COURT OF CHANCERY
OF THE
STATE OF DELAWARE

LEO E. STRINE, JR.
VICE CHANCELLOR

New Castle County Courthouse
Wilmington, Delaware 19801

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***RE: Gelof v. Prickett, Jones & Elliott, P.A.*, C.A. No. 4930-VCS**

Dear Counsel:

This decision addresses the question of whether this court has jurisdiction over the claims brought in plaintiff Dara M. Gelof's complaint. Because Gelof only properly raises a claim for professional negligence, which is a legal claim that can be completely remedied by legal relief, I conclude that this court does not have jurisdiction over this matter, and that the case should be transferred to Superior Court.

I. Background

These are the relevant facts as set forth in the complaint.

Gelof is a beneficiary under two trusts established by her deceased parents, Malvin and Helen Gelof: the Malvin Gelof Management Trust and the Helen Gelof Management Trust (the "Trusts"). Gelof's parents retained defendant Prickett, Jones & Elliot P.A. (hereinafter, "Prickett Jones") to handle their estate planning and to establish the Trusts. While a partner at Prickett Jones, defendant James Dalle Pazze, drafted and supervised the execution of the agreements creating the Trusts.[1]

Gelof claims that the trust agreements — which created trust shares for the lifetime of Malvin and Helen Gelof's children, including plaintiff Gelof, with a remainder interest to the grandchildren — are inconsistent with the specific testamentary intentions of Malvin and Helen Gelof, and fail to minimize the effect of generation-skipping transfer taxes.[2] Because of these alleged deficiencies in the trust agreements, Gelof filed a complaint with this court on September 30, 2009

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[1] Dalle Pazze later left Prickett Jones and eventually became a partner of defendant Herdeg, du Pont & Dalle Pazze, LLP (hereinafter, "Herdeg"). Herdeg Reply Br. 2.

[2] Compl. ¶ 7 ("The establishment of Trust shares for the lifetime of the Trustors' children, including Plaintiff, with a remainder interest over to grandchildren, if any, is inconsistent with the specific testamentary intentions [that] both Trustors expressed to their estate planning lawyers. Furthermore, the trusts for grandchildren are not so drafted as to minimize the impact of the generation skipping transfer tax upon a taxable distribution or taxable termination from the shares set aside in trust for the Trustors' children."). Gelof also alleges that her parents advised Prickett Jones that she was a clearly intended beneficiary of the estate planning advice being sought. *Id*. ¶¶ 1, 6.

alleging that the defendants performed their legal services negligently (Count I), breached their contract with Malvin and Helen Gelof to provide legal services in a competent, skillful, and diligent manner (Count II), and breached their fiduciary duties to Malvin and Helen Gelof (Count III).[3] In response, defendants filed a motion to dismiss, arguing that Gelof's breach of fiduciary duty claim is a groundless duplication of her claim for professional negligence, and, therefore, that all of these claims should be dismissed for lack of equitable jurisdiction.[4]

II. Legal Analysis

When considering a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), this court examines the nature of both the claims and the potential remedies in determining whether a legal, as opposed to an

[3] *Id*. at ¶¶ 9-18.

[4] Herdeg has also filed an independent motion to dismiss. Because I am dismissing this case for lack of jurisdiction under Rule 12(b)(1), I need not also decide Herdeg's separate motion to dismiss for failure to state a claim. But, in the interest of judicial efficiency and for the benefit of the able Superior Court judge who eventually adjudicates Gelof's claims, I take this opportunity to briefly note my impressions of the merits of Herdeg's motion. *Cf. Sunrise Ventures, LLC v. Rehoboth Canal Ventures, LLC*, 2010 WL 363845, at *2 (Del. Ch. Jan. 27, 2010) (dismissing claims for lack of subject matter jurisdiction but also addressing the pleading stage merits of the claims for the sake of judicial efficiency). Herdeg was formed nearly six years after the allegedly negligently-drafted trust agreements were executed. Herdeg's Reply Br. at 3. (indicating that the trust agreements were executed on July 23, 1993, and that Herdeg was formed on May 22, 1999). Herdeg is not a legal successor to Prickett Jones and has no other legal relationship with Prickett Jones. Herdeg's Motion to Dismiss ¶ 4. Because Gelof's allegations relate only to those 1993 agreements, and not to any activity Dalle Pazze engaged in after he left Prickett Jones, there is no connection between Herdeg and the alleged professional negligence. *See* Compl. ¶ 7 (alleging only that the trust agreements were improperly drafted). For this reason, Herdeg should be dismissed from this action.

equitable, remedy is available and adequate.[5] The court has jurisdiction where there is no adequate remedy at law and an equitable remedy is requested, when an equitable right is implicated, or when there is a statutory delegation of subject matter jurisdiction.[6] And, where equitable claims are present, this court may exercise "clean-up" jurisdiction over non-equitable claims arising from the same controversy.[7]

Count III of the complaint, which alleges that the defendants breached their fiduciary duties, is the only possible basis for this court's jurisdiction because Counts I and II, which allege professional negligence and breach of contract, are legal claims. If Count III is a viable claim, then this court may exercise clean-up jurisdiction over Counts I and II.

But, Count III cannot serve as a basis for jurisdiction because there was no fiduciary relationship between Malvin and Helen Gelof and the defendants of the kind that implicates this court's confined jurisdiction. The issue in the present matter is identical to that in *Sokol Holdings Inc. v. Dorsey & Whitney, LLP*, where this court decided that jurisdiction did not lie in this court over a dispute between a

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[5] *See, e.g., IMO Indus., Inc. v. Sierra Int'l, Inc.*, 2001 WL 1192201, at *2 (Del. Ch. Oct. 1, 2001).

[6] *Pitts v. City of Wilmington*, 2009 WL 1204492, at *5 (Del. Ch. Apr. 27, 2009) ("The Court of Chancery can acquire subject matter jurisdiction over a case in three ways: (1) the invocation of an equitable right; (2) a request for an equitable remedy when there is no adequate remedy at law; or (3) a statutory delegation of subject matter jurisdiction.").

[7] *See Getty Ref. Mktg. Co. v. Park Oil, Inc.*, 385 A.2d 147, 149 (Del. Ch. 1978) ("[I]f a controversy is vested with equitable features which would support Chancery jurisdiction of at least part of the controversy, then the Chancellor has discretion to resolve the remaining portions of the controversy as well.").

client and his attorneys about the quality and cost of legal services provided.[8] In that case, the client's complaint cast his claim in the form of a breach of fiduciary duty — *i.e.*, the complaint alleged that the attorneys breached their fiduciary duties by over-billing.[9] But, this court rejected that characterization, finding that "the attorney-client relationship is not a fiduciary relationship in the sense that there are special concerns for which there is no adequate remedy at law."[10] Because "[t]he hallmark of a fiduciary relationship is that *one person has the power to exercise control over the property of another as if it were her own*,"[11] the court explained:

> The attorney-client relationship does not raise the same concerns. Outside of narrow circumstances — such as in the case of client trust accounts or when an attorney is acting in a second capacity like a trustee or corporate manager — none of which are alleged here, attorneys do not exercise control over their clients' property. Rather, attorneys simply hold a position of heightened trust, akin to that of a doctor, which requires the attorney to meet certain professional standards, but does not give rise to fiduciary duties.[12]

Therefore, absent an allegation that the attorney improperly managed the assets of a client, the fact that the person a plaintiff accused of failing to meet standards of professional care is an attorney does not suffice to give rise to a breach of fiduciary duty claim implicating this court's equitable jurisdiction.

Here, as in *Sokol*, there is no allegation in the complaint that the defendants ever directly controlled Malvin and Helen Gelof's assets. All that is alleged is that

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[8] 2009 WL 2501542, at *3-4 (Del. Ch. Aug. 5, 2009).
[9] *Id*. at *1.
[10] *Id*. at *3.
[11] *Id*. at *3-4 (emphasis added).
[12] *Id*. at *4 (internal citations omitted).

the defendants improperly advised Malvin and Helen Gelof and drafted poorly-structured trust agreements,[13] not that they mismanaged the trust funds or any other property of Malvin and Helen Gelof.

Nevertheless, Gelof argues that there was a fiduciary relationship because (1) Malvin and Helen Gelof "placed a special trust" in the defendants and "deposited their sizeable estates" into the Trusts in reliance on the defendants' advice;[14] and (2) the defendants "directed control of Plaintiff's parents' estates by creating the agreements at issue."[15] But both arguments miss the point. Gelof's first argument simply states that her parents followed the defendants' legal and estate planning advice. And, the second argument is an unsuccessful attempt to construe the *drafting* of trust agreements as equivalent to *controlling* the funds entrusted. Although the trust agreements set the parameters in which the trustee — the fiduciary ultimately created in this situation — may operate, drafting the agreements does not make the attorney a fiduciary in the sense that invokes this court's jurisdiction. If the attorney or estate planner's advice falls short of expectations and causes economic harm, a remedy for that exists at law. What equity polices are fiduciaries who actually take control over and make decisions regarding the assets of other persons.[16] Neither Prickett Jones, Dalle Pazze, nor

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[13] *See supra* note 3.
[14] Pl.'s Ans. Br. at 4.
[15] *Id*. at 4-5.
[16] Two well-regarded commentators have described the role of fiduciary duties as follows:

Herdeg did that. In other words, without a party having discretion and control over the disposition of another party's assets, fiduciary duties are not implicated because the classic principal-agent problem simply does not arise. For this reason, both of Gelof's arguments fail. All that the complaint objects to is the quality of the defendants' legal and estate planning advice. That is precisely the sort of argument that provides the grounds for claims of professional negligence against a wide range of persons hired, and to that extent trusted, by their clients to deploy special expertise in accordance with professional standards — from attorneys, to accountants, to doctors, etc. The trust clients place in their lawyers' professional expertise is no more important than the trust patients place in the professional

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> In any of the[] paradigmatic forms [of the fiduciary relationship], *a beneficiary entrusts a fiduciary with control and management of an asset*. Ideally, for the beneficiary, this relationship would be governed by specific rules that dictate how the fiduciary should manage the asset in the beneficiary's best interests. In fact, however, the fiduciary's obligations are open-ended. Because asset management necessarily involves risk and uncertainty, the specific behavior of the fiduciary cannot be dictated in advance. Moreover, constant monitoring of the fiduciary's behavior, which would protect the beneficiary, often is prohibitively costly . . . . The fiduciary relationship exposes a beneficiary/principal to two distinct types of wrongdoing: first, the fiduciary may misappropriate the principal's asset or some of its value (an act of malfeasance); and second, the fiduciary may neglect the asset's management (an act of nonfeasance). *Each type of wrongdoing is controlled by imposing a legal duty upon the fiduciary*.

Robert Cooter & Bradley J. Freedman, *The Fiduciary Relationship: Its Economic Character and Legal Consequences*, 66 N.Y.U. L. REV. 1045, 1046-47 (1991) (emphasis added); *see also Alpert v. 28 Williams St. Corp.*, 63 N.Y.2d 557, 568 (N.Y. 1984) ("Because the power to manage the affairs of a corporation is vested in the directors and majority shareholders, they are cast in the fiduciary role of 'guardians of the corporate welfare.' In this position of trust, they have an obligation to all shareholders to adhere to fiduciary standards of conduct and to exercise their responsibilities in good faith when undertaking any corporate action." (internal citations omitted)).

expertise of their physicians, and no more calls out for an equitable cause of action.

Indeed, the complaint's fiduciary duty claim is the mirror image of its professional negligence claim. Count I of the Complaint alleges:

> In rendering legal services to Malvin and to Helen, Defendants performed their services negligently and below the applicable standard of reasonable care, skill and diligence expected of lawyers practicing in the estate planning failed [sic]. Defendants failed to follow the Trustors' instructions by failing to provide for outright distribution of the Trustors' children's share to them upon the death of the surviving Trustor and further failed to exercise reasonable care, skill and diligence in drafting the Trusts for grandchildren to minimize the generation skipping transfer taxes otherwise applicable.[17]

By comparison, Count III alleges:

> In rendering legal services to Malvin and Helen, Defendants owed a fiduciary duty to their clients to perform their legal services within the standard of care, skill and diligence applicable to attorneys practicing in the field of estate planning in Delaware. Defendants, and each of them, failed to exercise reasonable care, skill and diligence in drafting the Malvin Trust and the Helen Trust as described above and thereby breached the fiduciary duties they owed to both Malvin and Helen.[18]

The allegations in both Counts I and III are functionally identical, and they even share much of the same language.[19] As this court has stated many times before,

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[17] Compl. at ¶ 10.
[18] *Id*. at ¶ 17.
[19] On this issue, Gelof's brief only makes the conclusory assertion that "Plaintiff's claim for professional negligence is far broader than the specialized breach of fiduciary duty claim and is based on different aspects of the representation Defendants provided. Defendants' fiduciary duty to act in the highest degree of fidelity and good faith differs

this court does not have jurisdiction "merely because [a party] styled one of its counts as a breach of fiduciary duty."[20] Rather, Gelof's claims should be heard in Superior Court, which is the court with jurisdiction, and, as a result, has substantial experience in adjudicating professional negligence claims such as this.[21]

III. Conclusion

For the reasons stated above, this court lacks jurisdiction over Gelof's claims, and I therefore dismiss her complaint under Rule 12(b)(1).[22] Her

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from their professional duty to exercise reasonable care, skill and diligence in drafting the subject documents." Pl.'s Ans. Br. at 6-7.

[20] *Sokol Holdings*, 2009 WL 2501542, at *4; *see also McMahon v. New Castle Assocs.*, 532 A.2d 601, 603 (Del. Ch. 1987) ("Chancery jurisdiction is not conferred by the incantation of magic words. Neither the artful use nor the wholesale invocation of familiar chancery terms in a complaint will itself excuse the court, upon a proper motion, from a realistic assessment of the nature of the wrong alleged and the remedy available in order to determine whether a legal remedy is available and fully adequate.").

For this reason, I also reject Gelof's request that this court allow her to amend her pleadings "[i]f this honorable Court should determine that Plaintiff's cause of action for breach of fiduciary duty does not sufficiently allege that breach so as to differentiate it from her claim for professional negligence." Pl.'s Ans. Br. at 7. Rephrasing her complaint will not result in a different outcome, because Gelof already has an adequate remedy at law if the defendants fell short of their professional obligations and thereby caused harm. Therefore, any amendment would be futile. *See Krahmer v. Christie's, Inc.*, 903 A.2d 773, 778 (Del. Ch. 2006) ("[L]eave to amend should not be granted 'where it appears with a reasonable certainty that the plaintiff would not be entitled to the relief sought under any reasonable set of facts properly supported by the complaint, because such amendments would be futile.'" (citations omitted)).

[21] *See Sokol Holdings*, 2009 WL 2501542, at *4 n.20 (citing a number of legal malpractice cases heard recently in Delaware Superior Court).

[22] In dismissing Gelof's complaint, I reject her argument that I should nevertheless exercise jurisdiction over the present matter because this court is currently presiding over related actions between Gelof and her brother, Adam Gelof, the trustee of the Trusts. Pl.'s Ans. Br. at 8. There are two such cases: *Dara M. Gelof v. Adam D. Gelof*, C.A. No. 4811-VCS, which was filed August 17, 2009, and *Adam D. Gelof v. Dara M. Gelof*, C.A.

complaint is dismissed without prejudice so as to allow her to pursue her claims in Superior Court after transfer in accordance with 10 *Del. C.* § 1902.

IT IS SO ORDERED.

Very truly yours,

/s/ Leo E. Strine, Jr.

Vice Chancellor

LESJr/eb

No. 5096-VCS, which was filed on November 20, 2009. Although Gelof is a party to both cases, there are no other commonalities suggesting that judicial efficiencies will be gained by hearing the present controversy in this court. The present matter is a professional malpractice case, whereas Civil Action No. 4811-VCS alleges that Adam Gelof breached his fiduciary duties as trustee, and Civil Action No. 5096-VCS requests this court to partition a number of properties held by the Malvin and Helen Gelof Trusts. In other words, the other cases involve the relationship between Gelof and her brother, and do not apparently implicate the present defendants at all.