). Thus, without there being a professional duty to breach, no cause of action may lie.

In order to establish legal malpractice, a plaintiff must demonstrate three elements: "(1) the existence of an attorney-client relationship creating a duty of care by the defendant attorney; (2) the breach of that duty by the defendant; and (3) proximate causation of the damages claimed by the plaintiff." McGrogan v. Till, 167 N.J. 414, 425 (2001) (citing Conklin v. Hannoch Weisman, 145 N.J. 395, 416 (1996)). As to these elements, the record is crystal clear regarding the first of them which is outcome dispositive. There was not an attorney-client relationship and, therefore, no professional duty that could be breached. Defendants were not retained by plaintiffs to perform legal services. Plaintiffs

and defendants never discussed representation generally or the deregistration transaction specifically. Plaintiffs proffered no evidence that defendants participated in any theft or conversion of the aircraft. Nor is there any evidence that defendants performed legal services for plaintiffs at any time ever. Defendants had no encounters with plaintiffs and received no monies from them. The record remains undisputed that Amadasu received no legal advice from defendants, nor did he expect any. The motion court properly determined there were no material facts in dispute concerning plaintiffs' legal malpractice claim and that defendants were entitled to judgment as a matter of law.

B. Duty owed to a non-client

In Est. of Albanese v. Lolio, 393 N.J. Super. 355 (App. Div. 2007), we discussed how New Jersey law gauges the existence and extent of a duty owed by a lawyer to a non-client. We noted at the outset of our analysis that whether such a duty exists to a non-client in a given situation is a question of law, the determination of which requires that the court "balanc[e] the attorney's duty to represent clients vigorously with the duty not to provide misleading information on which third parties foreseeably will rely." Id. at 368 (alterations in the original) (citations omitted) (citing Petrillo v. Bachenberg, 139 N.J. 472, 479 (1995).

We explained what was entailed in an attorney's duty of care:

> The duty of care required of attorneys obligates them to use the reasonable knowledge and skill in the transaction of business which lawyers of ordinary ability and skill possess and exercise. On the one hand[,] he is not to be held accountable for the consequences of every act which may be held to be an error by the court. On the other hand, he is not immune from the responsibility, if he fails to employ in the work he undertakes that reasonable knowledge and skill exercised by lawyers of ordinary ability and skill.
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> [Est. of Albanese, 393 N.J. Super. at 368 (quoting Stewart v. Sbarro, 142 N.J. Super. 581, 590 (App. Div. 1976) (alteration in original)).]

We noted that "[w]hether this duty extends to non-clients is 'necessarily fact-dependent.'" Est. of Albanese, 393 N.J. Super. at 368 (citing Est. of Fitzgerald v. Linnus, 336 N.J. Super. 458, 467-68 (2001) (clarifying that "lawyers' duties in specific cases vary with the circumstances presented. 'What constitutes a reasonable degree of care is not to be considered in a vacuum but with reference to the type of service the attorney undertakes to perform'").

In further articulating the considerations as to the existence of a duty, we described how there need not be privity between an attorney and a non-client for a duty to attach "where the attorney had reason to foresee the specific harm which occurred." Est. of Albanese, 393 N.J. Super. at 368-69 (quoting Albright v. Burns, 206 N.J. Super. 625, 633 (App. Div. 1986)); see also Petrillo, 139 N.J. at 478.

Moreover, "attorneys may owe a duty of care to non-clients when the attorneys know, or should know, that non-clients will rely on the attorney's representations and the non-clients are not too remote from the attorneys to be entitled to protection." Petrillo, 139 N.J. at 483-84; see also Stewart, 142 N.J. Super. at 593.

To determine if that duty exists, a court conducts an "inquiry [that] involves a weighing of the relationship of the parties, the nature of the risk, and the public interest in the proposed solution." Barner v. Sheldon, 292 N.J. Super. 258, 267 (Law Div. 1995). The primary question in this inquiry is one of fairness. See Est. of Fitzgerald, 336 N.J. Super. at 468.

The entirety of this analytical template does not depart in significant measure from the duty analysis discussed above in the context of ordinary negligence. Thus, at the outset, in order to prove the existence of a duty owed by defendants, plaintiffs bear the burden of showing that defendants knew or should have known that they would reasonably rely upon defendants' representations and that they did in fact rely upon those representations. At times, this can be a fact question, but not in this case. Here, there is nothing in the record, at all, to support the notion of any reliance by plaintiffs no less intended or invited reliance. To the contrary, no evidence of record even remotely suggests that happened. That is to plainly say that nothing shows that defendants knew or should have known that plaintiffs would reasonably rely upon

their representations to their client, nor is there any evidence in the record that plaintiffs actually did so.

We agree with the trial court's view of the record on this threshold point required to establish the existence of a legal duty. There was no overture by the defendants to plaintiffs, at any time, inviting the plaintiffs to rely on anything done in connection with services provided to their client. Neither was there anything conveyed by plaintiffs, verbally, in writing, or by virtue of some action or inaction otherwise taken, that would signal plaintiffs' reliance on the work and counsel of defendants that was provided to their client. As the trial court noted in its oral ruling, "the only thing to the contrary, were after-the-fact, self-serving representations by Amadasu."

The record is clear that there were no communications whatsoever between plaintiffs and the defendants. We are satisfied that this dearth of communications of any kind, at any time, combined with the utter lack (if not impossibility) of any sort of reliance, are of sufficient collective weight so as to answer the duty question in the negative. We see nothing in the record that would give us pause on this point.

In the absence of privity, there must be some relationship between the parties. In Petrillo, our Supreme Court was clear on this point, stating "when courts relax the privity requirement, they typically limit a lawyer's duty to situations in which the

lawyer intended or should have foreseen that the third party would rely on the lawyer's work." 139 N.J. at 482. In this case, there was no relationship between the parties. Without this relationship there can be neither an invitation to rely nor reliance and thus there can be no basis upon which to impose liability. Banco Popular N. Am. v. Gandi, 184 N.J. 161, 181 (2005).

In short, there are no facts in this record that would allow a finding that there existed any sort of duty running from defendants to the plaintiffs. These non-clients, while no doubt aggrieved regarding their missing airplane, are owed nothing from these defendants and the trial court correctly disposed of this claim by entering judgment on behalf of the defendants.

IV.

Plaintiffs have appealed from the denial of their cross-motion for summary judgment. We see no merit in that appeal largely due to our agreement with the trial court that the defendants were entitled to judgment as a matter of law. In the cross-motion, plaintiffs argued that defendants deviated from accepted standards of practice and were negligent. Without legal or factual support, they further argued that there was a direct attorney-client relationship and that the duties and professional obligations attendant to such a relationship were breached by the defendants. We have addressed these very arguments in considering the appeal of

the trial court's order granting defendants' motion for summary judgment which we have affirmed. For those same reasons, we find it appropriate to affirm the trial court's order. As the trial court said:

> Here . . . there was no attorney/client relationship with the defendants. The plain- -- as indicated in a retainer agreement. The plaintiff fails to present any viable -- viable evidence to show that the parties entered into such a retainer agreement and it's undisputed. Nor could the plaintiff show that there was an act, word, or any identifiable manifestation by the -- by him at the moment of the deregistration process that would signify his reliance on the defendant in their professional capacity and create the relationship by the implication as indicated in case law. Thus, the parties had no attorney/client relationship and, consequently, the defendant owed no duty to the plaintiff.

V.

The trial court order dismissed the punitive damages claim. We need not say much about this part of the order for two reasons. First of all, it is axiomatic that damages of any kind may not be recovered from a party who owes no duty to a claimant as is the case here. While a demand for punitive damages is often included in a separate count, as opposed to merely within an ad damnum clause, it is not a separate cause of action; rather it is a form of compensation demanded for the supposed wrong committed. Entitlement to punitive damages turns on a number of factors but most significantly, and fundamentally, there must first be

a duty that has been breached. Given that we have affirmed the trial court's order and have agreed with the trial court that there was no duty owed, no damages are, or could be owed.

Secondly, while plaintiffs' notice of appeal states generally that they are appealing from both orders of the trial court, it is not at all evident that the appeal was intended to address the part of the order dismissing the punitive damages count. There is certainly no meaningful discussion of the issue in plaintiffs' brief. Indeed, the second point of plaintiffs' brief, the point which pertains to the trial court's decision on defendants' motion, is entitled, "THE TRIAL JUDGE ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE NEGLIGENCE AND LEGAL MALPRACTICE CLAIMS." There is no mention of the punitive damages claim. As such, any appeal of that part of the order is deemed waived. See Telebright Corp. v. Dir., N.J. Div. of Tax'n, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming an issue waived when the brief includes no substantive argument with respect to the issue); Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) (stating "[a]n issue not briefed on appeal is deemed waived"); Mid-Atl. Solar Energy Indus. Ass'n v. Christie, 418 N.J. Super. 499, 508 (App. Div. 2011) (declining to consider issue

raised "without a separate point heading"); DeSoto v. Smith, 383 N.J. Super. 384, 395 n.1 (App. Div. 2006).

To the extent we have not addressed any other remaining arguments offered by plaintiffs, it is because we have concluded they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.