

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JAMES SINEX and BETTY
SINEX,

Plaintiffs,

v.

ROMIE D. BISHOP and SHIRLEY
A. BISHOP,

Defendants and
Third-Party Plaintiffs,

v.

BRIAN P. MURPHY,

Third-Party Defendant.

C.A. No. 04C-12-256 MMJ

MEMORANDUM OPINION

***Upon Third-Party Defendant Brian P. Murphy's
Motion for Summary Judgment***

Submitted: January 9, 2005

Decided: January 12, 2005

Romie D. Bishop and Shirley A. Bishop, Middletown, Delaware, Defendants and
Third-Party Plaintiffs, *Pro Se*

Brian P. Murphy, Esquire, Middletown, Delaware, Third-Party Defendant, *Pro Se*

Third-Party Plaintiffs Romie D. Bishop and Shirley A. Bishop filed a third-party complaint against Brian P. Murphy, alleging felony fraud and legal malpractice. By Memorandum Opinion dated October 27, 2005, the court held that “felony fraud” is grounded in alleged criminal conduct. Individuals do not have a private cause of action for damages purportedly suffered as a result of criminal conduct. Thus, the court ruled that the “felony fraud” portion of the third-party claims against Murphy fails to state a claim.

With regard to the legal malpractice claims, the court found that, assuming the facts in the light most favorable to the non-moving party, the record was insufficient at that stage in the proceedings to fully evaluate Brian P. Murphy’s motion to dismiss. Thus, the Motion to Dismiss Third Party Defendant Brian P. Murphy was denied. Murphy subsequently filed a Motion for Summary Judgment, supported by additional factual assertions, as set forth in two affidavits.

In their Response to Motion for Summary Judgment, the Bishops attached excerpts of sworn testimony, taken in the Court of Common Pleas in *Murphy v. Bishop*, C.A. No 04-10-422, as well as an affidavit signed by Mr. and Mrs. Bishop. The court heard oral argument on Murphy’s motion.

The third-party plaintiffs’ legal malpractice claims are based upon Murphy’s legal representation in connection with the sale of Sinex Pools to the Bishops.

The Bishops have made inconsistent allegations with regard to the issue of representation. The Bishops initially alleged that Murphy acted as “attorney for all parties during the sale.” In other sections of the record, they state that Murphy was acting as the Sinex’ attorney. If Murphy did not represent the Bishops, they do not have standing to seek damages for legal malpractice.

The court finds that at most, the third-party plaintiffs had a subjective impression that Murphy represented them in connection with Murphy’s review of a contract. The contract reflects the agreement by the Bishops to purchase the pool business and real estate from plaintiffs James and Betty Sinex. There is no evidence demonstrating that, at the time of the transaction in question, the Bishops’ subjective impression was reasonable. There was no agreement regarding representation among Murphy and the Bishops, as there was among Murphy and Mr. and Mrs. Sinex. In fact, the crux of the Bishops’ legal malpractice claim against Murphy is that Murphy failed to represent the Bishops’ interests. Murphy’s legal fees, in the amount of \$150.00, were billed to and paid by Mr. and Mrs. Sinex. Murphy’s conversations with the Bishops were for the purpose of confirmation of certain information necessary to review the contract on

behalf of Mr. and Mrs. Sinex. There is no evidence that Murphy gave the Bishops any substantive legal advice.¹

THEREFORE, Third-Party Defendant Brian P. Murphy's Motion for Summary Judgment is hereby **GRANTED**. The third-party claims against Brian P. Murphy are hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston

oc: Prothonotary - Civil Division

¹Nevertheless, the better practice would have been for Murphy to have affirmatively informed the Bishops, preferably in writing, that he did not represent their interests in connection with the transaction, and that they were entitled to seek their own legal counsel. Although this is neither an ethical nor legal *requirement*, such notification of non-representation should be standard practice and, in this case, obviously would have conserved the time and resources of the parties and of the court.