No. 1-10-1287

SIXTH DIVISION
June 30, 2011

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANTARES IRON & COPPER, INC.,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
v.	)	07 L 09883
	)	
ROGER L. PRICE and SEYFARTH SHAW, LLP,	)	Honorable
	)	Jennifer Duncan-
Defendants-Appellees.	)	Brice,
		Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
JUSTICES CAHILL and R. E. GORDON concurred in the judgment.

O R D E R

HELD: Ornamental iron work fabricator sued real estate developer for breach of contractual duty to "diligently prosecute" a lawsuit which was source of funds for fabricator and sued developer's lawyers for aiding and abetting their client's "breach of fiduciary duty" to "diligently prosecute" the lawsuit, trial court granted defendant lawyers' motion for judgment on the pleadings, this appellate court affirmed.

A trade contractor settled a dispute with a customer by agreeing payment of $103,195 would "be deferred pending and subject to resolution by settlement or by entry of a final, non-appealable court order of litigation pending [against another entity]" and that the customer would "diligently prosecute" the case "in our mutual interests." When the customer agreed to settle the litigation and allocate only $10,000 for the contractor, the contractor filed suit against the

customer alleging breach of contract and a separate suit against the customer's lawyers alleging they aided and abetted a breach of a fiduciary duty. The trial judge granted the lawyers' motion for judgment on the pleadings or, in the alternative, summary judgment, and this appeal followed. *See* 735 ILCS 5/2-619.1 (authorizing combined motions for dismissal and summary judgment, but requiring the moving party to separate the arguments into distinct parts and specify the points or ground relied upon in each part).

A section 2-615(e) motion for judgment on the pleadings and a section 2-1005 motion for summary judgment similarly ask the court to examine the pleadings in order to determine whether a genuine issue of material fact has been raised, and, in the absence of such an issue, whether the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-615(e), 5/2-1005 (West 2008); *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 29, 801 N.E.2d 1103, 1109 (2003) (2-615 motion); *Safeway Insurance Co. v Hister*, 304 Ill. App. 3d 687, 690, 710 N.E.2d 48, 51 (1999) (summary judgment motion). The motions differ in that a motion for judgment on the pleadings is limited solely to the pleadings and pleading exhibits, while a motion for summary judgment may also rely on affidavits, deposition transcripts, and any other evidentiary documents that are filed by the parties. *Cwikla*, 345 Ill. App. 3d at 29, 801 N.E.2d at 1109; *Safeway Insurance Co.*, 304 Ill. App. 3d at 690, 710 N.E.2d at 51. Both types of motions present questions of law, and we address questions of law *de novo*. *Cwikla*, 345 Ill. App. 3d at 29, 801 N.E.2d at 1109; *Safeway Insurance Co.*, 304 Ill. App. 3d at 627, 710 N.E.2d at 50. *De novo* consideration means we perform the same analysis that a trial judge would perform and give no deference to the judge's conclusions or specific rationale. *Khan v. BDO Seidman, LLP*, 408 Ill.

App. 3d 564, ---, 948 N.E.2d 132, 146 (2011).

The plaintiff Antares Iron & Copper, Inc., which we will refer to as Antares, is a small business based in Summit-Argo, Illinois which designs, makes, and installs custom ornamental iron work. Antares fabricated fence railings and gates for an eight-story residential condominium building that was erected between 2001 and 2004 in Chicago's Gold Coast neighborhood at 65 East Goethe Street. Antares was just one of the more than 40 trades or suppliers that took part in the construction. Antares, however, was the only trade that contracted directly with the condominium developer, Fordham 65 E. Goethe L.L.C., instead of subcontracting with the project's first general contractor, E.W. Corrigan Construction Company. We will refer to the condominium developer as Fordham and the original general contractor as Corrigan.

Fordham terminated Corrigan from the project in January 2003 for performance issues, and then made a claim against a $29 million performance bond and a $29 million labor and material payment bond issued by Corrigan's surety, Fireman's Fund Insurance Company. Consequently, the surety, which we will refer to as Fireman's Fund, filed a declaratory judgment action in federal court against Fordham regarding their respective rights and obligations under the bonds, as well as the availability of bonds issued by other sureties for the building's limestone cladding and zinc roof.

While the declaratory judgment action was pending and the Goethe Street project was nearing completion, a disagreement arose in late 2003 between Fordham and Antares. Fordham had paid Antares about $1.15 million for materials and work as they were contributed to the condominium project, however, Fordham took issue with one or some of Antares' later monthly

invoices. Fordham and Antares reached a compromise about the charges and on January 6, 2004, executed a "Payment Agreement-Rider [to Original Purchase Agreement]" indicating Antares would complete its work, and upon tender of a waiver of lien, would receive $240,000. Of greater significance here is the statement in paragraph 4 that Fordham's payment of an additional $103,195 "shall be deferred pending and subject to resolution by settlement or by entry of a final, non-appealable court order of [the] litigation pending [between Fireman's Fund and Fordham]." Continuing, paragraph 4(b) stated:

> "The Settlement Balance [of $103,195] shall be due and first paid to Antares if and to the extent that Fordham is successful in recovering compensation from Fireman's Fund in the Litigation and only with respect to Antares' work on the Project, and interest charges as detailed herein. If the settlement with Fireman's Fund is not allocated, then Fordham shall pay Antares the entire Settlement Balance, with interest charges, as detailed herein. Fordham shall diligently prosecute the claim, against Fireman's Fund, in our mutual interests, and shall not unilaterally dismiss the claims covered by the Settlement Balance, in which Antares has an interest, nor shall Fordham compromise the claims covered by the Settlement Balance without having diligently prosecuted these claims."

Paragraph 12 was prefaced "Relationship of the Parties" and stated: "Antares and Fordham are independent contracting parties and nothing in this Agreement or any order shall make either party the joint venturer, agent or legal representative of the other for any purpose whatsoever, nor shall it grant either party any authority to assume or to create any obligation on

behalf of or in the name of the other." Fordham and Antares were represented by separate counsel in the negotiation of the Payment Agreement-Rider. Fordham's lawyer was Roger L. Price of the law firm Seyfarth Shaw, L.L.P. The lawyer and his firm are the defendants in the current action. We will refer to the Price and his firm collectively as the lawyers and to the firm as Seyfarth Shaw.

As the declaratory judgment action progressed in federal court, the surety took the position that it had no liability for Antares, because Antares was not a Corrigan subcontractor. Fordham, however, kept the Antares claim in its negotiations and asked the iron fabricator to provide any and all documentation for its claim so that it could recover the highest possible figure from Fireman's Fund. Antares' sole shareholder and owner, Thomas E. Martin, testified at a deposition in the current action that he submitted green and white binders to Fordham containing all the documentation he had. He also said, however, that it was "impossible" for him to document everything, and:

> "I'm running a shop. I'm not running an archive or a museum of, you know, stuff. I'm more interested in getting it out the door and hanging in the building. Nobody pays me to archive or document things. They pay me to get it up and installed.
>
> So I tend to lean toward wanting to do work that I'm getting paid for, rather than, you know, documentation work."

In addition, the documentation expected by his individual "high end residential" customers was "minimal compared to [this] commercial work."

Fireman's Fund hired Vertex Engineering Services, Inc., hereinafter Vertex, to evaluate the specifics of Fordham's demand for at least $7 million from the bonding arrangement, including claims regarding 25 subcontractors and Antares, and expenses Fordham had or would incur due to the construction delays, such as legal fees, and extra taxes and insurance. Vertex analyzed Anatres' claims and the contents of its green and white documentation binders, and concluded that most of the charges should be rejected either because Antares was not entitled to the sums billed or because its supporting documentation was inadequate. Vertex's written report indicated, for instance, that Antares wanted $1,290 for 12 hours of site visits it attributed to Corrigan's lack of cooperation, and also related travel expenses and administrative costs, but Antares substantiated this request with one page of handwritten notes about two telephone conversations, and the notes did not support or suggest Corrigan was uncooperative. It did not provide any supporting time sheets or expense receipts. Another claim was freight delivery and off-site parking fees totaling $5,500, which Antares substantiated with seven parking slips totaling $108. The Vertex report concluded Antares' legitimate claims totaled no more than $31,700, and most of that amount should be "backcharged" to a subcontractor which helped install Antares' products on site. Based on the report, Fireman's Fund determined the net value of Antares' claims was, at most, $4,070. Martin testified at deposition that he received the Vertex report in February 2005 (the Fireman's Fund declaratory judgment action went to mediation in early March 2005), but he did not attempt to refute the surety's conclusion by submitting better or additional documentation. Martin did telephone Fordham's representative Andrew Cripe, but Cripe referred him to Fordham's lawyer, Price, and the lawyer did not return

his three messages, and thus, Price never obtained Martin's opinion of the Vertex report.

A two- or three-day mediation of the declaratory judgment action led to a settlement involving all the claims except the ones involving the building's mansard roof. Cripe recalled at his deposition that the roof contractor was the only trade or subcontractor that attended the meetings. Price recalled at his deposition that no one testified, the mediation was to avoid the expense of "dozens and dozens" of depositions and other means of gathering detailed evidence necessary for a trial, Fordham incurred $500,000 to $600,000 in attorney fees and expenses just getting to mediation, and Cripe and Price anticipated that if a trial became necessary each party would expend at least another $500,000. The Fireman's Fund settlement was memorialized in an agreement dated June 29, 2005, which allocated amounts to the claims of the various trade creditors and others, including Antares, and entitled Fordham to payments totaling $1,150,000, and the release $433,856 being held in escrow, for a sum total of $1,585,856. The written settlement indicates that many of the claimants, including the architect, 15 of the 25 subcontractors, and Fordham itself did not receive an allocation of the settlement funds. Price suggested and Fireman's Fund agreed that Antares' allocation would be $10,000, an amount Price considered to be "an over allocation" because it was double or triple the value placed on the claim by Fireman's Fund and its consultant Vertex and significantly more than what Antares had documented.

Martin indicated at deposition, however, that he did not believe the claim was diligently prosecuted, and that diligence meant Cripe or Price would have returned his messages, interviewed him, sent him interrogatories, and brought him to the mediation table so he could

explain the facts and his documentation to Fireman's Fund. He believed his presence and "energy" at the mediation table would have resulted in a higher overall settlement figure which would have "trickled down" to his benefit. He was also "under the impression [Fordham was] going to shoot for something way north of 103 [thousand dollars]," "thought it was in [their] mutual interests to shoot for something [like] 250, 300, 350, 400 [just for Antares]," "so [he] could get the 103 and they would get the rest." His "understanding of the [parties'] mutual interest language *** [was] it's very clear, okay, that we were shooting for something north of 103." Martin decided he would not cash the $10,000 check.

Instead, on June 30, 2007, his company sued Fordham in the circuit court of Cook County for breach of the Payment Agreement. In its original verified complaint, Antares alleged on information and belief that Fordham breached the contract by failing to "diligently prosecute" the claim. In a separate count, Antares sought an accounting on grounds that it knew the amount but not the rationale behind the $10,000 allocation, needed documentation to determine whether Fordham had "diligently prosecuted" the claim, and until it received that information it would not know "what amounts are due to ANTARES pursuant to the Payment Agreement." Thus, in this pleading, Antares was alleging the contract provided for a conditional payment and did not fix the amount Antares would ultimately recover from Fordham.

On September 19, 2007, Antares filed a separate complaint against Fordham's attorney Price and his law firm, alleging on information and belief, that Fordham breached the Payment Agreement's diligent prosecution language by "permit[ting] an unreasonable or unfounded purported allocation of the claim," and, on information and belief, that the lawyers aided and

abetted that breach of duty. We point out that because the action against Fordham was expressly styled as a breach of contract action, it would seem that the related action against Fordham's lawyers was for aiding and abetting a breach of contract. However, Antares argues the related action, which it did not title, stated a claim for aiding and abetting of a breach of a fiduciary duty, which is a tort claim. See *Thornwood v. Jenner and Block*, 344 Ill. App. 3d 15, 27-28, 799 N.E.2d 756, 767-68 (2003) (indicating breach of fiduciary duty and associated claim of aiding and abetting a breach of fiduciary duty are tort claims); *Reuben H. Donnelley Corp. v Brauer*, 275 Ill. App. 3d 300, 309, 655 N.E.2d 1162, 1170 (1995) (indicating allegations of persons acting in concert and aiding and abetting the misconduct are tort claims).

Antares' two complaints regarding Fordham's performance of the Payment Agreement were consolidated.

In late 2009, all the defendants sought summary judgment against Antares on grounds that two years of discovery had produced no indication of a breach of duty. Instead of ruling on the motions, the trial judge convened the parties to announce that although both sides of the litigation were contending their contract required Fordham's diligence but not a specific result, the judge had determined the contract obligated Fordham to pay Antares the full $103,195.45 regardless of the outcome of the federal action. The judge did not enter an order to this effect, but later in the proceedings, recounted the procedural history of the case as follows:

> "[When the parties appeared in court on November 9, 2009], this Court communicated that it construed the Payment Agreement to mean that Fordham was contractually required to pay Antares the full $103,195.45 as a 'deferred

> payment' irrespective of the outcome of the Federal Litigation. This Court further stated that in its view, this was the only reasonable construction of the Payment Agreement. ***
>
> On November 9, 2009, the plaintiff orally moved for and was granted leave to amend its pleading to allege that the $103,195.45 was a deferred payment, which Fordham was contractually obligated to pay Antares irrespective of the outcome of the Federal Litigation. *** The amended verified complaint dropped the count for accounting and added a new count based on this Court's Absolute Payment interpretation of the Payment Agreement. Therefore, Counts II and III of the amended complaint are based on different interpretations of the contract: Count II deals with the Conditional Payment interpretation while Count III deals with the Absolute Payment interpretation."

Count I of the amended verified complaint against Fordham was also a breach of contract claim but was premised on a contract clause which is not relevant here. In each of the three counts of the amended pleading, Antares sought up to $103,195.45 in damages for Fordham's alleged breach of a contractual duty.

Shortly after Antares amended its pleading against Fordham to incorporate the judge's absolute payment theory, the defendant lawyers motioned for dismissal or judgment on the pleading directed at them, and judge granted the motion. This is the ruling at issue on appeal.

A few weeks after that, Antares prevailed on its claims against Fordham. Seyfarth Shaw had withdrawn from its role as Fordham's counsel, and it appears Fordham did not retain

substitute counsel, because the record indicates that Antares motioned to find Fordham in default and that it was granted a default judgment on April 30, 2010. The judgment rendered was $240,291.70, which reflected the $103,195.45 principal and 9% annual interest as provided in the written contract.

With these facts in mind, we now address Antares' tort suit against Fordham's lawyers. Antares contends the judge misunderstood the allegations that Fordham's lawyers aided and abetted Fordham's breach of a fiduciary duty. Antares contends a fiduciary relationship arises when a party controls another party's economic results, the Payment Agreement gave Fordham this power and responsibility and, therefore, obligated Fordham to collect the largest possible amount on Antares' behalf from Fireman's Fund, even if that meant Fordham alone incurred the expense of going to trial so that Antares could reap the benefit. Antares insists it did not allege the lawyers owed a duty to Antares, as the judge seemed to conclude. Rather, Antares argues, Fordham's lawyers had control over the execution of Fordham's fiduciary duty to Antares and they breached the duty first by prematurely settling the claim and second by intentionally allocating an artificially low number for Antares' ornamental iron work. Antares' appeal relies primarily on *Thornwood*, which it cites for the proposition that a lawyer may be held liable in tort to a non-client for aiding and abetting a client's breach of a fiduciary duty. *Thornwood*, 344 Ill. App. 3d 15, 799 N.E.2d 756. Antares asks us to vacate the judge's ruling and remand its tort claim for resolution on the merits.

We find, however, that Antares cannot maintain an action against Fordham's lawyers for their representation in the Fireman's Fund action. We reach this finding because Antares'

allegations and evidence were insufficient to create a material question as to any element of its claim, and the record indicates Price and Seyfarth Shaw were entitled to judgment as a matter of law.

For one thing, Antares failed to plead or provide evidence of an underlying fiduciary relationship which the lawyers assisted in breaching. As summarized above, when it sued Fordham, Antares alleged that Fordham's conduct in the Fireman's Fund proceedings was a breach of contract, not the commission of tortious conduct, and it has gone as far as obtaining judgment on its allegations. More specifically, Antares' "First Amended Verified Complaint for Damages" against Fordham consisted of three counts, all of them were captioned "Breach of Contract," were based on the terms of the Payment Agreement, and sought the principal sum of $103,195.45 as specified in the contract. Antares obtained default judgment on this pleading when Fordham failed to respond in a timely manner. The corollary claim against Fordham's lawyers for their role in Fordham's breach of contract would be "aiding and abetting" the breach, but Illinois does not recognize a claim for aiding and abetting a breach of contract. *Reuben H. Donnelley Corp.*, 275 Ill. App. 3d at 310, 655 N.E.2d at 1170-71 (rejecting allegations of aiding and abetting where the underlying conduct was "not tortious conduct, but, rather conduct of a contractual breach"). Furthermore, parties to a contract are generally not in a fiduciary relationship and Antares did not allege or come forth with any facts indicating one existed here. *Colmar, Ltd. v. Freemantlemedia North America, Inc.*, 344 Ill. App. 3d 977, 994, 801 N.E.2d 1017, 1030 (2003) (affirming dismissal of complaint because in Illinois, "[i]t is well established that parties to a contract do not stand in a fiduciary relationship to one another"). A confidential

or fiduciary relationship arises where one party's trust and confidence conveys dominance and influence to another party. *Carey Electric Contracting, Inc. v. First National Bank*, 74 Ill. App. 3d 233, 237, 392 N.E.2d 759, 763 (1979). Therefore, a fiduciary relationship arises as a matter of law between attorney and client, principal and agent, guardian and ward, and may arise in other instances in which one party is "heavily dependent upon the advice of another." *Carey Electric Contracting*, 74 Ill. App. 3d at 238, 392 N.E.2d at 763. Establishing that a fiduciary relationship existed is difficult; the evidence must be clear and convincing, and "so strong, unequivocal and unmistaken that it leads to only one conclusion." *Carey Electric Contracting*, 74 Ill. App. 3d at 238, 392 N.E.2d at 763.

For instance, in *Carey Electric Contracting*, subcontractors on a City of Elgin public works agreed to delay cashing checks and executed waivers of mechanics lien for a contractor who subsequently became bankrupt. *Carey Electric Contracting*, 74 Ill. App. 3d at 235, 392 N.E.2d at 762. The appellate court rejected their fiduciary claim, reasoning:

> "Plaintiffs allege they trusted [general contractor] Benchmark and that that trust, plus the dominant position Benchmark occupied in their business relationships because it was the general contractor, operated to create a confidential relationship. We cannot agree. The parties herein were all businesses, theoretically operating at arms length, and their relationship was governed according to contracts made between them. Normal trust between friends or businesses, plus a slightly dominant business position, do not operate to turn a formal, contractual relationship into a confidential or fiduciary relationship. A

> confidential relationship only goes to a situation where one party, because of some close relationship, relies very heavily on the judgment of another. We do not say that businesses linked by contract can never be found to be parties in a confidential relationship, but mere allegations that one businessman simply trusted another to fulfill his contractual obligations is certainly not enough. If we were to hold otherwise, most contracting parties might well be found to be in this type of confidential relationship." *Carey Electric Contracting*, 74 Ill. App. 3d at 238, 392 N.E.2d at 763-64.

See also *Oil Express National v. Burgstone*, 958 F.Supp. 366, 371 (N.D. Ill. 1997), quoting *In re Estate of Wernick*, 151 Ill. App. 3d 234, 502 N.E.2d 1146, 1153 (1986) ("the duties of the parties are clearly set forth in the contract between them, and the *** allegations "do not move [them] out of the mainstream of franchisor-franchisee relationships *** into the more subservient position of [a fiduciary]").

Similarly, the record on appeal establishes nothing more than an ordinary arms' length contractual agreement between the ornamental iron work fabricator and the real estate developer. Antares alleged:

> "8. Pursuant to ¶4(b) of the Contract, Fordham had a duty to Plaintiff to diligently prosecute the claim [against the surety] insofar as it involved Plaintiff's work, and not to permit unreasonable or unfounded purported allocation of the claim. On information and belief, Fordham breached that duty.
>
> 9. Defendants [Price and Seyfarth, Shaw] were, at all times material

hereto, aware of the Contract.

10. As counsel for Fordham, Defendants owed a duty to Plaintiff not to aid and abet Fordham's breach of its duty to Plaintiff. On information and belief, Defendants did so aid and abet Fordham's breach of its duty aforesaid. Plaintiff is unaware of the details of such breach by Fordham and of Defendants' aiding and abetting thereof because Fordham has refused to voluntarily provide information and documents as to the settlement ***."

These allegations fail to create a material issue because, under Illinois law, parties to a contract do not stand in a fiduciary relationship to one another and Antares did not allege any facts outside of the parties' contractual relationship which would indicate Fordham was its fiduciary. It did not plead a breach of any fiduciary duty, let alone the aiding and abetting of a breach of fiduciary duty. Furthermore, Cripe (Fordham's representative), Martin, and Price all gave deposition statements consistent with an ordinary contractual relationship. And, although Martin described the steps he wished Fordham and Price had taken, such as grossly inflating Antares' damage claim and including him and his claim in the direct negotiations with Fireman's Fund, there was no contractual or fiduciary obligation for anyone to take these actions. Thus, the record Antares compiled did not create a material question regarding any fiduciary duty. We also emphasize that the lawyers had an attorney-client relationship with Fordham only and owed duties to Fordham only. Despite Antares' tortured characterization of the facts, it is plainly attempting to extend a duty from Fordham's lawyers directly to Antares, and Illinois courts will not impose such a duty. Imposing a duty under the facts alleged "would have the undesirable

effect of creating a duty to third parties which would take precedence over [the] attorney's fiduciary duty to his client." *Schott v. Glover*, 109 Ill. App. 3d 230, 235, 440 N.E.2d 376, 379 (1928). As a matter of public policy, attorneys are left free to advise their clients without fear of personal liability to third persons. *Schott*, 109 Ill. App. 3d at 235, 440 N.E.2d at 379.

Instead of addressing the Illinois law discussed above and the defect it exposes in the pleading at issue, Antares relies exclusively on foreign law. Foreign law can never be more than persuasive authority in this jurisdiction and all the cases Antares cites are factually distinguishable. In *Corcoran*, for example, a federal district court applying Iowa law found a question of fact existed as to whether there was a fiduciary relationship because the record compiled "suggests far more than a simple arm's-length business relationship between the parties to the Agreement." *Corcoran v. Land O' Lakes, Inc.*, 39 F.Supp.2d 1139, 1155 (N.D. Iowa, 1999). In that case, the defendant was contractually required to provide continuing counsel and advice to the plaintiff, the defendant had the right to direct the plaintiff, and the plaintiff was required to take any action reasonably requested by the defendant. *Corcoran*, 39 F.Supp.2d at 1155. In addition, various members of the defense testified at deposition that they believed they were obligated to act with the interests of the plaintiff in mind. *Corcoran*, 39 F.Supp.2d at 1155. These indications of domination and that the purported fiduciary considered its first loyalty to be to the plaintiff were enough to withstand a motion for summary judgment on the breach of fiduciary duty claim. *Corcoran*, 39 F.Supp.2d at 1155. The contract at issue here did not concern any ongoing business counseling, advice, or direction, and expressly provided that Fordham's bond claim was to pursued "in our mutual interests" rather than in the interests of one

party. Accordingly, *Corcoran* does not aid Antares' appeal. In the New York case *Crabtree v. Tristar Automotive Group, Inc.*, 776 F.Supp. 155 (S.D.N.Y. 1991), the court denied a motion to dismiss where the defendants were alleged to be in a position of trust or confidence because they took possession of the plaintiff's business, including the management of financial data needed to value and consummate the sale of the business between the parties. In *Atlantic Richfield Company v. Farm Credit Bank of Wichita*, 226 F.3d 1138, 1161 (10th Cir. 2000), the record created a question of fact as to whether a fiduciary relationship existed where the operator of a Colorado oil and gas lease was alleged to have withheld revenue and royalty information and taken more than its fair share from ongoing sales. In *Church of Scientology International v. Eli Lilly & Company*, 848 F.Supp.1018, 1028 (D.C.C. 1994), a federal district court was unwilling to grant summary judgment on allegations that a public relations firm had a relationship of "great sensitivity, based on trust and confidence" where there was evidence the firm betrayed this trust to enhance its own bottom line and gave advice to other clients to be used against the plaintiff's interests. We conclude that none of these cases is analogous to the present circumstances or suggest the relationship between Antares and Fordham was anything more than an ordinary contractual relationship.

Antares' primary source of Illinois authority is *Thornwood*, which is also off point. *Thornwood*, 344 Ill. App. 3d 15, 799 N.E.2d 756. In that case, there was no dispute that a fiduciary relationship existed and had been breached, and the issue on appeal was whether Illinois would recognize a cause of action against attorneys who were alleged to have knowingly participated in the breach of fiduciary duty. The underlying parties were partners in the

development of an upscale residential community and golf course in Kane County in the early 1990's. *Thornwood*, 344 Ill. App. 3d at 18, 799 N.E.2d at 759. Under Illinois law, the existence of a fiduciary relationship between partners is well-established, and each partner is bound to exercise the utmost good faith and honesty in all matters relating to the partnership business. *Winston & Strawn v. Nosal,* 279 Ill. App. 3d 231, 239, 664 N.E.2d 239, 244-45 (1996). The fiduciary relationship "prohibits all forms of secret dealings and self-preference in any [partnership] matter" and "requires each partner to fully disclose partnership business to other partners." *Winston & Strawn,* 279 Ill. App. 3d at 239–40, 664 N.E.2d at 245. One of the development partners, however, bought out the other partner's interests without disclosing that the PGA Tournament was negotiating to join the development project. *Thornwood*, 344 Ill. App. 3d at 19-20, 799 N.E.2d at 760-61. It was alleged that the buyer's attorneys knew about the PGA's involvement when they drafted a sales contract which incorporated release of claims language for their client and themselves. *Thornwood*, 344 Ill. App. 3d at 20, 799 N.E.2d at 761. The trial court dismissed allegations that the attorneys aided and abetted a breach of fiduciary duty, but this court concluded the dismissal was in error because there was a material question as to whether the release was valid. *Thornwood*, 344 Ill. App. 3d 15, 799 N.E.2d 756. This holding does not exempt subsequent litigants such as Antares from the requirement that they adequately plead an underlying breach of fiduciary duty, which Antares has not done. Antares cannot elevate an ordinary breach of contract claim against Fordham into a tort claim against Fordham's lawyers simply by adding the phrase "aiding and abetting" to a contract claim.

Antares' reliance on *Khan*, 408 Ill. App. 3d 564, 948 N.E.2d 132, is similarly misplaced

because it concerns the principal-agent relationship that undisputedly exists between a securities broker and client, and nothing in the court's analysis is applicable here.

We could affirm the trial judge's ruling for these reasons alone, but we also point out that the damage element of Antares' claim against the lawyers fails because Antares has obtained a judgment for the full amount specified in the Payment Agreement. Antares sued Fordham's lawyers seeking the difference between the $10,000 check it received and the much higher amount stated in the Payment Agreement, but obtaining judgment on the full amount means Antares has been made whole and cannot show it was damaged by the current defendant lawyers' conduct. See *e.g.*, *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 910 N.E.2d 1134 (2009) (indicating the elements of a tort claim are (1) a duty owed to the plaintiff by the defendant, (2) a breach of that duty, (3) an injury, and (4) a proximate cause between the breach and injury). In short, the record does not suggest a duty which was breached and resulted in injury to plaintiff Antares.

For these reasons, we conclude Antares has sued and obtained judgment against the only entity it could arguably pursue and it cannot maintain the current suit against Fordham's lawyers. We have examined the pleadings and competent evidence compiled for our review. The record before us creates no genuine issue of material fact regarding the actions of the defendant attorneys and indicates the defense is entitled to judgment as a matter of law. It is inconsequential that our reasons for reaching this conclusion differ from the trial judge's. Our role is to review the ruling rather than the trial judge's specific reasoning, and our *de novo* consideration permits us to affirm on any basis established by the record. *Swilley v. County of*

Cook, 348 Ill. App. 3d 405, 407, 810 N.E.2d 167, 170 (2004). We affirm the summary judgment entered for the defense.

Affirmed.