2014 IL App (1st) 122120-U

FIRST DIVISION
AUGUST 11, 2014

No. 1-12-2120

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LEON G. LOME, M.D., S.C., derivatively, MARK J. SCHACHT, M.D., and PETER VASELOPULOS, M.D.,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 10 L 3024
LEON G. LOME, M.D., S.C., LEON G. LOME, M.D., individually, and KAMENSKY, RUBINSTEIN, HOCHMAN, and DELOTT, LLP,	)	Honorable Joan E. Powell,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Connors and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiffs' claim of malpractice against law firm was properly dismissed pursuant to section 2-615 of the Code of Civil Procedure where complaint failed to allege actual damages incurred due to malpractice and where complaint failed to allege that plaintiffs were owed a fiduciary duty by law firm notwithstanding plaintiffs' status as shareholders of law firm's corporate client.

¶ 2 This appeal arises from a legal malpractice claim asserted in a shareholder derivative action involving a closed corporation, Leon G. Lome, M.D., S.C. (the Corporation). The

Corporation was owned by three physicians: Leon G. Lome, M.D., Mark J. Schacht, M.D., and Peter Vaselopulos, M.D. Two of those physicians, Dr. Schacht and Dr. Vaselopulos (plaintiffs) initiated this action individually and derivatively on behalf of the Corporation. The named defendants in the underlying action are Dr. Lome individually, the Corporation,[1] and the law firm, Kamensky, Rubinstein, Hochman & Delott, LLP (Kamensky). Plaintiffs appeal from the dismissal of that portion of their third amended complaint that asserted a claim of legal malpractice against Kamensky, as well as the denial of the motion to reconsider that dismissal. Plaintiffs argue that, contrary to the arguments made in Kamensky's motion to dismiss, (1) the third amended complaint sufficiently pleaded that plaintiffs suffered an injury as a result of Kamensky's alleged malpractice; and (2) the third amended complaint sufficiently pleaded that Kamensky owed a duty to plaintiffs, as plaintiffs were shareholders of Kamensky's corporate client. For the following reasons, we conclude that dismissal of the legal malpractice claim was correct and affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 This appeal concerns a legal malpractice claim filed in the circuit court of Cook County asserted in conjunction with a dispute among three physicians who were equal shareholders of a closed corporation. At all relevant times, Dr. Lome and plaintiffs Dr. Schacht and Dr. Vaselopulos were each one-third shareholders in the Corporation, which provided medical care and services pursuant to the Illinois Medical Corporation Act. According to the third amended

[1]As Dr. Schacht and Dr. Vaselopulos sued both "individually and derivatively on behalf of" the Corporation, the underlying action names the Corporation both as a derivative plaintiff and as a defendant.

complaint, filed on September 23, 2011, which is at issue in this appeal (the complaint),[2] Dr. Lome served as the President of the Corporation and controlled its books and records. Dr. Lome allegedly "controlled the Board and the actions of the corporation to such a degree that he was the only person making decisions for the Board and the corporation," and Dr. Lome "co-opted and usurped plaintiffs['] authority as shareholders and eliminated their ability to participate in the business of the corporation." At all relevant times, defendant-appellee Kamensky served as legal counsel to the Corporation.

¶ 5 The complaint included allegations of corporate misconduct against Dr. Lome, as well as alleging separate counts against Kamensky. It asserted that Dr. Lome engaged in "reckless and egregious acts and breaches of fiduciary duty and corporate waste." Among these acts, Dr. Lome allegedly "failed to hold annual Shareholder Meetings and Board of Director meetings for *** the years 2005 through 2009 in violation of the Illinois Business Corporation Act." In January 2010, Kamensky "sent [Dr.] Lome a letter with proposed shareholder minutes for the past four years," despite the fact that "these meetings were never held and these minutes were false." Dr. Lome then "attempted to defraud [plaintiffs] by presenting them with these falsified records of annual minutes of Shareholders and Board of Directors' meetings that never actually

[2]The initial complaint commencing this action was filed on March 9, 2010. After Kamensky moved to dismiss the counts asserted against it, plaintiffs filed their first amended complaint on November 3, 2010. After Dr. Lome and Kamensky filed motions to dismiss that version of the complaint, the trial court granted plaintiffs leave to file a second amended complaint, which was filed on June 10, 2011. Following motions by Dr. Lome and Kamensky to dismiss the second amended complaint, the trial court again permitted plaintiffs to amend their pleading. The third amended complaint, which is the pleading at issue in this appeal, was filed on September 23, 2011.

occurred ***." According to the complaint, Dr. Lome's "intent was to induce [plaintiffs] and several other non-parties into believing the meetings had occurred."

¶ 6 Separately, the complaint alleges that the Corporation had a profitable business relationship with an entity known as Greater Chicago Urology (GCU), with whom the Corporation had an agreement to share the services of an employee, a specialized surgeon. Plaintiffs allege that Dr. Lome "fail[ed] to obtain insurance for the corporation's joint venture with [GCU]" despite telling plaintiffs that he would obtain such coverage. Subsequently, Dr. Lome "unilaterally severed the agreement and relationship with GCU without notice" to the plaintiffs, resulting in expenses to the Corporation and lost revenue. Moreover, the complaint alleges that "[b]oth the corporation and individual plaintiffs [were] damaged through their exposure to liability in the form of a lawsuit that has been brought against them during the time when they did not have insurance." Notwithstanding this allegation, the plaintiffs provide no additional details about the lawsuit to which they attribute damages.

¶ 7 Count III of the complaint, which is the only count at issue in this appeal,[3] asserts legal malpractice against the Kamensky law firm. Count III alleges that Kamensky acted as attorneys for the Corporation and "owed the Corporation a duty to provide competent legal services." In addition, the complaint alleges that Kamensky "owed plaintiffs the duty to exercise that degree of skill, learning and diligence in the representation of plaintiff[s] as would be ordinarily employed by reasonably well-qualified attorneys specializing in civil litigation." The complaint alleges that Kamensky "breached [its] duty by failing to advise the Corporation that minutes and

[3]Count II of the complaint pleaded an "aiding and abetting" claim against Kamensky for assisting Dr. Lome's alleged breaches of fiduciary duties to the Corporation. However, Plaintiffs do not address the dismissal of count II in their appellate briefing and thus have forfeited any review of dismissal of that count. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

annual meetings were necessary" and by "advis[ing] the directors and shareholders to fabricate minutes" for shareholder meetings that did not occur. Specifically, Kamensky allegedly asked Dr. Lome to sign "proposed minutes" for meetings in 2005 through 2009 that did not occur. As a result, Kamensky "expos[ed] the individual Officers and Shareholders of the Corporation, as well as the Corporation itself, to claims of fraud by third parties." In addition, Count III alleges that Kamensky "also breached [its] duty by failing to take the necessary steps to ensure that [Dr.] Lome obtained insurance coverage for the Joint Venture" with GCU.

¶ 8 On October 17, 2011, Kamensky filed a motion to dismiss counts II and III of the complaint pursuant to 735 ILCS 5/2-615 for failure to state a cause of action. The motion to dismiss with respect to the malpractice claim in count III focused on two arguments. First, Kamensky argued that the complaint "faile[d] to set forth an attorney-client relationship between the individual plaintiffs and Kamensky." Since Kamensky's client was the Corporation, Kamensky argued that "the factual allegations of the complaint do not establish a duty owed by the law firm to the shareholders," including Dr. Schacht and Dr. Vaselopulos. Secondly, Kamensky's motion to dismiss argued that the plaintiffs "fail[ed] to allege that the alleged malpractice caused damages." Kamensky argued that although "plaintiffs allege[d] exposure to a theoretical fraud claim and [an] unidentified pending lawsuit," the complaint did not allege cognizable injuries related to any attorney negligence.

¶ 9 In response to Kamensky's argument regarding the lack of alleged injury, plaintiffs stated: "plaintiffs allege that defendants['] fabrication of corporate minutes has exposed plaintiffs to claims of fraud which will necessarily involve the expenditure of attorneys' fees. Therefore, plaintiffs have sufficiently pled an injury ***." Plaintiffs argued that "it is plainly obvious that [Kamensky] should have advised plaintiffs to keep corporate minutes rather than fabricate them

and that plaintiffs have incurred and will incur attorneys['] fees as a result of [Kamensky's] failure to do so regardless of the outcome of subsequent litigation."

¶ 10 In response to Kamensky's argument that the firm owed them no duty, plaintiffs contended that: (1) "Kamensky represented the corporation and its officers, including Schacht and Vaselopulos who also paid Kamensky's bill"; and (2) under a "control group" theory, plaintiffs, as officers and shareholders of the Corporation, "were entitled to assert an attorney-client privilege with" Kamensky that "demonstrate[d] that there was a direct attorney-client relationship as well"; and (3) that plaintiffs could "maintain a legal malpractice claim against [Kamensky] as a result of their status as third-party beneficiaries of the attorney-client relationship between the corporation and [Kamensky]." Plaintiffs argued that since Kamensky represented the Corporation, of which plaintiffs were two-thirds shareholders, "the obligations [Kamensky] owed to the corporation were directed to plaintiffs as the primary beneficiaries of [Kamensky's] representation."

¶ 11 Kamensky filed a reply brief on January 19, 2012 reiterating its arguments that the complaint had not sufficiently pleaded either a breach of duty or actual damages caused by Kamensky's alleged malpractice. At a hearing on March 28, 2012, the trial court considered Kamensky's motion to dismiss counts II and III of the complaint, as well as the other defendants' motion to dismiss the remaining claims asserted against them. The trial court granted both motions and dismissed all counts of the complaint, including the malpractice claim asserted against Kamensky, with prejudice. The trial court's order of dismissal does not set forth the reasoning for dismissing each claim, and the appellate record does not contain a transcript or record of proceedings from the hearing. Thus, the basis of the trial court's dismissal is not clear.

¶ 12 Plaintiffs filed a motion to reconsider on April 27, 2012. On June 4, 2012, defendants including Kamensky filed a motion requesting that the court deny the plaintiffs' motion to reconsider *instanter*. On June 14, 2012, the trial court denied plaintiffs' motion to reconsider. On July 16, 2012, plaintiffs filed a notice of appeal from the dismissal of the complaint and denial of the motion to reconsider. The notice of appeal was timely because 30 days following the June 14, 2012 order on the motion to reconsider was Saturday, July 14, 2012, and the notice of appeal was filed on the next business day. See Ill. S. Ct. R. 303(a) (eff. May 1, 2007). On June 27, 2013, this court granted plaintiffs' request to dismiss the Corporation and Dr. Lome from the appeal. Thus, this appeal concerns only the dismissal of the legal malpractice claim against Kamensky.

¶ 13 ANALYSIS

¶ 14 We have jurisdiction here pursuant to Illinois Supreme Court Rule 304(a). Ill. S. Ct. R. 304(a) (eff. Jan. 1, 2006). We note that the underlying lawsuit had previously been consolidated with a separate declaratory judgment action filed by the Corporation and Dr. Lome against Dr. Schacht and Dr. Vaselopulos in the circuit court of Cook County's Chancery Division.[4] The chancery division action, in which Kamensky was not a party, remained pending after the trial court's March 28, 2012 dismissal of the complaint at issue on this appeal. However, the trial court's dismissal order included an express finding that "pursuant to Supreme Court Rule 304(a),

[4]The chancery division action, No. 10 CH 29062, was initiated by Dr. Lome against Dr. Schacht and Dr. Vaselopulos in July 2010, following the commencement of the action underlying this appeal. The chancery division action sought, among other relief, a declaratory judgment that Dr. Schacht and Dr. Vaselopulos had been terminated as employees of the Corporation and that subsequent corporate resolutions purporting to remove Dr. Lome as a director and dissolve the Corporation were invalid. By order dated August 4, 2010, the circuit court consolidated the chancery division action with the action at issue in this appeal.

no just reason exists to delay enforcement or appeal" from that order. After plaintiffs' motion to reconsider dismissal of the complaint was denied on June 14, 2012, plaintiffs filed a timely notice of appeal on July 16, 2012.

¶ 15 "A motion to dismiss for failure to state a cause of action pursuant to section 2-615 attacks 'the legal sufficiency of a complaint based on defects apparent on its face.' " *Nelson v. Quarles and Brady, LLP*, 2013 IL App (1st) 123122, ¶ 27 (quoting *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009)); 735 ILCS 5/2-615) (West 2006). In an appeal from dismissal of a complaint pursuant to section 2-615, we review the order granting the motion *de novo*. *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 12. In reviewing the legal sufficiency of the complaint, we "accept[] as true all well-pleaded facts" and "construe the allegations in the complaint in the light most favorable to the plaintiff." *Id.*; *Nelson*, 2013 IL App (1st) 123122, ¶ 3. "A cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Simpkins*, 2012 IL 110662, ¶ 12; *Nelson*, 2013 IL App (1st) 123122, ¶ 27.

¶ 16 The elements of a legal malpractice claim are well-settled. "To state a cause of action for legal malpractice, the plaintiff must allege facts to establish (1) the defendant attorney owed the plaintiff client a duty of due care arising from an attorney-client relationship; (2) the attorney breached that duty; (3) the client suffered an injury in the form of actual damages; and (4) actual damages resulted as a proximate cause of the breach." *Nelson*, 2013 IL App (1st) 123122, ¶ 27 (quoting *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (2008)).

¶ 17 We first consider plaintiffs' argument on appeal that dismissal of the legal malpractice claim was improper because the complaint sufficiently pleaded that plaintiffs suffered an injury. Our supreme court has held that "[t]he existence of actual damages is *** essential to a viable

cause of action for legal malpractice." *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 307 (2005). "Even if negligence on the part of the attorney is established, no action will lie against the attorney unless that negligence proximately caused damage to the client." *Id.* "Unless the client can demonstrate that he has sustained a monetary loss as the result of some negligent act on the lawyer's part, his cause of action cannot succeed." *Id*. On the other hand, "[w]here the mere possibility of harm exists or damages are otherwise speculative, actual damages are absent and no cause of action for malpractice yet exists." *Id*.

¶ 18 Because "[a] legal malpractice suit is by its nature dependent upon a predicate lawsuit," satisfying the element of injury generally requires that the plaintiff has suffered an adverse result in an underlying action due to attorney negligence. *Nelson*, 2013 IL App (1st) 123122, ¶ 28 ("no malpractice exists unless counsel's negligence has resulted in the loss of an underlying cause of action, or the loss of a meritorious defense if the attorney was defending in the underlying suit." (quoting *Claire Associates v. Pontikes*, 151 Ill. App. 3d 116, 122 (1986))). Thus, we have recognized that "a cause of action for legal malpractice will rarely accrue prior to the entry of an adverse judgment, settlement, or dismissal of the underlying action in which plaintiff has become entangled due to the purportedly negligent advice of his attorney." *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349, 356 (1998).

¶ 19 Although an adverse judgment in an underlying case is usually a prerequisite to establishing the injury element of a malpractice claim, we have recognized that "[a] legal malpractice claim can accrue before the client suffers a final, adverse judgment in the underlying action where it is 'plainly obvious, prior to any adverse ruling against the plaintiff, that he has been injured as the result of professional negligence' or where an attorney's neglect is a direct

cause of the legal expense incurred by the plaintiff." *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 70 (2007) (quoting *Lucey*, 301 Ill. App. 3d at 358).

¶ 20 Here, although recognizing that an adverse judgment in underlying litigation is generally required to plead damages due to legal malpractice, plaintiffs nevertheless argue that "they suffered damages prior to the entry of a judgment against them based on [Kamensky's] negligent conduct." Specifically, plaintiffs' appellate brief argues that they "were damaged due to their exposure to liability in the form of a lawsuit that was brought against them during the time the Corporation was without the insurance coverage *** and claims of fraud by third parties." Plaintiffs argue that "it is plainly obvious that [Kamensky] should have advised plaintiffs to keep corporate minutes rather than fabricate them and should have ensured that Lome obtain insurance for the joint venture and that plaintiffs have incurred and will incur attorneys['] fees as a result of [Kamensky's] failure to do so regardless of the outcome of subsequent litigation."

¶ 21 Plaintiffs' reliance on the "plainly obvious" exception to the usual requirement of an adverse judgment, as applied to the facts here, is misplaced. Plaintiffs argue that a breach of duty with respect to the contemporaneous creation of meeting minutes or obtaining insurance for the joint venture was "plainly obvious," yet this does not mean that damages were incurred by the plaintiffs. Even if we assume the Kamensky firm deviated from the acceptable standard of practice, this does not establish the independent element of actual damages necessary to support a malpractice claim. See *Northern Illinois Emergency Physicians*, 216 Ill. 2d 294, 306-07 ("Even if negligence on the part of the attorney is established, no action will lie against the attorney unless that negligence proximately caused damages to the client"); see also *Mauer v. Rubin*, 401 Ill. App. 3d 630, 647 (2010) ("A causal link between the alleged negligence and the

loss of the underlying suit will not be presumed ***. This is true even where it is conceded that defendant committed negligence in his handling of the underlying lawsuit.")

¶ 22 Regardless of whether Kamensky's breach was "plainly obvious," plaintiffs' allegation that the firm's malpractice resulted in mere "exposure to liability" does not plead a sufficient injury. To the contrary, we have stated that "[w]here the mere possibility of harm exists or damages are otherwise speculative, actual damages are absent and no cause of action for malpractice yet exists." *Lucey,* 301 Ill. App. 3d at 353. In *Lucey* we held that "the trial court correctly dismissed plaintiff's action *** as premature" because the mere potential for damages was not sufficient to state a claim for malpractice. *Id.* at 358-59 ("Although plaintiff may have been alerted to the *possibility* defendants had given him incorrect legal advice when he dismissed them and retained other counsel, *** his tentative damages would not become actionable unless and until the [underlying] litigation ended adversely to him."). We concluded in *Lucey* that "[a]s actionable damages were a mere potentiality prior to resolution of the [underlying] litigation, plaintiff failed to state a claim for legal malpractice, and his first amended complaint was properly dismissed." *Id.* at 359.

¶ 23 Here, as in *Lucey*, plaintiffs' alleged exposure to third-party lawsuits is a "mere potentiality" and does not constitute actual damages. In other words, the claim that Kamensky's malpractice exposed plaintiffs to liability asserts only a "mere possibility of harm" and thus "actual damages are absent and no cause of action for malpractice yet exists." *Northern Illinois Emergency Physicians,* 216 Ill. 2d at 307.

¶ 24 Plaintiffs' argument on appeal that they will have to pay attorneys' fees due to Kamensky's alleged malpractice also does not cure the complaint's failure to allege actual damages. Plaintiffs argue that "regardless of the outcome of subsequent litigation," plaintiffs

"have incurred and will incur attorneys['] fees as a result" of Kamensky's alleged malpractice with respect to the fabricated meeting minutes and failure to obtain insurance. However, the complaint itself does not contain any allegation that plaintiffs have been or will be damaged by paying attorneys' fees. Rather, the only allegation in the malpractice count of the complaint relating to damages is that Kamensky's fabrication of corporate meeting minutes "expos[ed] the [plaintiffs], as well as the Corporation itself, to claims of fraud by third parties." In reviewing a section 2-615 motion, which "attacks the legal sufficiency of a plaintiff's complaint," "our analysis is *** limited [] to those facts and allegations contained with the complaint and its attachments." *Seith v. Chicago Sun-Times, Inc.*, 371 Ill. App. 3d 124, 133 (2007); *Krueger v. Lewis*, 342 Ill. App. 3d 467, 471-72 (2003) (in reviewing a section 2-615 dismissal, "we look at only the four corners of the complaint"). Accordingly, in challenging a dismissal under section 2-615, "[a] plaintiff *** may not rely on factual or legal conclusions that are not supported by factual allegations." *Duffy v. Orlan Brook Condominium Owners' Ass'n*, 2012 IL App (1st) 113577, ¶ 14. Thus, the plaintiffs in this case cannot rely on the attorneys' fees argument, as it does not correspond to the allegations contained in the complaint. This is especially so considering that plaintiffs were granted multiple opportunities to refine their allegations by amending their complaint. The complaint at issue in this appeal is the *third* amended complaint.

¶ 25 In any event, this court in *Lucey* explained that the mere payment of attorneys' fees does not fulfill the element of damages absent a clear causal connection between the fees and the alleged malpractice, which generally requires an underlying judgment or settlement in the predicate litigation. See 301 Ill. App. 3d at 355. Although we acknowledged that "where an attorney's neglect is a direct cause of the legal expense incurred by the plaintiff, the attorney fees incurred are recoverable as damages," we emphasized "the converse of this rule is equally true:

where an attorney's neglect is *not* a direct cause of the legal expenses incurred by the plaintiff (*i.e.*, the plaintiff prevails when sued or loses for reasons other than incorrect legal advice), the attorney fees incurred are generally not actionable." *Id.* We explained that "[s]ince it is also possible the [plaintiff] will prevail when sued by a third party, damages are entirely speculative until a judgment is entered against the [plaintiff] or he is forced to settle" in the underlying litigation. *Id.* Thus, we specifically "reject[ed] the parties' assertion that subsequently incurred attorney fees will, in every case, automatically give rise to a cause of action for legal malpractice against former counsel." *Id.* at 355. Our decisions since *Lucey* confirm this holding. See *Huang v. Brenson*, 2014 IL App (1st) 123231, ¶ 25 ("A legal malpractice plaintiff may recover as actual damages the attorney fees proximately caused by the defendant's malpractice, 'so long as the plaintiff can demonstrate she [or he] would not have incurred the fees in the absence of the defendant's negligence.' " (quoting *Nettleton v. Stogsdill*, 387 Ill. App. 3d 743, 753 (2008))); *York Woods Community Ass'n v. O'Brien*, 353 Ill. App. 3d 293, 299 (2004) (rejecting proposition that "the mere incurrence of attorney fees automatically gives rise to a cause of action for legal malpractice"). Here, the complaint does not identify any underlying litigation, let alone any adverse judgment or settlement, that would indicate a causal nexus between the expenditure of attorneys' fees and Kamensky's purported malpractice. Thus, plaintiffs' argument that they will have to pay attorneys' fees does not remedy the complaint's failure to plead damages caused by attorney negligence.

¶ 26 In short, despite the allegation that Kamensky's actions resulted in potential exposure to lawsuits by third parties, there is no allegation that any liability has been attributed to plaintiffs or the Corporation as a result of Kamensky's alleged legal malpractice. It is certainly not "plainly obvious" that plaintiffs will suffer any injury as a result of Kamensky's advice, and thus

any damages from the alleged malpractice are merely speculative. As plaintiffs failed to plead actual damages attributable to the alleged malpractice, the injury element has not been satisfied and dismissal of the claim was warranted.

¶ 27 Although the complaint's failure to plead actual damages is sufficient to affirm dismissal of the legal malpractice claim, we further note that the claim is independently deficient due to the lack of duty owed to plaintiffs by the Kamensky firm. "Generally, to go forward on a legal malpractice claim, a plaintiff must first establish the existence of an attorney-client relationship that gave rise to a duty of care on the part of the attorney." *Blue Water Partners, Inc. v. Edwin D. Mason*, 2012 IL App (1st) 102165, ¶ 38. "However, a narrow exception to this privity requirement has been carved out in limited circumstances. An attorney *** owes a duty to a third party only where hired by the client specifically for the purpose of benefitting that third party." *Kopka v. Kamensky and Rubenstein*, 354 Ill. App. 3d 390, 411 (2004) (citing *Pelham v. Griesheimer*, 92 Ill. 2d 13 (1982)).

¶ 28 In *Pelham*, our supreme court held that plaintiffs who are not actual clients of the defendant attorney but "allege and prove facts demonstrating that they are in the nature of third-party intended beneficiaries of the relationship between the client and the attorney" may sustain a malpractice claim. 92 Ill. 2d at 20. However, the *Pelham* court explained that "to establish a duty owed by the defendant attorney to the nonclient," the plaintiff "must allege and prove that the intent of the client to benefit the nonclient third party was the primary or direct purpose of the transaction or relationship." *Id.* at 21. Thus, "for a nonclient to succeed in a negligence action against an attorney, he must prove that the primary purpose and intent of the attorney-client relationship itself was to benefit or influence the third party." *Id.* at 21.

¶ 29 Here, plaintiffs acknowledge that Kamensky's client was the Corporation, not the plaintiffs individually. Nevertheless, plaintiffs argue that, under *Pelham*, they were owed a duty by Kamensky because they were third-party beneficiaries of the attorney-client relationship between Kamensky and the Corporation. Plaintiffs point out that Kamensky "represented the corporation of which plaintiffs own 66⅔%" and thus contend that "the obligations [Kamensky] owed to the corporation were also owed to plaintiffs as the primary beneficiaries of [Kamensky's] representation." However, "[p]roof of intent to benefit or influence a third party must be specific." *Blue Water Partners*, 2012 IL App (1st) 102165, ¶ 38. In the past, we have held that "[a] claim that the third party is a shareholder in the corporation is by itself insufficient to establish a duty on the part of the attorney for the corporation in favor of the shareholder third-party." *Id.*; see also *Kopka*, 354 Ill. App. 3d at 939 (affirming dismissal of breach of fiduciary duty claim against law firm and noting "[t]his court has *** declined to impose a fiduciary duty upon an attorney to a corporation's shareholders, in the absence of privity or status as intended third-party beneficiary"); *Majumdar v. Lurie*, 274 Ill. App. 3d 267, 270 (1995) ("The fact that [plaintiff] became a shareholder, officer, and director of the defendants' client *** is of no moment because the attorney for a corporate client owes his duty to the corporate entity, not its individual shareholders, officers, or directors.") A plaintiff's shareholder status does not create a fiduciary duty running from the corporation's counsel to the individual shareholder, even in the case of a closed corporation. See *Hager-Freeman v. Spricoff*, 229 Ill. App. 3d 262, 277-78 (1992) ("the attorney for a corporation, even a closely held one, does not have a specific fiduciary duty toward the individual shareholders").

¶ 30 Here, plaintiffs have not alleged any facts other than their shareholder status to support the claim that they were intended third-party beneficiaries of the attorney-client relationship

between Kamensky and the Corporation. Absent any allegations of specific intent to benefit plaintiffs, their status as shareholders is insufficient to invoke the third-party beneficiary exception to the general rule that only clients may bring a legal malpractice claim against their attorneys. The complaint's lack of allegations establishing a duty owed by Kamensky to the plaintiffs thus provides an independent basis for affirming the dismissal of the legal malpractice claim.

¶ 31 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.