

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FREEBORN & PETERS LLP,

Plaintiff,

v.

DAVID J. FLETCHER, MD; ARCHIE
FLETCHER; SAFEWORKS ILLINOIS
OCCUPATIONAL HEALTH SERVICES,
LTD.; and PAUL A. DUFFY;

Defendants.

Case No.

2012L004104
CALENDAR/ROOM Y
TIME 00:00
Breach of Contract

**COMPLAINT FOR BREACH OF CONTRACT,
FRAUD, CONSPIRACY, BREACH OF FIDUCIARY DUTY
AND OTHER RELIEF**

NOW COMES plaintiff FREEBORN & PETERS LLP, by its attorneys, and for its
complaint against Defendants DAVID J. FLETCHER, MD; ARCHIE FLETCHER;
SAFEWORKS ILLINOIS OCCUPATIONAL HEALTH SERVICES, LTD.; and PAUL A.
DUFFY, alleges and states as follows:

Parties, Jurisdiction and Venue

1. Plaintiff Freeborn & Peters LLP is a limited liability partnership comprised of attorneys who are duly licensed to practice law in the State of Illinois. Plaintiff's principal place of business is located at 311 South Wacker Drive, Suite 3000, Chicago, Illinois 60606.

2. Defendant SafeWorks Illinois Occupational Health Services, Ltd. ("SafeWorks"), an Illinois corporation, provides occupational health services and return-to-work programs to businesses. SafeWorks' principal place of business is 1806 N. Market Street, Champaign, Illinois 61822.

and SafeWorks owe plaintiff \$23,936.42 for general corporate work and \$2,751.50 for trademark work performed by plaintiff.

33. Fletcher and SafeWorks have not disputed the amounts due by them to plaintiff or complained to plaintiff about the legal services provided to them by plaintiff related to the general corporate and trademark work.

Attempts to Collect Amounts Owed from Fletcher and SafeWorks

34. Fletcher began to accumulate a balance owed to plaintiff within a few months after engaging the firm. Beginning in late 2009, the plaintiff began an ongoing dialogue with Fletcher and SafeWorks with respect to the payment of attorneys' fees and the ability of Fletcher and SafeWorks to pay for attorneys' fees to be incurred.

35. Duffy was asked by plaintiff to serve as plaintiff's principal contact with Fletcher and SafeWorks. Plaintiff believed that Duffy would serve as a faithful and true agent of plaintiff with respect to his interactions with Fletcher and SafeWorks, but, as set forth more fully below, Duffy's loyalties were divided between his loyalty to plaintiff and his loyalty to defendants Fletcher, Archie and SafeWorks, and he worked with Fletcher, Archie and SafeWorks to deceive plaintiff regarding Fletcher, Archie and SafeWorks' willingness and ability to pay plaintiff for legal services provided to the benefit of Fletcher and SafeWorks, and he worked with Fletcher, Archie and SafeWorks to obtain valuable legal services from plaintiff without payment and to transfer their matters to another law firm at a time when a substantial balance was owed to plaintiff for the attorneys' fees.

36. In September 2010, Duffy attended the meeting of plaintiff's Management Committee in order to discuss the balances owed by Fletcher and by SafeWorks for legal services. On information and belief, Duffy discussed the status of the balances owed to plaintiff

interests of plaintiff. In recognition of his breach of loyalty to plaintiff, Duffy sought to hide evidence of his communications with Fletcher.

40. At the meeting of plaintiff's management Committee, Duffy presented himself as plaintiff's agent, reporting to plaintiff on his efforts to confirm a payment plan from Fletcher and SafeWorks. Plaintiff approved a payment plan communicated by Fletcher and SafeWorks through Duffy, and Duffy reported back to Fletcher after the meeting to tell him that the meeting had gone better than expected.

41. Thereafter, in November, 2010, when Fletcher failed to make a previously promised payment against the outstanding balance, plaintiff's Management Committee asked Duffy again to communicate with Fletcher and SafeWorks, advising Duffy that, in the absence of payment of substantial funds, the plaintiff would cease providing legal service and would have to pursue collection actions against the clients. Duffy, in turn, advised Fletcher of the plaintiff's intentions.

42. At the same time, another of plaintiff's partners also emailed Fletcher and Archie requesting that they pay Fletcher and SafeWorks' outstanding invoices or plaintiff would have to cease work. Duffy presented himself to his partner as having already communicated plaintiff's position and request for payment to Fletcher and SafeWorks, while, at the same time, Duffy apologized to Fletcher for his partner's aggression, assured Fletcher that the situation would improve and advised Duffy's wife that he desired to resign from plaintiff.

43. On information and belief, as of November 2010, Duffy knew and understood that Archie controlled the finances of defendant SafeWorks and that the ability of SafeWorks to meet its obligations to plaintiff for legal services depended on the decision of Archie and his willingness to continue to support SafeWorks financially.

44. In late November, 2010, Fletcher offered security for his and SafeWorks' obligation to pay attorneys' fees, offering to give plaintiff a mortgage on real estate assets that he represented to be worth approximately one million dollars. Duffy was asked by plaintiff to follow up on Fletcher's offer by obtaining legal descriptions for the property, but he never did so.

45. Fletcher never made good on his offer to pledge real estate assets to secure payment of fees.

46. By December 9, 2010, Fletcher and SafeWorks owed plaintiff over \$500,000. On that day, Duffy learned that Archie intended to cut off the litigation, default on SafeWorks' and Fletcher's agreements to pay legal bills, and not pay plaintiff. Duffy discussed Archie's intentions with Fletcher, but he did not inform the Management Committee of this new information.

47. Archie's willingness to support Fletcher and SafeWorks in its litigation was material to Fletcher and SafeWork's ability to fulfill their promises to pay plaintiff for its services.

Duffy Conspires with Fletcher, SafeWorks and Archie

48. Duffy and Fletcher understood the importance of Archie's continued support of Fletcher and SafeWorks' litigation to their ability to pay attorneys' fees to plaintiff, and they agreed to conceal from plaintiff their knowledge that Archie had decided not to support Fletcher and SafeWorks any longer.

49. In addition, Duffy and Fletcher continued to pursue discussions with another law firm, Levenfeld, Pearlstein, LLC ("Levenfeld") in furtherance of a plan by which Duffy would resign from plaintiff and rent an office at Levenfeld, Fletcher would withhold payment of

plaintiff's invoices, and Levenfeld, with assistance and information from Duffy, would represent Fletcher in contesting plaintiff's bills.

50. Plaintiff had no knowledge of any discussions or conspiracies. Plaintiff elected Duffy to become a partner at the firm, which Duffy reported immediately to Fletcher. Fletcher urged Duffy to keep communications between Duffy and Fletcher on Duffy's private email and not on plaintiff's email system.

51. On December 22, 2010, Duffy met with James D. Brusslan, ("Brusslan") Duffy's former mentor and a Levenfeld partner, and another Levenfeld employee at the Italian Village restaurant. On information and belief, Duffy and Brusslan discussed a plan where Duffy would leave plaintiff and Brusslan would represent Fletcher and SafeWorks in contesting plaintiff's legal fees.

52. Unbeknownst to plaintiff, Duffy had begun communicating months previously with Levenfeld regarding the possibility of leaving plaintiff to work with Brusslan and leasing an office from Levenfeld. On many occasions between March and June 2010, Duffy discussed with Fletcher his intention of leaving plaintiff to work with Brusslan, and, in October and November, 2010, Duffy communicated with Levenfeld in furtherance of a contemplated resignation from plaintiff and move of his practice.

53. In those communications with Levenfeld, Duffy provided a list of clients and adverse parties and inquired when he might lease office space from that firm. Levenfeld requested additional information regarding one of Duffy's clients, and Duffy spoke with Levenfeld with respect to that request.

54. Over the ensuing three weeks after the December 22, 2010 meeting with Levenfeld, Duffy secured insurance for an office he planned to rent from Levenfeld, requesting that Levenfeld be named as an additional insured.

55. Eight days after the Levenfeld meeting, on December 30th, at the instruction of plaintiff's Management Committee, Duffy emailed plaintiff's demands for payment to Fletcher. Plaintiff did not know that Duffy was counseling Fletcher how to deceive plaintiff's management Committee into continuing to provide legal services to Fletcher and SafeWorks, but, on information and belief, Duffy was assisting Fletcher and directing him how to proceed and to appease plaintiff's Management Committee.

Meeting Among Plaintiff, Fletcher, Duffy and Archie

56. On February 25, 2011, Fletcher, Archie Fletcher, and Duffy met with plaintiff's Management Committee to discuss the need for payment of Fletcher and SafeWorks' outstanding invoices.

57. Duffy had emailed plaintiff's Management Committee to request permission to attend the meeting, suggesting to plaintiff that he was suspicious of Fletcher and wanted to ensure that Fletcher did not try to deceive plaintiff.

58. At the meeting, plaintiff requested a payment plan whereby Fletcher and SafeWorks would make regular payments of the amounts owed to plaintiff as well as a personal guaranty of Fletcher for the amount outstanding. Fletcher stated that he would need to think about it.

59. At the meeting, Fletcher praised plaintiff's handling of his and SafeWorks' matters. Neither Fletcher, nor Duffy, nor Archie advised that Archie had already decided to stop supporting Fletcher and SafeWorks in connection with their legal matters.

60. After the meeting, plaintiff's Management Committee instructed Duffy to file an attorney lien related to all matters for which Fletcher or SafeWorks had outstanding invoices.

61. Duffy failed to follow this instruction.

62. Instead, on the following day, Duffy and Fletcher met at the Rainforest Café in Chicago, and, on information and belief, they further discussed their plan for Duffy to leave plaintiff and rent an office at Levenfeld, Fletcher to withhold payment of plaintiff's invoices, and Levenfeld, with assistance and information from Duffy, to represent Fletcher in contesting plaintiff's bills.

63. Duffy and Fletcher continued to communicate, without plaintiff's knowledge, about the efforts to avoid plaintiff's claims for fees.

64. At the same time, Duffy continued to hold himself out to plaintiff as a partner seeking to protect and advance the plaintiff's interests with respect to Fletcher and SafeWorks. Plaintiff asked Duffy to prepare a plan and budget for the remaining Fletcher and SafeWorks matters, and Duffy promised to do so.

65. On March 4, 2011, Duffy met Fletcher in Fletcher's Chicago office at Rush Presbyterian Hospital. At of that date, Fletcher and SafeWorks owed plaintiff over \$800,000. On information and belief, Duffy and Fletcher finalized the plan by which Duffy would leave plaintiff and rent an office at Levenfeld, Fletcher would terminate his and SafeWorks relationship with plaintiff and withhold payment of past-due invoices due to plaintiff, and Levenfeld, with assistance from Duffy, would represent Fletcher in contesting plaintiff's bills.

66. On information and belief, Fletcher and Brusslan also met in the late afternoon and early evening of March 4, 2011, in Chicago, Illinois and confirmed their arrangements.

155. Plaintiff's reliance on defendants' representations and omissions was reasonable.

156. Plaintiff has sustained damages in excess of \$50,000.

157. The actions of defendants were willful, malicious, intentional, aggravated, and were committed with an evil mind and with the intent to cause injury, or in reckless and/or deliberate disregard of an unjustifiably substantial risk of significant harm to plaintiff. As such, plaintiff submits that this is an appropriate case for imposition of punitive damages.

WHEREFORE, Plaintiff FREEBORN & PETERS LLP respectfully requests that this Honorable Court award compensatory and punitive damages in favor of plaintiff and against defendants in an amount in excess of \$50,000, plus statutory pre-judgment interest, and grant any other and further relief to plaintiff as this Court deems necessary or appropriate under the circumstances.

COUNT VIII
CONSPIRACY (FLETCHER, SAFEWORKS, DUFFY AND ARCHIE)

158. Plaintiff realleges and incorporates by this reference paragraphs 1 through 75 and 135 through 157 above as though fully set forth herein.

159. On information and belief, at some point prior to December 2010, defendants Fletcher, SafeWorks, Duffy and Archie entered into a conspiracy whose object was to deceive plaintiff into providing legal services for the benefit of Fletcher and SafeWorks without adequate assurances of payment and to receive significant attorneys' services without payment.

160. In furtherance of that conspiracy, defendants offered assurances to plaintiff that Fletcher and SafeWorks intended to and would pay attorneys' fees; defendants Fletcher and Duffy worked together, without plaintiff's knowledge, to present payment proposals that Fletcher and Duffy believed would induce plaintiff to agree to continue to provide services in reliance on promises to pay; and defendants Fletcher, SafeWorks, Duffy and Archie made

representations to plaintiff regarding payment of attorneys' fees without disclosing to plaintiff their knowledge that defendant Archie had decided not to support Fletcher or SafeWorks any longer with regard to payment of attorneys' fees.

161. Plaintiff suffered damages as a result of defendants' conspiracy, through the continued provision of attorneys' services without payment.

162. The actions of defendants were willful, malicious, intentional, aggravated, and were committed with an evil mind and with the intent to cause injury, or in reckless and/or deliberate disregard of an unjustifiably substantial risk of significant harm to plaintiff. As such, plaintiff submits that this is an appropriate case for imposition of punitive damages.

WHEREFORE, Plaintiff FREEBORN & PETERS LLP respectfully requests that this Honorable Court award compensatory and punitive damages in favor of plaintiff and against defendants in an amount in excess of \$50,000, plus statutory pre-judgment interest, and grant any other and further relief to plaintiff as this Court deems necessary or appropriate under the circumstances.

COUNT IX
AIDING AND ABETTING (DUFFY AND ARCHIE)

163. Plaintiff realleges and incorporates by this reference paragraphs 1 through 75 and 135 through 157 above as though fully set forth herein.

164. On information and belief, at all times relevant, defendants Duffy and Archie knew and understood that defendants Fletcher and SafeWorks were pursuing a scheme to defraud plaintiff into providing valuable legal services without payment.

165. Defendants Duffy and Archie aided and abetted defendants Fletcher and SafeWorks in the pursuit of their fraudulent scheme by, among other things, participating in meetings and communications with plaintiff in which Archie's refusal to support Fletcher or

compensatory damages; punitive damages, including attorneys' fees and costs; and grant any other and further relief to Plaintiff as this Court deems necessary or appropriate under the circumstances.

COUNT XI
TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY (DUFFY)

173. Plaintiff realleges and incorporates by this reference paragraphs 1 through 75 above as though fully set forth herein.

174. Plaintiff had valid and enforceable contractual relationships with Fletcher and SafeWorks that were mutually satisfactory and reasonably expected to continue indefinitely in the absence of acts of interference.

175. Defendant Duffy knew of plaintiff's contractual relationships with Fletcher and SafeWorks. In fact, Duffy executed the engagement letters with Fletcher and SafeWorks on behalf of plaintiff.

176. Duffy has intentionally and unjustifiably interfered with plaintiff's contracts and its advantageous business relationships with Fletcher and SafeWorks. Furthermore, Duffy has intentionally and unjustifiably induced Fletcher and SafeWorks to breach their contracts with plaintiff.

177. Duffy's conduct has caused a breach of the contracts between plaintiff and Fletcher and SafeWorks.

178. Plaintiff has suffered damages as a result of the tortious interference.

179. The actions of Duffy were willful, malicious, intentional, aggravated, and were committed with an evil mind and with the intent to cause injury, or in reckless and/or deliberate disregard of an unjustifiably substantial risk of significant harm to plaintiff.