

DOCKET NO. FBT CV 24- 6130739-S : SUPERIOR COURT
 SYLVESTER SALCEDO, EXECUTOR OR : J. D. OF BRIDGEPORT
 THE ESTATE OF JOSEPH VOLONINO
 V. : AT BRIDGEPORT
 JOSEPH MARCELL, INDIVIDUALLY, : MAY 29, 2024
 JOSEPH MARCELL AS EXECUTOR OF
 THE STATE OF MICHAEL MARCELL,
 RYAN MILLER, ESQ. AND MILLER &
 MORILLA LLC, AGUSTIN SEVILLANO
 AND SEVILLANO LAW PLLC


OFFICE OF THE CLERK
 SUPERIOR COURT
 2024 MAY 29 P 3:30
 JUDICIAL DISTRICT
 OF BRIDGEPORT

MEMORANDUM OF DECISION RE:
DEFENDANTS' MOTION TO DISMISS (#104.00, 2/29/24)

A hearing on the defendants Ryan K. Miller, Esq. and Miller & Morilla LLC, hereinafter referred to as "the defendants), motion to dismiss the fifth and sixth counts of the plaintiff's complaint for lack of standing was heard before the undersigned on May 13, 2024.

This lawsuit results from the July 14, 2017 opening of the plaintiff's estate in Bridgeport, Connecticut Probate Court. The sole asset of the estate was a \$150,000 personal injury settlement which was approved by the Stratford, Connecticut Probate Court. The net proceeds of the settlement were \$78,627.24. The defendants, among others, represented the estate in the personal injury claim, and allegedly delivered those proceeds to co-defendant Joseph Marcell personally.

The plaintiff further alleges that its estate was a creditor of the Marcell estate, and that it made multiple requests to the latter that it place those proceeds in an estate account, as was ordered by the Stratford Probate Court when it approved the personal injury settlement.

Notice sent to all
 Counsel & RJD.
 5/29/24  Asst. Clerk

The fifth count of the plaintiff's complaint alleges "legal malpractice negligence" on the part of the defendants in that they allegedly failed to preserve the cash assets of the Marcell estate, namely the net proceeds of the personal injury settlement, so the assets could be distributed in accordance with Connecticut probate law, by allegedly giving the proceeds to Joseph Marcell personally.

The sixth count of the plaintiff's complaint alleges "legal malpractice reckless conduct" against the defendants in that they allegedly recklessly or consciously disregarded a known risk to the Volonino estate by distributing the net proceeds of the personal injury settlement to Marcell individually.

The defendants filed the instant motion to dismiss those counts for lack of subject matter jurisdiction because the plaintiff lacks standing to assert claims for legal malpractice against those defendants.

A party may move to dismiss a pleading for lack of subject matter jurisdiction. See Practice Book § 10-30(a)(1). Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by an action before it. *Deutsche Bank Nat'l Trust Co. v. Thompson*, 163 Conn. App. 827, 831 (2016).

A court lacks discretion to consider the merits of a case over which it lacks jurisdiction. *Id.* "[T]he question of subject matter jurisdiction, because it addresses the basic competency of the court, can be raised by any of the parties, or by the court sua sponte, at any time." *Equity One, Inc. v. Shivers*, 310 Conn. 119, 126 (2013).

"A court does not have subject matter jurisdiction to hear a matter unless the plaintiff has standing to bring the action." *Deutsche*. *Supra*, at 831.

“One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy.” *Equity One, Inc.*, supra, at 125.

“[When] a party is found to lack standing, the court is consequently without subject matter jurisdiction to determine the cause. . . .” *Id.*

In general, the plaintiff in a legal malpractice action must establish: (1) the existence of an attorney-client relationship; (2) the attorney’s wrongful act or omission; (3) causation; and (4) damages. *Mayer v. Biafore, Florek & O’Neill*, 245 Conn. 88, 92 (1998).

“As a general rule, attorneys are not liable to persons other than their clients for the negligent rendering of services.” *Krawczyk v. Stingle*, 208 Conn. 239, 244 (1988).

“It is well established that a plaintiff lacks standing to bring a legal malpractice action unless he or she can ‘establish . . . the existence of an attorney-client relationship’” *Idlibi v. Ollennu*, 205 Conn. App. 660, 666 (2021).

Thus, “[w]hen ‘it is clear that an attorney-client relationship at no time existed between [the plaintiff] and [an attorney] . . . the court properly [finds] that [the plaintiff] lack[s] standing to bring a legal malpractice claim against [the

attorney].’” *Martinelli v. Martinelli*, Superior Court, judicial district of New Britain, at New Britain, Docket No. HHB CV 22 6071654-S, 2023 Conn. Super. LEXIS 34, at *10 (January 13, 2023, Knox, J.).

A review of the instant complaint reveals that the plaintiff never alleged that the defendants were attorneys for the plaintiff or that there was an attorney-client relationship

between them and the plaintiff. Rather, the plaintiff only alleges that the defendants represented the Marcell Estate in that estate's personal injury matter.

Although the plaintiff alleges that the defendants owed him a duty to provide the standard of care owed by attorneys and law firms when representing a decedent's estate, attorneys are generally not liable to persons other than their clients for the negligent rendering of services.

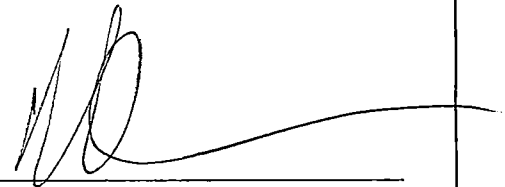
Based on that Connecticut courts have routinely dismissed or affirmed the dismissal of legal malpractice claims for lack of standing where there was no attorney-client relationship between the plaintiff and the defendant attorney. *Idlibi*, 205 Conn. App. at 666; *Martinelli* at 12–16; *Dubinsky v. Reich*, Superior Court, judicial district of Fairfield, at Bridgeport, Docket No. FBT CV 16 6056320, 2017 Conn. Super. LEXIS 822, at *24 (April 27, 2017, Arnold, J.); *Gombert v. Herzner*, Superior Court, judicial district of Hartford, at Hartford, Docket No. HHD CV 10 5034743-S, 2010 Conn. Super. LEXIS 2277, at *7 (September 9, 2010, Pellegrino, J.T.R.); *Fedor v. Hawley*, Superior Court, judicial district of Fairfield, at Bridgeport, Docket No. CV 06 5003192-S, 2006 Conn. Super. LEXIS 3143, at *18 (October 19, 2006, Tyma, J.).

There is, however, a limited exception to the general rule that attorneys are not liable to persons other than their clients for the negligent rendering of services where the plaintiff can demonstrate that they were the intended or foreseeable beneficiary of the attorney's services. *Krawczyk*, 208 Conn. at 244.

“Our appellate courts have [otherwise] remained reluctant to broaden the boundaries of an attorney's third-party liability.” *Healey v. Mantell*, Superior Court, judicial district of Waterbury, Complex Litigation Docket at Waterbury, Docket No. X06 UWY CV 21 6060206-S, 2021 Conn. Super. LEXIS 1237, at *20 (July 16, 2021, Bellis, J.).

“Indeed, at this point, Connecticut’s appellate courts have essentially limited this exception only to encompass ‘claims of malpractice . . . [that] focus on errors in the drafting and execution of . . . wills.’” Id. (quoting *Leavenworth v. Mathes*, 38 Conn. App. 476, 480 (1995)).

For those reasons, the plaintiff lacks standing to assert the claims and the fifth and sixth counts of his complaint are dismissed.

A handwritten signature in black ink, appearing to be 'J. Gould', written over a horizontal line. The signature is cursive and extends to the right of the line.

GOULD, J.