

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KATHLEEN FREDERICK, ESQ., et al.,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
PATRICIA DAVITT, et al.,	:	
Defendants.	:	02-8263

AMENDED MEMORANDUM AND ORDER

SCHILLER, J.

February , 2003

I. INTRODUCTION

Plaintiffs Kathleen Frederick, Esq. and Cureton Caplon, P.C. bring suit against their former client, Patricia Davitt, and her subsequent attorney, Richard J. Orloski, Esq., seeking to recover a fee allegedly owed to them under a contingent fee agreement. Defendant Davitt moves the Court to dismiss Plaintiffs' complaint for lack of jurisdiction pursuant to an arbitration clause in the fee agreement. Defendant Orloski moves the Court to dismiss the complaint for failure to state a claim upon which relief can be granted. On January 23, 2003, the Court heard oral argument regarding these motions. For the reasons set forth below, I grant both motions to dismiss.

II. BACKGROUND

Because Defendants' motions to dismiss are before the Court, the following facts are taken from Plaintiffs' pleadings. Plaintiffs represented Defendant Davitt and Ms. Davitt's co-worker in an employment action in state court. (Compl. ¶ 6.) Ms. Davitt entered into a contingent fee

agreement with Plaintiffs that contained the following language:

Arbitration. Since a dispute concerning fees aired in court could result in the dissemination of information which could be injurious to you and the defendants in this matter, we both agree that if any dispute concerning this agreement arises between us, the matter should be arbitrated in a private, confidential proceeding. However, you do not waive your right to litigate in a court a claim for legal malpractice against any attorney representing you in this matter. A fee Arbitration will be conducted by the American Arbitration Association of Philadelphia, Pennsylvania, according to its terms and conditions. All costs incurred in connection with the fee arbitration will be equally shared by both parties.

(Compl. ¶ 7; Ex. A, “Contingency” Fee Agreement to Provide Legal Services (“Agreement”) ¶ 11.)

Before the summary judgment motion was filed against Ms. Davitt and her co-worker in state court, the employer made a global settlement offer. (Compl. ¶ 13.) Ms. Davitt’s co-worker decided to take the settlement but Ms. Davitt did not, despite Plaintiffs’ suggestions. Plaintiffs withdrew from the case, (*Id.* ¶¶ 17-21), causing Ms. Davitt to proceed pro se in a case that had advanced to the summary judgment stage. Summary judgment was not favorable for Ms. Davitt; the court granted summary judgment on her Title VII claims, leaving only her false light invasion of privacy claim. (*Id.* ¶ 22.) Ms. Davitt thereafter sought help from Defendant Orloski.

Plaintiffs allege that Mr. Orloski proceeded in settlement negotiations with the employer on behalf of Ms. Davitt and obtained settlement of her claims while knowing that Ms. Davitt owed a fee to Plaintiffs. Plaintiff allege, however, that Mr. Orloski stated to Plaintiffs that he did not intend to represent Defendant Davitt. (Compl. ¶ 26.) Plaintiffs contend that Defendant Davitt was obligated to pay under the terms of the fee agreement at least forty percent of the gross recovery from settlement. (Compl. ¶ 35.) Plaintiffs brought this action against Defendant Davitt for breach of contract, quasi-contract, fraud, and quantum meruit and against Defendant Orloski for tortious

interference, quasi-contract, negligent misrepresentation, and quantum meruit. Defendant Davitt moves to dismiss these claims against her pursuant to the arbitration clause in the fee agreement. Defendant Orloski moves to dismiss the claims against him for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

III. DISCUSSION

A. Defendant Davitt’s Motion to Dismiss

Defendant Davitt moves to dismiss pursuant to an arbitration clause in the fee agreement between Ms. Davitt and Plaintiffs. Under the Federal Arbitration Act (“FAA”), 9 U.S.C. § 3, courts must enter a stay pending arbitration when issues brought before it are subject to written arbitration clauses. *See* 9 U.S.C. § 3 (2002). The Third Circuit, however, has interpreted this provision to permit dismissal when all issues raised in the action are arbitrable. *See Smith v. Equitable*, 209 F.3d 268, 272 (holding that “when ‘all the claims involved in an action are arbitrable, a court may dismiss the action instead of staying it’” (quoting *Seus v. John Nuveen & Co., Inc.*, 146 F.3d 175, 179 (3d Cir. 1998))). Under the FAA, in order to determine if there is an enforceable arbitration agreement between the parties that compels arbitration and a stay or dismissal of the present action, a court must consider the following issues: (1) does a valid agreement to arbitrate exist between the parties, and (2) do the plaintiff’s claims fall within the substantive scope of the valid arbitration agreement.¹ *See*

¹ As neither party has raised the issue and Pennsylvania law and the FAA do not conflict regarding whether the issues before the Court may be arbitrated, I do not reach the issue of whether the contract between the parties involves interstate commerce. *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265 (1994) (holding FAA shall apply where state law conflicts with FAA regarding effect of arbitration agreement and where contract between parties concerns interstate commerce). Pennsylvania law has the same standard for deciding whether issues before a court should be arbitrated. *See Midomo Co. Inc. v. Presbyterian Hous. Dev. Co.*,

Painewebber v. Hartmann, 921 F.2d 507, 510-511 (3d Cir. 1990). Doubts are generally resolved in favor of coverage of the arbitration agreement. See *AT&T Tech.v. Comm. Workers of Am.*, 475 U.S. 643 (1986).

First, Plaintiffs argue that the arbitration clause is invalid because Defendant Orloski asserts that the fee agreement is invalid. Plaintiffs' argument, however, is misplaced; Defendant Orloski is not a party to the contract or the arbitration clause that can contest the existence of the agreement. Defendant Davitt, who is a party to the agreement and can enforce the arbitration clause, does not contest the existence of the agreement, but simply states that the claims against them should be determined pursuant to the arbitration clause in the contract. Thus, there is no real dispute that there was an enforceable fee agreement that contained an arbitration clause.

The issue that remains is whether the scope of the arbitration agreement encompasses Plaintiffs' claims against Ms. Davitt. Because the clause states arbitration will be applicable "if any dispute concerning this agreement arises between us," it is sufficiently broad to encompass the claims of breach of contract, fraud and quantum meruit against Ms. Davitt, which all stem from the allegation that Ms. Davitt did not pay Plaintiffs' fee as required by the agreement. Therefore, I grant Defendant Davitt's motion to dismiss as all the claims against her should proceed to arbitration pursuant to the agreement between the parties.

B. Defendant Orloski's Motion to Dismiss

Defendant Orloski moves the Court to dismiss the claims against him for failure to state a claim. When determining a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) ,

739 A.2d 180, 186-7 (Pa. Super. 1999).

“[c]ourts are required to accept all well-pleaded allegations in the complaint as true and to draw all reasonable inferences in favor of the non-moving party.” See *In re Rockefeller Ctr Props., Inc.*, 311 F.3d 198, 215-16 (3d Cir. 2002) (citing *Scheuer v. Rhoades*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Allegheny Gen. Hosp. v. Phillip Morris, Inc.*, 228 F.3d 429 (3d Cir. 2000)). Although courts must not dismiss an action unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claims that would entitle him to relief, courts are not required to “credit bald assertions or legal conclusions improperly alleged in the complaint.” *In re Rockefeller Ctr Props., Inc.*, 311 F.3d at 215-16. “Similarly, legal conclusions draped in the guise of factual allegations may not benefit from the presumption of truthfulness.” *Id.* (citing *In re Nice Sys.*, 135 F. Supp. 2d 551, 565 (D.N.J. 2001), *see also Schuylkill Energy Res., Inc. v. Pa. Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997) (holding courts do not need to accept as true “unsupported conclusions and unwarranted inferences”).

In this case, after hearing argument from counsel for the parties, it is clear to the Court that Plaintiffs’ complaint is based on unsupported conclusions and inflammatory suppositions that if allowed to proceed would interfere with an attorney’s ability to represent any client that was formerly represented by different counsel. As Plaintiffs withdrew prior to Ms. Davitt’s seeking Mr. Orloski’s assistance, the contractual relationship between the parties ended and could not be interfered by Mr. Orloski’s assistance to Ms. Davitt. See *Crivelli v. GM*, 215 F.3d 386, 394 (3d Cir. 2000) (holding that Pennsylvania law requires “the existence of a contractual. . .relation between the complainant and a third party” in order to make out claim for tortious interference). Whatever duty Ms. Davitt may owe to Plaintiffs must be resolved by arbitration and cannot be transfer to her new counsel. It appears to the Court that Plaintiffs filed this Complaint against Mr. Orloski in order to force the

disclosure of the settlement amount obtained and the amount paid to Mr. Orloski, and not based on any facts upon which this Court could draw reasonable inferences. Any inference to be drawn by these allegations would have the affect of interfering with the attorney-client relationship with Mr. Orloski and would have prejudiced Ms. Davitt in her case against her former employer. Thus, I grant the dismissal of all claims against Mr. Orloski.

IV. CONCLUSION

For the above reasons, I grant Ms. Davitt's motion to dismiss as all claims against her must be arbitrated pursuant to the parties' agreement. In addition, I dismiss all claims against Mr. Orloski as Plaintiffs have failed to state a claim against him. An appropriate Order follows.

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v.	:	
	:	
PATRICIA DAVITT, et al.,	:	
Defendants.	:	02-8263

AMENDED ORDER

AND NOW, this day of **February, 2003**, upon consideration of Defendant Davitt's Motion to Dismiss, Defendant Orloski's Motion to Dismiss, responses hereto, and following oral argument, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant Orloski's Motion to Dismiss (document no. 7) is **GRANTED**.
2. Defendant Davitt's Motion to Dismiss (document no. 8) is **GRANTED**.

BY THE COURT:

Berle M. Schiller, J.