2016 IL App (2d) 150141-U
No. 2-15-0141
Order filed January 19, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GLOBAL DATA SCIENCES, INC., a Nevada Corporation, Plaintiff-Appellant, v. OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C., a South Carolina Professional Corporation, and MICHAEL H. CRAMER, Defendants-Appellees.	)	Appeal from the Circuit Court of Kane County. No. 12-L-630 Honorable Thomas E. Mueller Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted summary judgment for defendants when plaintiff failed to prove that defendants owed a duty to plaintiff to advise it of the legal consequences of changing a substantial term in a draft employment agreement defendants had reviewed, and then entering into that revised agreement with plaintiff's Chief Operating Officer.

¶ 2 Appellant, Global Data Sciences, Inc., (GDS) appeals from the trial court's order granting a motion for summary judgment in favor of appellees Ogletree, Deakins, Nash, Smoak &

Stewart, P.C., (Ogletree Deakins) and Michael Cramer (Cramer) (collectively, defendants) in this legal malpractice case. For the following reasons, we affirm.

¶ 3 A. BACKGROUND

¶ 4 The record reflects that GDS is a start-up technology company founded in 2007 by Michael Mantzke (Mantzke), its Chief Executive Officer. In January 2008, GDS's Chief Operating Officer, Timothy Kuhfuss entered into an employment agreement with GDS that provided him with a salary of $175,000 (January Agreement). In October 2008, Kuhfuss hired Cramer on behalf of GDS to review and comment upon a draft employment agreement that GDS was contemplating signing with two potential new employees, David Malmstedt and Kevin Schick. GDS received the draft employment agreement from Malmstedt, who emailed it to GDS. In the email Malmstedt said, "[a]ttached please find agreements that could be applicable to employment for this team at Global Data Sciences."

¶ 5 On October 3, 2008, Kuhfuss sent Cramer the draft agreement that Malmstedt had sent to GDS. The compensation term in the draft agreement was for commission only and contained a base salary of "$0.00." Around October 6, Cramer advised Kuhfuss that under federal and state minimum wage laws GDS had to pay Malmstedt and Schick at least minimum wage. On October 9, Kuhfuss forwarded Malmstedt's email to Cramer. Attached to that email was a modified version of the draft employment agreement containing edits and comments that Kuhfuss had made to the document following his conversations with Cramer. In the body of the email Kuhfuss included a brief background on GDS as well as an overview of GDS' negotiation points with respect to Malmstedt and Schick. On October 17, Cramer sent Kuhfuss a further modified version of the draft agreement that contained additional edits. Ultimately, GDS never hired Malmstedt or Schick.

¶ 6 More than two months later, and unbeknownst to Cramer, on December 31, 2008, GDS modified the draft agreement that Cramer had reviewed earlier, and Kuhfuss executed a new employment agreement with GDS based upon that document (December Agreement). Like Kuhfuss' earlier employment agreement, this agreement provided him with a salary of $175,000. However, the December Agreement also provided a "Termination Benefits" section. That section contained a subsection entitled "Severance Pay." In that section the agreement provided that if GDS terminated an executive's employment for any reason other than for cause, GDS shall pay the executive, for a period of 12 months following the termination of employment, severance pay at a monthly rate equal to an average of the executive's prior three months' bonus and/or commissions, plus his monthly base salary in effect at the time of the termination of employment. Before signing the December Agreement, Mantzke read it and understood that its terms required GDS to pay Kuhfuss a $175,000 annual salary. Both before and after GDS executed the December Agreement, GDS only paid Kuhfuss a portion of his annual salary and treated the unpaid portion of his salary as a loan from Kuhfuss to GDS.

¶ 7 In March 2011, GDS fired Kuhfuss. In response, Kuhfuss filed an arbitration claim seeking his unpaid back and future wages. As an affirmative defense to these claims, GDS contended that it did not intend for Kuhfuss' December Agreement to be enforceable since it was only executed to show potential investors the anticipated terms of Kuhfuss' employment once GDS became profitable.

¶ 8 GDS settled the arbitration in December 2011 by agreeing to pay Kuhfuss $548,000, a portion of which were Kuhfuss' wages that he claimed were unpaid before his termination.[1] On February 21, 2013, four years after reviewing the employment agreement for GDS, GDS filed a

[1] Kuhfuss died on July 11, 2014.

two-count complaint alleging legal malpractice against Cramer's employer, Ogletree Deakins (count I), and Cramer individually (count II). GDS later amended the complaint.

¶ 9 In count I of the amended complaint GDS alleged that at all relevant times Ogletree Deakins and GDS were involved in an attorney-client relationship and Ogletree Deakins owed a duty to GDS to represent it competently. GDS then alleged that Ogletree Deakins, through its agent Cramer, breached that duty in one or more of the following ways: (1) when Cramer failed to explain the scope of his representation; (2) when Cramer failed to reasonably communicate that the example employment agreement should not have been used to guarantee salaries of highly compensated employees; (3) when Cramer failed to advise GDS that, as a start-up company, it should not guarantee salaries for its highly compensated executives in the first several years of its operation; (4) when Cramer failed to advise GDS that the employment agreement that Kuhfuss submitted to him would not adequately protect the rights of the company; (5) when Cramer provided legal advice regarding the employment agreement without investigating, or having sufficient legal knowledge of, GDS and the risks presented; and (6) when Cramer failed to have sufficient expertise in the subject matter of Cramer's work for GDS. GDS claimed that but for Ogletree Deakins' acts and/or omissions, GDS would not have entered into the December Agreement, and GDS would not have entered into a settlement agreement with Kuhfuss in the underlying arbitration matter. Finally, GDS alleged that as a direct and proximate cause of Ogletree Deakins' negligence it sustained damages in an amount exceeding $50,000.

¶ 10 Count II was directed against Cramer individually and reiterated the same allegations of negligence. The December Agreement was attached to the complaint.

¶ 11 Defendants filed an answer to GDS' amended complaint and raised a second set of affirmative defenses (their first set was filed before GDS filed their amended complaint). GDs did not file a timely response to defendants' second set of affirmative defenses.

¶ 12 On October 2, 2014, defendants filed a motion for summary judgment along with a supporting memorandum and supporting exhibits. In the motion, defendants alleged that they were entitled to summary judgment because: (1) GDS could not prove all of the required elements of its legal malpractice claims; and (2) GDS' claims were barred by defendants' affirmative defenses. In the supporting memorandum, defendants alleged that GDS' failure to file a reply to their second set of affirmative defenses resulted in certain factual admissions. GDS then filed a motion for leave to answer defendants' second set of affirmative defenses, and alleged that it inadvertently missed filing an answer to those defenses.

¶ 13 Cramer filed an affidavit in support of the motion for summary judgment. In the affidavit, Cramer said that on October 3, 2008, he was contacted by Kuhfuss in his capacity as COO of GDS. In Cramer's initial conversation with Kuhfuss, Kuhfuss told him that he had received an employment agreement from a potential new hire, and he asked Cramer if he would review it to make sure that it was appropriate to use with some potential new hires. Kuhfuss later emailed him the employment agreement with a note stating, "[t]his is for one of the executives (Marketing) we are bring [*sic*] on board." A copy of that email was attached to Cramer's memorandum in support of the motion for summary judgment.

¶ 14 Cramer further averred that over the next two weeks he had several conversations with Kuhfuss and exchanged several emails with him about the employment agreement Kuhfuss had sent to him. On October 6 and 7, 2008, Cramer spoke to Kuhfuss about the agreement, and in one of those conversations Kuhfuss explained that GDS intended to use the employment

agreement to hire David Malmstedt and Kevin Schick. Cramer told Kuhfuss that while it was acceptable to pay employees primarily with sales commissions, GDS had to guarantee that they would be paid at least equal to or above the minimum wage by federal and state wage laws.

¶ 15 Cramer also averred that on October 9, 2008, Kuhfuss sent Cramer an email with an attached version of the draft employment agreement that Kuhfuss had edited based upon his prior conversations with Cramer. In the part of the agreement that stated an employee shall be paid "an initial base salary at a gross annual rate of $0.00," Kuhfuss had inserted a comment stating, "[w]e need to either include an amount equal or more than minimum wage ($1250), or put in wording about a draw on commission." In the body of the email Kuhfuss included background information on GDS and GDS's negotiation points with respect to the business issues GDS was negotiating with Malmstedt and Schick. That email and attachments were also attached to the supporting memorandum.

¶ 16 From October 3 through 17, 2008, Cramer had several conversations with Kuhfuss and exchanged several emails with him regarding the draft employment agreement. Cramer averred that Kuhfuss did not tell him in any of those communications that the draft employment agreement would be used: (1) for Kuhfuss himself; (2) to guarantee any GDS employee a salary of $175,000; or (3) to compensate a GDS employee in any way other than by providing him with a minimum base salary plus sales commissions.

¶ 17 On October 17, 2008, Cramer sent an email to Kuhfuss that contained the edits Cramer had made to the draft employment agreement. In the email, Cramer asked Kuhfuss to please let him know if he had any questions or required additional assistance. Unless Kuhfuss had additional questions, comments or the need for further assistance, Cramer considered the legal work he performed for GDS to be completed.

¶ 18 Cramer asserted that from the time he sent the email to Kuhfuss on October 17, 2008, through December 31, 2008, he had no recollection of any conversation with Kuhfuss about any issue. During that time period, the only written communication he had with Kuhfuss was limited to an email Kuhfuss sent to him on October 31, 2008. In that email Kuhfuss asked for a referral to a corporate lawyer to help GDS with the drafting of corporate documents, and two emails Cramer sent to Kuhfuss on November 3, 2008, responding to that email and providing him with the requested referral.

¶ 19 Cramer averred that from October 3, 2008, through December 31, 2008, Kuhfuss was the only person affiliated with GDS with whom he communicated. The first time Cramer saw Kuhfuss' employment agreement, which was dated December 31, 2008, was when he received the initial complaint filed by GDS in December 2012. GDS did not send Cramer Kuhfuss' employment agreement or ask him advice about it. GDS did not notify him that it was using the draft agreement Cramer reviewed in 2008 for Kuhfuss' employment agreement. GDS never told Cramer that it intended to use the draft employment agreement to execute an agreement it believed was unenforceable or that it intended to use the draft agreement to execute employment agreements for the purpose of showing GDS' potential investors the terms of employment expected by its employees once GDS' revenue and profit grew or investors gave sufficient funds to the company.

¶ 20 Cramer asserted that on or about November 7, 2008, he sent GDS an invoice which set forth the professional services he rendered to GDS through October 31, 2008. Attached to Cramer's affidavit was a cover letter to GDS with a subject line stating, "Re: Global Data Sciences – General Advice." Also attached was an invoice which indicated that Cramer billed GDS $1,580 for 4.3 hours of legal work. The invoice listed descriptions of Cramer's billed

hours, and referred to communications with Kuhfuss about the employment agreement. Cramer did not send any additional invoices to GDS because he did not render any additional professional services to it.

¶ 21 On January 8, 2015, the trial court held a hearing on defendants' motion for summary judgment and GDS' motion for leave to answer defendants' second set of affirmative defenses. The court first heard GDS' motion and granted it. With regard to the motion for summary judgment, defense counsel argued that the fatal problem with GDS' case was that Cramer was never given Kuhfuss' employment agreement and he was never asked any questions about Kuhfuss' agreement. Instead, Cramer was asked to review an employment agreement for two potential new hires who were going to be paid by commission, and that is all Cramer reviewed. Cramer was never informed that the employment agreement he reviewed would be modified months later to guarantee Kuhfuss a $175,000 salary. Counsel also noted that GDS was already contractually obligated to pay Kuhfuss $175,000 pursuant to an earlier employment agreement that was executed well before defendants were ever contacted. Counsel said that there were five undisputed facts in this case: (1) In January 2008 GDS and Kuhfuss executed an employment agreement that guaranteed Kuhfuss a $175,000 salary, and defendants had nothing to do with that agreement; (2) Cramer was contacted by Kuhfuss on October 3, 2008, and he was asked to draft an employment agreement for use with two potential new hires; (3) on December 31, 2008, Kuhfuss and GDS executed a new employment agreement, without contacting defendants, by modifying the draft employment agreement to guarantee Kuhfuss a $175,000 salary; (4) in 2008 and 2009 GDS only paid Kuhfuss part of his salary and it considered the remainder to be a loan to GDS and that information was never disclosed to defendants; and (5) in the arbitration case that stemmed from Kuhfuss' termination, GDS filed an affirmative defense that said the

Amended Employment Agreement was not intended to function as an employment agreement pursuant to its stated terms.

¶ 22 Defense counsel continued and argued that in a malpractice case the plaintiff must establish that the scope of the representation included the advice that the defendant failed to give, and here, GDS had not done that. It was undisputed that defendants were never told that this employment agreement was going to be used for Kuhfuss to guarantee himself a high salary. The only evidence that GDS had tendered to the court to try to create a disputed fact was an email from Malmstedt, one of the potential new hires, to GDS. In the email Malmstedt said "this employment agreement could be applicable to employment for this team at Global Data." However, Malmstedt did not send the email to Cramer. Instead, Kuhfuss forwarded that email to Cramer. GDS did not make the statement that the employment agreement could be used for the team at GDS. Therefore, it was inaccurate to take a statement by a third party, who was neither an agent nor employee at GDS, and then say that GDS made that statement.

¶ 23 With regard to GDS' argument that Cramer had a duty to advise GDS that it might modify the employment agreement that he reviewed, counsel said that attorneys are not required to exercise clairvoyance regarding a client's future conduct and that the attorney's duty is defined by what is objectively reasonable to expect at the time of the attorney's action or inaction. Advising GDS on how to compensate a specific employee is a business decision that could only be made in GDS' business judgment. Counsel also argued that there was no legal causation here because no reasonable lawyer in Cramer's position would foresee that after advising GDS on an employment contract for commission-based employees it would use that agreement to promise a high salary to Kuhfuss. Defense counsel then argued why their affirmative defenses entitled them to summary judgment.

¶ 24 GDS's counsel argued that summary judgment was inappropriate here because there were questions of fact present with regard to the evidence GDS had produced. Specifically, Cramer testified in his deposition that he knew GDS was a start-up corporation and that obviously there could be some issues with funding. He referred to the email sent by Malmstedt to GDS that was forwarded to Cramer and contained background information on GDS. According to counsel, that email created a duty in Cramer to ask GDS more information about what GDS meant when it said the employment agreement was being drafted for their "team." GDS' counsel argued that lawyers stand in the peculiar role of having knowledge that is beyond the lay person and it is the obligation of the lawyer to foresee certain possibilities, and Cramer did not do that. Also, GDS attached the opinion of an expert in one of its exhibits, and that expert opined that in this situation, it was the attorney's obligation to make sure he understood the transaction. Counsel said that it was a question of fact for the jury as to what Cramer should or should not have explained to GDS.

¶ 25 After hearing the parties' arguments the trial court noted that it disregarded any admissions that could arise out of GDS' failure to file a timely reply to Cramer's affirmative defenses. It then granted defendants' motion for summary judgment, holding in part:

> "This issue—the issue with regard to and I will call it unclean hands as opposed to immorality or illegality or criminality is that by their own admission, the Plaintiff—this company sets up this sham contract with one of their two partners at the time who is now deceased. Setting forth an unreachable salary to lure prospective other partners into the fold.
>
> They don't want to reap what they sowed. That stands out to me as just an example or a reason why this is such an incredible allegation for [GDS] to now make

against an innocent counsel that was retained for a limited purpose. The suggestion was made by a prospective employee that here's an agreement that you ought to look at. I'm not a lawyer. Run it past a lawyer. It's run past a lawyer from the perspective of we are thinking of bringing these two people on board. That is a fact not in issue. And that is the context within which Mr. Cramer reviews the documentation. ***[.]"

¶ 26 With regard to GDS' allegation that Cramer had a legal duty to advise it of the risks of guaranteeing salaries, the court said:

"Here it's a business decision. I don't—I mean, there is a huge leap being made by the Plaintiff to suggest that Mr. Cramer has any legal duty to advise the client who has already got a contract for $175,000 and isn't the contract in front of him. That's for a prospective employee. That Cramer has an obligation to extrapolate into the future and say, by the way, don't re-up the boss at $175,000 because you all can't afford it. That's not legal. That's not legal advice at all.

First of all, it's speculative. Second of all, it's beyond the scope of his retention. And third, it's business advice, which a lawyer is not retained to give. In this case it was an employment contract and how that was going to relate to issue of confidentiality, agreements not to compete, so forth. It had nothing to do with the current president or current partner's salary of $175,000, which wasn't being paid from day one.

[GDS] went out of their way to try to find a third party to bring into this unfortunate financial situation they found themselves in, but it certainly from a legal standpoint, purely based on the law, there is no way that Mr. Cramer under these facts that are not in dispute viewing all of the facts in a light most favorable to the Plaintiff,

there is no way that legally Mr. Cramer or his law firm could be found liable. And I am going to grant summary judgment. Order to come."

¶ 27 The order that the trial court subsequently entered granted GDS' motion to reply to defendants' affirmative defenses and granted defendants' motion for summary judgment. GDS timely appealed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, GDS claims that the trial court erred in granting summary judgment to defendants. Specifically, it contends: (1) genuine issues of material fact exist regarding the scope of Cramer's representation of GDS; (2) defendants owed a duty to advise GDS regarding the risks of guaranteeing salaries for its executive team; (3) genuine issues of material fact exist as to whether Cramer's negligence was an actual and proximate cause of GDS' alleged damages; and (4) defendants did not establish, as a matter of law, that their affirmative defenses barred GDS' claims.

¶ 30 Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2–1005(c) (West 2014). We review *de novo* a trial court's entry of summary judgment. *Standard Mutual Insurance Co. v. Lay*, 2013 IL 114617, ¶ 15.

¶ 31 GDS first claims that genuine issues of material fact exist regarding the scope of Cramer's representation of GDS. He argues that pursuant to comment 1 of Rule 1.2(a) of the Illinois Rules of Professional Conduct (eff. Jan. 1, 2010), that rule "confers upon the client the ultimate authority to determine the purposes to be served by legal representation ***[.]" Here,

GDS contends, there is evidence that it hired Cramer to review and revise a "template" employment agreement for the executive team at GDS, including Kuhfuss. It also argues that there is no evidence showing that Cramer's legal advice was limited to advising GDS of its potential hires, and that Cramer never limited his representation of GDS in any way. Also, any uncertainty about the services Cramer believed he was hired to perform must be construed against him because an attorney has a duty to inform a client about the scope of the attorney's representation, citing *Widuch v. Keef*, 321 Ill. App. 3d 571, 577 (2001). In addition, if Cramer believed that his representation only involved the draft agreement for Schick or Malmstedt, Cramer was required to explain to GDS that the draft agreement should not be used for Kuhfuss and others. Finally, GDS claims that whether Kuhfuss was a part of the "team" at GDS is a genuine issue of material fact. For these reasons, it argues that the scope of Cramer's representation is a triable issue and the defendants' motion for summary judgment should have been denied.

¶ 32 Rule 1.2 (a) of the Illinois Rules of Professional Conduct of 2010 (eff. Jan. 1, 2010) provide:

> "(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. ***[.]

¶ 33 The first comment to Rule 1.2 provides:

> "[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the

> lawyer's professional obligations. ***. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation."

¶ 34 "To set forth an action for legal malpractice, a plaintiff must plead: '(1) the existence of an attorney-client relationship which establishes a duty on the part of the attorney; (2) a negligent act or omission constituting a breach of that duty; (3) proximate cause establishing that "but for" the attorney's negligence, the plaintiff would have prevailed in the underlying action; and (4) damages.' " *Timothy Whelan Law Associates, Ltd. v. Kruppe*, 409 Ill.App.3d 359, 363 (2011) (quoting *Ignarski v. Norbut*, 271 Ill.App.3d 522, 525 (1995)).

¶ 35 Whether a duty from a lawyer to a client is owed is a question of law. *Jewish Hospital v. Boatmen's National Bank*, 261 Ill. App. 3d 750, 759 (1994). The factors that are relevant to determining the existence of a duty include: (1) reasonable foreseeability; (2) the likelihood of injury; (3) the magnitude of the burden on defendant in guarding against injury; and (4) the consequences of placing that burden on defendant. *LaFever v. Kemlite Co.*, 185 Ill.2d 380, 389 (1998).

¶ 36 We have reviewed GDS' many claims regarding the scope of Cramer's representation and find that the scope did not include reviewing and revising a draft employment agreement for Kuhfuss. Here, it is clear that the alleged omission—the failure to advise GDS about the risks of guaranteeing a $175,000 salary to Kuhfuss—was beyond the scope of Cramer's representation of GDS. We agree with the trial court that defendants were engaged to review a draft agreement for two potential new hires, *not* to review a draft agreement for Kuhfuss, GDS' Chief Operating Officer, who already was under contract to GDS and *who had retained Cramer on behalf of*

GDS. As stated in Cramer's uncontradicted affidavit, Kuhfuss never told Cramer that the draft employee agreement he had asked Cramer to review would be used for Kuhfuss himself, or to guarantee *any* GDS employee a salary of $175,000, or even to guarantee any employee a salary more than a minimum base salary plus sales commissions. In fact, Kuhfuss emailed Cramer the employment agreement with a note specifically saying, "[t]his is for one of the executives (Marketing) we are bring [*sic*] on board."

¶ 37 Although we agree with GDS that the client is conferred with the authority to determine the purposes to be served by legal representation (Ill. R. Prof. Conduct (2010) Rule 1.2(a) comment [1]), that does not mean that the client can expand the scope of representation after the representation has ended, and for a purpose which suits it financially. This is exactly what GDS is trying to do here.

¶ 38 We also reject GDS' claim that any uncertainty about the services Cramer believed he was required to perform must be construed against him because an attorney has a duty to inform a client about the scope of the attorney's representation. GDS cites *Widich v. Keef*, 321 Ill. App. 3d at 577, for this proposition. However, the *Widich* court was citing to Rule 1.2(c) of the Rules of Professional Conduct when it made that statement. Rule 1.2(c) states, "[a] lawyer may limit the objectives of the representation if the client consents after disclosure." This rule is inapplicable here, since it is clear that Cramer did not limit the objectives of his representation of GDS. Instead, it is abundantly clear that GDS hired Cramer for a very limited purpose—to review a draft employment agreement for two potential hires on a minimum base salary plus commission basis.

¶ 39 We are also not persuaded by GDS' claim that whether Cramer was hired to review the draft agreement for the entire GDS "team" is a genuine issue of material fact. Here, the only

evidence GDS produced as support for this claim was the email from Malmstedt, *who was never an employee or agent of GDS*, which Kuhfuss forwarded to Cramer. In its reply brief, GDS states, "[t]hat the forwarded email was originally sent by Malmstedt is inapposite. Kuhfuss made a single communication to Cramer regarding the services that GDS was seeking. In doing so, Kuhfuss adopted the statements of Malmstedt as those of GDS." We disagree. It is undisputed that Kuhfuss did not tell Cramer that he was reviewing the draft employment agreement for the "team" at GDS. Also, Malmstedt, a third party with no legal connection to GDS, never indicated that Kuhfuss, who was already under contract with GDS, was a part of this team.

¶ 40 In reviewing the factors that are relevant to determining whether Cramer had a duty to advise GDS about the legal pitfalls of using the draft agreement for Kuhfuss, we find that no duty existed here. First, the reasonable foreseeability that GDS would use this draft agreement, whose clear purpose when Cramer was hired was to potentially hire Schick and Malmstedt *for a minimum base salary plus commission*, and instead use it for the company's COO with a substantial salary, is completely unreasonable. Second, the likelihood of injury—that GDS would use the draft agreement for Kuhfuss, GDS would then fire Kuhfuss and GDS would end up paying Kuhfuss over half a million dollars to settle the matter—is too incredibly remote. Third, the burden the defendants would bear if GDS were allowed to change a major term in the draft agreement defendants reviewed and then hold defendants liable for the sums it would have to pay to settle these matters is incredibly burdensome. Finally, the consequences of placing that burden on defendant are innumerable.

¶ 41 III. CONCLUSION

¶ 42 Since Cramer was not hired to review the draft employment agreement for GDS to enter into with Kuhfuss, no duty existed here. Since we have found that GDS failed to prove an essential element of legal malpractice, we need not address GDS' remaining arguments on appeal. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008) ("[i]f the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is proper.").

¶ 43 Accordingly, the trial court properly granted defendants' motion for summary judgment.

¶ 44 The judgment of the circuit court of Kane County is affirmed.

¶ 45 Affirmed.