

STATE OF VERMONT  
WINDSOR COUNTY, SS

Beverly Derouchey  
Plaintiff

v.

Quechee Lakes Landowners Assoc.  
and Lisman, Webster and Leckerling, P.C.  
Defendant

SUPERIOR COURT  
Docket No. 366-5-09 Wrcv

DECISION ON MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant Lisman, Webster and Leckerling, P.C. (LWL) has moved for judgment on the pleadings against Plaintiff, who is proceeding pro se. Plaintiff has filed a 29 page complaint which stemmed from efforts by Quechee Lakes Landowners Association (QLLA) to foreclose on Plaintiff's property as a result of allegedly unpaid house account charges of less than \$3000. LWL provided legal services to QLLA. In addition to being a landowner, Ms. Desrouchey served on the board of trustees of QLLA.

A motion for judgment on the pleadings is the direct descendant of that ancient leper of the common law, the "speaking demurrer." The standard for granting a Rule 12(c) motion for judgment on the pleadings is identical to that of a Rule 12(b)(6) motion for failure to state a claim. *Irish Lesbian & Gay Org. v. Giuliani*, 143 F.3d 638, 644 (2d Cir.1998); *Sheppard v. Beerman*, 18 F.3d 147, 150 (2d Cir.1994); *Ad-Hoc Comm. of Baruch Black & Hispanic Alumni Ass'n v. Bernard M. Baruch Coll.*, 835 F.2d 980, 982 (2d Cir.1987). In both postures, the court must accept all allegations in the complaint as true and draw all inferences in the non-moving party's favor. *Irish Lesbian & Gay Org.*, 143 F.3d at 644. The court will not dismiss the case unless it is satisfied that the complaint cannot state any set of facts that would entitle him to relief. *Sheppard*, 18 F.3d at 150. *Patel v. Contemporary Classics of Beverly Hills* 259 F.3d 123, 126 (C.A.2d. Cir. 2001); *Thayer v. Herdt*, 155 Vt. 448 (1990).

Ms. Desrouchey's complaint contains nearly 120 separate paragraphs and asserts numerous claims for relief. These claims all have as a common basis actions taken by QLLA. Ms. Desrouchey does not allege she hired LWL to perform any legal services for her individually. For example, Ms. Desrouchey alleges improper suspension by QLLA from membership, thus disqualifying her from serving on the board of directors; failure to disclose a lien against her property by QLLA; assertion of a lien by QLLA without legal basis; exceeding statutory authority by QLLA; assertion of improper or excessive attorney's fees by QLLA; actions by QLLA beyond those authorized by its by-laws.

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incorrect interpretation of its covenants by QLLA; exceeding QLLA's enabling authority; and exceeding QLLA's contractual authority.

The pleadings demonstrate that Ms. Desrouchey's complaint is directed at QLLA. That LWL acted as legal counsel for QLLA and may or may not have advised them concerning certain actions or performed legal services on behalf of QLLA which Ms. Desrouchey claims were improper does not give her a claim against LWL. LWL undertook no legal services on behalf of Ms. Desrouchey.

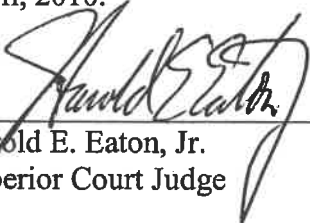
Ms. Desrouchey claims she was improperly charged legal fees for LWL's work on behalf of QLLA, which QLLA then tried to collect against Ms. Desrouchey pursuant to QLLA house account documents. The fact that LWL performed legal services on behalf of QLLA, which QLLA then tried to collect from Ms. Desrouchey does not create an attorney/client relationship between Ms. Desrouchey and LWL, nor does it create a duty of care running from LWL to Ms. Desrouchey. LWL performed legal services for its client, QLLA, and billed QLLA for those services. Whether Ms. Desrouchey must indemnify QLLA for those fees is a matter between Ms. Desrouchey and QLLA. The complaint does not allege any wrongdoing on the part of LWL nor does it allege that LWL owed Ms. Desrouchey any duty of care.

An attorney owes a duty of care to his/her client, not to a third party who claims to have been damaged by some negligence on the part of the attorney. *Bovee v. Gravel*, 174 Vt. 486 (2002). Even were the Court to assume some claim of wrongdoing on behalf of LWL (which is not present), there is no allegation that LWL acted as Ms. Desrouchey's attorney. Accordingly, LWL owed her no duty of care. *Chang v. Lederman*, 90 Cal Rptr. 3d 758 (Cal. App 2009).

This court is aware of the rigorous standards applied to motions made under V.R.C.P. 12(c) and to the pro-se status of Ms. Desrouchey. However, the existence of a legal duty is a question of law. *Gero v. JWJ Realty*, 171 Vt. 57 (2000); *Denis Bail Bonds v. State*, 159 Vt. 481 (1993). Simply stated, the claims Ms. Desrouchey has arising out of her dealings with QLLA exist, if at all, against QLLA, not the attorneys performing work on QLLA's behalf. LWL owed her no duty of care and was not in contractual privity with her if any of her claims sound in contract.

In accordance with the foregoing, LWL's Motion for Judgment on the Pleadings is **GRANTED**.

Dated at Woodstock this 16th day of April, 2010.

  
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Harold E. Eaton, Jr.  
Superior Court Judge

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