IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TABATHA WOLFE
and all others similarly situated,

Plaintiff,

v.

KRAEMER, MANES & ASSOCIATES LLC; PRABHU NARAHARI; and MICHAEL KRAEMER,

Defendants

Civil Division

No. GD-18-016480

REPLY BRIEF IN SUPPORT OF DEFENDANTS' PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

Filed on Behalf of Defendants,
Kraemer, Manes & Associates LLC,
Prabhu Narahari and Michael Kraemer

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TABATHA WOLFE and all others similarly situated, Plaintiff, v. KRAEMER, MANES & ASSOCIATES LLC; PRABHU NARAHARI; and MICHAEL KRAEMER, Defendants	)	No. GD-18-016480

REPLY BRIEF IN SUPPORT OF DEFENDANTS' PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

Defendants, Kraemer, Manes & Associates LLC, Prabhu Narahari and Michael Kraemer, by their undersigned counsel, respectfully submit this Reply Brief in support of their Preliminary Objections to Plaintiff's Amended Complaint. For the reasons set forth below and in Defendants' Principal Brief[1], the Amended Complaint should be dismissed in its entirety.[2]

[1] References herein to "Defendants' Principal Brief" are to the Brief in Support of Defendants' Preliminary Objections to Amended Complaint, filed on March 27, 2019.

[2] As is set forth in Defendants' Principal Brief at 4, the Amended Complaint was filed without leave of Court and beyond the twenty-day deadline set forth in Pa.R.Civ.P. 1028(c)(1). Plaintiff seeks to excuse her late filing of the Amended Complaint by contending that she was never properly served with Defendants' original Preliminary Objections because, according to Plaintiff, "the Pennsylvania Rules of Civil Procedure do not recognize email as a valid method of service." Brief in Opposition to Defendants' Preliminary Objections (filed on April 26, 2019) ("Plaintiffs' Brief"), at 6 n.2. These statements reflect a misunderstanding of the applicable rules regarding service and ignore Pa.R.Civ.P. 205.4(g)(1), which provides that "[c]opies of all legal papers other than original process filed in an action or served upon any party to an action may be served . . . (ii) by electronic transmission . . . if the parties agree thereto *or an electronic mail address is included on an appearance or prior legal paper filed with the court in the action*" (emphasis supplied). Plaintiff's original Complaint (filed on January 9, 2019) and every document filed by Plaintiff since then have included on the cover page the email addresses of each of Plaintiff's co-counsel.

I. COUNT I SHOULD BE DISMISSED BECAUSE OF PLAINTIFF'S FAILURE TO ALLEGE LEGAL MALPRACTICE.

In Count I of the Amended Complaint, a claim for alleged legal malpractice, Plaintiff claims that KM&A committed malpractice by allowing the statute of limitations to run on a hostile work environment claim Plaintiff believes she had against a former employer. The premise of Count I is that the 300-day statute of limitations began to run on March 1, 2016 (when Plaintiff allegedly was the victim of a sexual assault) and that in order for Plaintiff's underlying hostile work environment claim to be timely she was required to file a charge of discrimination with the EEOC on or before December 26, 2016. *See* Amended Complaint, ¶¶ 95, 96. Defendants pointed out in their Principal Brief that Count I fails to allege legal malpractice because hostile work environment claims are subject to the continuing violation doctrine – *i.e*., absent an averment that the hostile work environment to which Plaintiff allegedly was subjected abruptly ended on March 1, 2016, the statute of limitations did not begin to run on that date and therefore would not have expired on December 26, 2016. Defendants' Principal Brief, at 6-7.

Plaintiff's response to Defendants' argument is to rely on Paragraph 91 of the Amended Complaint and to take the position that because an alleged sexual assault occurred on March 1, 2016 and because "she had experienced no unwanted sexual contact . . . since early March 2016," the continuing violation doctrine could not be applied to extend the running of the statute of limitations beyond early March 2016. Plaintiff argues that the sexual assault that allegedly occurred on March 1, 2016, as a matter of law, was a "discrete discriminatory act" that commenced the running of the statute of limitations. Plaintiff's Brief, at 7-8, *quoting National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002). The Supreme Court observed in *Morgan* that

"[d]iscrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify" and that each incident of discrimination "constitutes a separate actionable 'unlawful employment practice.'" *Id*.

Plaintiff's contention that the alleged sexual assault on March 1, 2016 constituted a separate actionable unlawful employment practice as a matter of law does not withstand scrutiny, and that contention is not supported by *Morgan* or by any other case cited by Plaintiff. That an alleged sexual assault can be part of an ongoing hostile work environment, rather than a separate unlawful employment practice commencing the running of the 300-day period, is reflected in various decisions involving hostile work environment claims. For example, in *Vandergrift v. City of Philadelphia,* 228 F. Supp. 3d 464 (E.D. Pa. 2017), the City contended that a hostile work environment claim was time-barred to the extent it was based on a 2007 sexual assault because, the City argued, the sexual assault was an isolated act and was not sufficiently linked to constitute one unlawful employment practice. As noted by the court, "[t]he City argues the 2007 sexual assault is an individually actionable discrete act which cannot be considered for the purposes of Ms. Vandergrift's hostile work environment claim." *Id*. at 483. The court in *Vandergrift* rejected the City's argument, observing that "[t]he Supreme Court has made clear sexual assault or rape can form the basis of a hostile work environment claim." *Id*. at 484, *citing Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 73 (1986). Thus, "[w]e conclude Ms. Vandergrift's 2007 sexual assault should be considered under the continuing violation doctrine as a severe form of harassment – even if it is individually actionable." *Vandergrift*, 228 F. Supp. 3d at 485[3]; *see also*

[3] Regarding the list of discrete acts listed by the Supreme Court in *Morgan* as constituting separate acts of discrimination – *i.e*., termination, failure to promote, denial of transfer and refusal to hire – the court in *Vandergrift* observed: "The Court did not identify rape or sexual assault as a discrete act. Nor would it make sense to do so." *Vandergrift*, 228 F. Supp. 3d at 485.

Hague v. Alex E. Paris Contracting Co., Inc., No. 14-655, 2016 U.S. Dist. LEXIS 134193, at *14 (W.D. Pa. Sept. 29, 2016) (alleged rape was not a discrete act of discrimination because it constituted "merely the first unlawful employment practice to occur and all subsequent events stemmed from it"); *cf. Onuffer v. Walker*, No. 13-4208, 2014 U.S. Dist. LEXIS 95665, at *18-19 (E.D. Pa. July 11, 2014) (finding that sexual assault was a discrete act).

In her Amended Complaint, Plaintiff expressly characterizes her underlying claim – the claim on which the 300-day statute of limitations allegedly ran – as a hostile work environment claim, *i.e*., not merely a claim based on a discrete occurrence of sexual assault. *See* Amended Complaint, ¶¶ 95, 96, 105, 137. By definition, "[a] hostile work environment claim is comprised of a series of separate acts that collectively constitute one 'unlawful employment practice.'" *Morgan*, 536 U.S. at 117, *quoting* 42 U.S.C. § 2000e-5(e)(1). By virtue of her own characterization of her underlying claim, as well as her failure to plead that the hostile work environment to which she allegedly was subjected ended in March 2016, Plaintiff has failed to allege facts that, if proven, would establish that the statute of limitations on her hostile work environment claim ran in December 2016. Plaintiff, therefore, has failed to allege that KM&A committed malpractice or that she incurred any damages as the result of KM&A's representation of her.

Plaintiff contends that "KM&A fails to identify 'any act that is part of the hostile work environment' occurring after March 2016." Plaintiff's Brief, at 8, *quoting Morgan*, 536 U.S. at 118. This Court should reject Plaintiff's attempt to evade her pleading obligations. In order to survive a demurrer on Count I, Plaintiff has the burden to plead facts in support of the elements of her claim. One of those elements is that KM&A failed to exercise ordinary skill or knowledge in representing Plaintiff, *i.e*., that KM&A breached a duty owed to Plaintiff. *See* Defendants'

Principal Brief, at 5. Plaintiff has failed to plead facts in support of this required element and Count I should be dismissed.

II. COUNTS II THROUGH VI SHOULD BE DISMISSED BECAUSE OF PLAINTIFF'S FAILURE TO ALLEGE PROXIMATE CAUSE.

A critical pleading deficiency that pervades the Amended Complaint is Plaintiff's failure to allege proximate causation. This failure requires dismissal of Counts II through VI. *See* Defendants' Principal Brief, at 8-11 (Count II), 11-12 (Count III), 15 (Count IV), 16-17 (Count V) and 22-24 (Count VI).

In response, Plaintiff clings to her legally inadequate "but for" formulation of causation. *See* Plaintiff's Brief, at 12 (arguing that "[*b*]*ut for* KM&A's online review scores and its touting of the same, she would not have hired the firm" and "[*b*]*ut for* Wolfe's hiring of KM&A, she would not have suffered the damages arising out of her attorney-client relationship with KM&A" (emphasis supplied). For the reasons discussed in Defendants' Principal Brief, Plaintiff's simplistic pleading of "but for" causation does not satisfy her burden to plead, and ultimately prove, legal (proximate) causation. Defendants' Principal Brief, at 8-11; *see also, e.g., Roverano v. John Crane, Inc*., 177 A.3d 892, 914 (Pa. Super. 2017) ("[under general tort law, 'but for' causation is subsumed within the more stringent requirement that a cause must be sufficiently 'proximate' or 'substantial' to permit recovery"). In particular, in evaluating whether the "more stringent" element of proximate cause exists, "the court must determine whether the injury would have been foreseen by an ordinary person as the natural and probable outcome of the act complained of." *Lux v. Gerald E. Ort Trucking, Inc*., 887 A.2d 1281, 1287 (Pa. Super. 2005), *quoting Reilly v. Tiergarten, Inc*., 633 A.2d 208, 210 (Pa. Super. 1988), *app. denied*, 649 A.2d 675

(Pa. 1994); *see* Defendants' Principal Brief, at 9-11[4]. Nowhere in Plaintiff's Brief does Plaintiff explain – or even attempt to explain – how legal malpractice could be regarded by a reasonable person as the *natural and probable outcome* of engaging a law firm based on favorable reviews. And most importantly for present purposes, nowhere in the Amended Complaint does Plaintiff properly plead proximate causation.

The purported "straightforward chain of events" put forth by Plaintiff at page 12 of her Brief is unpersuasive and is simply an iteration of the "but for" test of causation. Under Plaintiff's approach, once she claims to have engaged KM&A as a result of positive online reviews, any harm befalling her thereafter would have been, in her view, legally caused by her decision to engage the firm. A hypothetical variant of the "straightforward chain of events" offered by Plaintiff in her Brief could be: (1) Wolfe allegedly was deceived into hiring KM&A; (2) Plaintiff slipped on ice walking toward KM&A's office to discuss her case; and (3) Plaintiff suffered injuries as a result of slipping on the ice. Would any reasonable person regard Plaintiff's injuries as having been proximately caused by her engagement of KM&A as a result of reading reviews of the firm, based on the proposition that she would not have slipped on the ice if she had not retained the firm?

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[4] *Kirschner v. K&L Gates LLP*, 46 A.3d 737 (Pa. Super. 2012), cited in Plaintiff's Brief at 11, is entirely consistent with the causation principles relied upon by Defendants. Indeed, Plaintiff's Brief quotes *Kirschner* as follows: "To determine whether any breach of duty proximately caused a plaintiff's damages, [courts look] to whether a reasonable person would infer that the injury was the natural and probable result of defendant's breach of duty." Plaintiff's Brief, at 11, *quoting Kirschner*, 46 A.3d at 753. As is discussed above, this standard requires the dismissal of Counts II through VI, as it could not reasonably be inferred that damages incurred by Plaintiff as a result of KM&A's alleged malpractice (*i.e.*, the supposed running of the statute of limitations on her hostile work environment claim – the only cognizable damages she claims) was the natural and probable result of her having engaged the firm as a result of favorable online reviews. *See also Kirschner*, 46 A.3d at 753 ("[a] defendant will not be found to have had a duty to prevent a harm that was not a reasonably foreseeable result of the prior negligent conduct").

III. COUNTS II THROUGH VI SHOULD BE DISMISSED BECAUSE OF PLAINTIFF'S FAILURE TO ALLEGE THAT DEFENDANTS MADE A MISREPRESENTATION TO HER.

Plaintiff's claims based on her engagement of KM&A as a result of online third party reviews she now claims to have been misleading, if allowed to proceed, would invite claims against virtually any business for allegedly ratifying or failing to disavow reviews by third parties the claimant believes to have been inaccurate in some way. Not surprisingly, the law does not recognize such claims. Most fundamentally, allegedly misleading reviews by third parties cannot be regarded as representations made by the firm that is the subject of the review.

As is fully set forth in Defendants' Principal Brief, Plaintiff's failure to allege that Defendants made a misrepresentation to her requires dismissal of Counts II through VI. *See* Defendants' Principal Brief, at 7-8 (Count II), 11 (Count III), 15 (Count IV), 16-17 (Count V) and 20-22 (Count VI). In responding to this contention, Plaintiff retreats from the express allegations of the Amended Complaint and suggests that rather than her claim being based on alleged misrepresentations, it actually rests on some "amorphous" (Plaintiff's term) formulation of fraud or on an omission (which Plaintiff does not identify). Plaintiff's Brief, at 9. *But see* Amended Complaint, Count II *ad damnum* (requesting damages "as a result of Defendants' fraudulent misrepresentations"); Count III (entitled "Negligent Misrepresentation"); Count III *ad damnum* (requesting damages incurred "as a result of Defendants' negligent misrepresentations"); Count IV *ad damnum* (requesting damages incurred "as a result of Defendants' fraudulent misrepresentations"); Count V *ad damnum* (requesting damages incurred "as a result of Defendants' fraudulent misrepresentations"; Count VI (alleging wire fraud as the predicate "racketeering activity," which requires proof of misrepresentations – *see* Defendants' Brief, at 21). Plaintiff's nimble shifting of positions notwithstanding, Counts II through VI of her Amended

Complaint clearly attempt to assert claims based on misrepresentations allegedly made by Defendants, although no such misrepresentations have been identified or properly pled. *See* Defendants' Brief, at 7-8.

In a futile attempt to show a misrepresentation made by Defendants, Plaintiff relies on a banner on KM&A's website that stated that the firm was "top rated" with five stars. Plaintiff's Brief, at 10, *citing* Amended Complaint, ¶ 14 and Ex. 1. This statement was completely accurate. For present purposes, it is clear from the Amended Complaint that Plaintiff did not read or rely upon this statement at any time leading up to, or during, her engagement of KM&A (which according to Paragraph 106 of the Amended Complaint terminated in February 2017), as she admits in her Brief that the banner statement appeared "[s]ince at least August 2018, and as recently as January 2019" and may have been seen "[m]ore recently" by "potential class members." Amended Complaint, ¶ 14; Plaintiff's Brief, at 10. Obviously, at this stage of the proceeding the claims made in Plaintiff's individual capacity must stand or fall on their own, and she cannot rely on claims that putative class members might have in order to salvage her individual claims. *See Niemiec v. Allstate Ins. Co*., 721 A.2d 807, 810 (Pa. Super. 2012) (noting that whether or not a case may proceed as a class action is not determined until after the pleadings have closed and that "[a]s such, the validity of the claim is already settled before the trial court even addresses the question of whether a class has been established"); Pa.R.Civ.P. 1707, Explanatory Comment ("[s]ince the certification hearing is not to be held until the pleading stage is concluded, attacks on the form of the complaint or demurrers to attack the substance must already have been filed and disposed of").

IV. COUNT III SHOULD BE DISMISSED UNDER THE ECONOMIC LOSS DOCTRINE.

One of the grounds of Defendants' demurrer to Count III – a purported claim for negligent misrepresentations – is that it is barred by the economic loss doctrine. *See* Defendants' Principal Brief, at 12-14. Plaintiff's response is to rely on Section 552 of the Restatement (Second) of Torts, contending that her claim satisfies the elements of that section. *See* Plaintiff's Brief, at 13 (discussing Section 552 and stating that "[t]hus, the question is whether Defendants 'supplied' false information"[5]).

As is set forth in Defendants' Brief, claims to recover economic damages for alleged negligent misrepresentation are consistently held to be barred by the economic loss doctrine, with a narrow exception carved out for negligent misrepresentation claims brought under Section 552. Defendants' Principal Brief, at 13. Section 552, by its terms, applies to "[o]ne who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions." Restatement (Second) of Torts § 552(1). As comment b makes explains, the rationale for Section 552 is that "[a]ny user of commercial information may reasonably expect the observance of this standard [of honesty] by a supplier of information to whom his use is reasonably foreseeable." *See also Excavation Technologies, Inc. v. Columbia Gas Company of Pennsylvania*, 936 A.2d 111, 116 (Pa. Super. 2007) (*en banc*), *aff'd*, 985 A.2d 840 (Pa. 2009) (observing that subparagraph 2 of

[5] This, of course, is only one of the questions under Section 552. For the reasons discussed in this Reply Brief and in Defendants' Principal Brief, at 12-14, Count III does not satisfy the requirements of Section 552, which applies to commercial transactions.

Section 552 serves to limit the scope of persons who may recover under Section 552 to those who, among other things, "are contemplating a specific commercial transaction").

The case of *Dittman v. UPMC*, 196 A.3d 1036 (Pa. 2018), does not save Count III, as Plaintiff contends. In *Dittman,* which did not involve a claim for negligent misrepresentations[6], the Court discussed at length its two earlier decisions that analyzed whether the economic loss doctrine barred negligent misrepresentation claims. In each of those cases – (i) *Excavation Technologies,* cited above, and (ii) *Bilt-Rite Contractors, Inc. v. Architectural Studio*, 866 A.2d 270 (Pa. 2005) – Section 552 was central to the Court's analysis. In *Bilt-Rite*, the Court adopted Section 552 and held that the economic loss doctrine did not apply because the plaintiff stated a claim under that Section; in *Excavation Technologies*, on the other hand, the Court ruled that the economic loss doctrine applied because the negligent misrepresentation claim in that case could not be brought under Section 552. Subsequent to *Bilt-Rite*, the Pennsylvania Supreme Court has not upheld any negligent misrepresentation claim seeking only economic damages that has not satisfied the requirements of Section 552, and Plaintiff has failed to identify any reason why this case could be regarded as such a case.

Although Count III is subject to a demurrer and should be dismissed in its entirety, at a minimum the claim should be dismissed insofar as it is asserted against Prabhu Narahari. Among other reasons, Plaintiff fails to plead that any alleged misrepresentations made by Mr. Narahari resulted in any damages that could be recoverable by Plaintiff. *See* Defendants' Principal Brief, at 13-14.

[6] The plaintiffs in *Dittman* were employees of UPMC and claimed that UPMC was negligent in failing to exercise reasonable care in safeguarding the employees' personal information that was stored on UPMC's computer systems.

V. COUNT IV SHOULD BE DISMISSED DUE TO PLAINTIFF'S FAILURE TO PLEAD MISCONDUCT THAT IS ACTIONABLE UNDER THE UTPCPL.

Under *Beyers v. Richmond*, 937 A.2d 1082 (Pa. 2007), UTPCPL claims against attorneys arising from their conduct in connection with the practice of law are barred. Such claims violate Article V, Section 10(c) of the Pennsylvania Constitution, which confers on the Pennsylvania Supreme Court the exclusive power to regulate the conduct of attorneys practicing in the Commonwealth. The conduct that is the subject of Plaintiff's purported UTPCPL claim – the marketing of attorneys' services – is unquestionably related to the practice of law; not only is that conduct related to the practice of law, it is in fact the subject of specific Rules of Professional Conduct promulgated by the Supreme Court. *See* Defendants' Principal Brief, at 16-19.

Plaintiff's attempts to avoid the *Beyers* holding are unavailing. In particular:

1. Plaintiff notes that *Beyers* was a plurality opinion and essentially suggests that this Court should therefore ignore the decision. But Plaintiff ignores the fact that Chief Justice Cappy in his concurring opinion (joined by Justice Baer) expressly agreed with Justice Fitzgerald's opinion "to the extent that it holds that as a matter of statutory construction, the [UTPCPL] . . . does not apply to attorneys practicing law." *Beyers*, 937 A.2d at 1093 (Cappy, C.J., concurring). Therefore, this holding, joined by a majority of the justices[7], is binding precedent. *See Commonwealth v. Brown*, 23 A.3d 544, 556 (Pa. Super. 2011) ("[i]n cases where a concurring opinion enumerates the portions of the plurality's opinion in which the author joins or disagrees,

[7] It is unclear what point Plaintiff is trying to make by observing that Justice Fitzgerald and the two justices joining in his opinion are no longer on the Court, Plaintiff's Brief, at 9, particularly when Justice Baer, who joined in Chief Justice Cappy's concurrence, remains on the Court. In addition, there were only two dissenting justices in *Beyers*, and only one of those currently sits on the Court.

those portions of the agreement gain precedential value"). *Beyers'* core holding – that the UTPCPL does not apply to the conduct of attorneys in the practice of law – is precedential and directly applicable to Plaintiff's UTPCPL claim in this case.

2. From the standpoint of statutory construction of the UTPCPL, the *Beyers* Court observed that the Superior Court has found that the statute does not apply to physicians, another category of professionals. 937 A.2d at 1088, *citing, e.g., Foflygen v. R. Zemel, M.D*., 615 A.2d 1345 (1992), *app. denied*, 629 A.2d 1380 (1993), and *Gatten v. Merzi*, 579 A.2d 974 (1990), *app. denied*, 596 A.2d 157 (1991). The *Beyers* Court further observed that the court in *Gatten* held that "[t]here is no indication that the [UTPCPL] was intended to create a cause of action for every statement made by a physician regarding a patient's condition, the likelihood for success of a given procedure, or the recommended course of treatment." 937 A.2d at 1088*, quoting Gatten*, 579 A.2d at 976.

3. Relying primarily on debt collection cases, Plaintiff suggests that the activities that constitute the "practice of law" should be construed narrowly for purposes of the *Beyers* holding. But *Beyers*, which involved the disbursement of settlement proceeds, does not support such an interpretation. Indeed, the contention that the "practice of law" is limited to conduct directly related to the pure legal representation of clients was the view set forth by only one of the justices in *Beyers*, *and that was in a dissenting opinion*. *Beyers* cited with approval the case of *Jamgochian v. Prousalis*, 2000 Del. Super. LEXIS 373 (Del. Super. 2000), as standing for the proposition that "[i]nherent in the power of the Delaware Supreme Court is the power to regulate *every aspect of the practice of law*." Beyers, 937 A.2d at 1091 n.20. The Court then quoted as follows from *Jamgochian*:

> Pursuant to this authority, the Court has promulgated rules governing the admission and conduct of attorneys as well as providing for the sanctioning of lawyers in violation of these regulations . . . . Every aspect of a lawyer's practice is encompassed by these rules. Everything from admission procedures to responsibilities of an attorney leaving practice are regulated. Advertising, accounting of client funds, communications with clients, dealings with third parties, competence of the attorney, conflicts of interest, and the unauthorized practice of law are among the myriad subjects that these comprehensive rules contemplate. The penalty for attorney misconduct in violation of these rules may range from censure to fines to disbarment, subject to the recommendations of the Office of Disciplinary Counsel.

Id., quoting Jamgochian, 2000 Del. Super. LEXIS 373, at *13-14. The Rules of Professional Conduct in force in Pennsylvania are no less comprehensive than the Delaware rules described by the court in *Jamgochian*.

4. The debt collection cases are inapposite and Plaintiff's reliance on *Glover v. Udren Law Offices, P.C.*, 139 A.3d 195 (Pa. 2016), and *Yelin v. Schwartz*, 790 F. Supp. 2d 331 (E.D. Pa. 2001), is misplaced. In *Glover*, the plaintiff asserted various claims, including four counts under the UTPCPL, arising from a mortgage foreclosure. The trial court dismissed the UTPCPL claims. The Superior Court affirmed and reiterated the central holding of *Beyers* that the UTPCPL does not apply to attorney conduct in the course of practicing law. *Glover v. Udren Law Offices, P.C.*, 92 A.3d 24, 31 (Pa. Super. 2014), *rev'd*, 139 A.3d 195 (Pa. 2016). Glover's appeal to the Supreme Court involved only the dismissal of her claims under the Pennsylvania Loan Interest and Protection Law – *i.e.*, the plaintiff did not even attempt to appeal the UTPCPL dismissal to the Supreme Court. The Supreme Court's holding with respect to the claim under the Loan Interest and Protection law does not support Plaintiff's position here, as the Court's reasoning was unique to the specific provisions of the Loan Interest and Protection Law and the legislative intent underlying that particular statute. In particular, the Court held in *Glover* that a law firm constituted

a "person" as defined by the Loan Interest and Protection Law and that a liberal interpretation of that term was necessary to effectuate the purposes of the statute – to curb mortgage lending abuses and to prevent lenders from collecting excessive fees through law firms and other third-party debt collectors. *Glover*, 139 A.3d at 199-200[8].

Yelin does not support Plaintiff's position because the holding in that case was based on the accepted principle that debt collection does not constitute the practice of law. *See Daniels v. Baritz*, No. 02-CV-7929, 2003 U.S. Dist. LEXIS 7707, at *11-12 (E.D. Pa. May 1, 2003) (holding that attorneys who regularly engage in debt collection practices, apart from their legal representation, are subject to the Fair Debt Collection Practices Act). Clearly, the marketing of legal services to prospective and future clients is inherently linked to providing legal services in a manner qualitatively different than how attorneys engage in debt collection practices. In evaluating whether the Supreme Court regards the conduct of attorneys in marketing their services to fall within the practice of law regulated by the Court, this Court need look no further than the fact that such activities are specifically regulated through the Rules of Professional Conduct. *See* Defendants' Principal Brief, at 18-19.

5. Plaintiff's argument that certain conduct can both violate the Rules of Professional Conduct and also give rise to civil liability in certain circumstances misses the point. Defendants

[8] The Court observed: "Notably, the residential mortgage arena is one, within the broader landscape of consumer protection, in which the Legislature has provided directed and enhanced protections. Thus, whatever liabilities and/or exclusions there may be under other consumer-protection statutes, Act 6 [the Loan Interest and Protection Law] expressly imposes a specific liability upon any person who has collected attorney's fees from a residential mortgage debtor in excess of that which the statute otherwise permits. By the same token, the fact that a law firm potentially faces liability under some other regulatory framework is irrelevant to whether Act 6 entitles Glover to damages, except with respect to purely overlapping monetary relief." *Id*. at 201.

are not relying on *Beyers* for the proposition that there can be no civil remedies available for attorney conduct that is addressed by the Rules of Professional Conduct. Defendants rely on *Beyers* for the far narrower proposition that the UTPCPL does not apply to the conduct of attorneys in the course of practicing law. Remedies such as legal malpractice claims or criminal prosecution are available in appropriate circumstances, but this does not undermine the core holding of *Beyers* because these remedies were just as available when *Beyers* was decided as they are now.

VI. CONCLUSION

For the reasons set forth above and in Defendants' Principal Brief, Defendants' demurrers to each of the counts of the Amended Complaint should be sustained and the Amended Complaint should be dismissed in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 10, 2019, a copy of the foregoing Reply Brief in Support of Defendants' Preliminary Objections to Amended Complaint was served to each of the following by electronic mail:

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