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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-2002**

Herbert A. Igbanugo, et al.,  
Appellants,

vs.

Mark A. Cangemi,  
Respondent.

**Filed June 27, 2011  
Affirmed in part and reversed in part  
Halbrooks, Judge**

Hennepin County District Court  
File No. 27-CV-09-29474

Herbert A. Igbanugo, Igbanugo Partners Int'l Law Firm, PLLC, Minneapolis, Minnesota  
(for appellants)

Thomas P. Kane, Mark T. Berhow, Shushanie E. Kindseth, Hinshaw & Culbertson LLP,  
Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and  
Bjorkman, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellants challenge the district court's dismissal of their complaint for failure to state a claim upon which relief can be granted and contend that the district court abused its discretion by striking portions of the complaint and by refusing to accept appellants'

post-hearing brief. Because we conclude that the district court erred by dismissing appellants' claim of breach of contract and implied covenant of good faith and fair dealing, we reverse in part. We affirm the remainder of the district court's order.

## **FACTS**

Appellants Herbert A. Igbanugo and Igbanugo Partners International Law Firm, PLLC (the firm) filed a complaint against respondent Mark A. Cangemi alleging four counts: breach of contract and implied covenant of good faith and fair dealing; fraud; negligent misrepresentation; and tortious interference with contractual relations and prospective business advantage. The complaint alleges that the parties entered into an oral agreement that respondent would join the firm as a non-equity partner in 2007. The alleged terms of the agreement allowed respondent to take monetary advances based on respondent's assurances that he would build a new area of practice for the firm. According to the complaint, respondent failed to fulfill his partnership obligations and failed to generate sufficient business to equal his advances. The complaint alleges that at the time of the agreement, respondent did not intend to perform according to the terms of the agreement. In support of the allegations, appellants attached to the complaint a number of e-mails and documents that were found on respondent's computer after his departure from the firm.

Respondent moved to strike portions of the complaint and to dismiss the complaint. The district court heard respondent's motion on April 23, 2010. More than two months after the hearing, appellants filed a "Post-Hearing Brief," which the district

court rejected as untimely. Appellants subsequently moved for leave to file their post-hearing brief; respondent opposed the motion and moved for sanctions.

The district court denied appellants' motion for leave to file a post-hearing brief and granted respondent's motion for sanctions. The district court also granted respondent's motion to dismiss the complaint and to strike portions of the complaint. With regard to respondent's motion to dismiss, the district court found that the complaint "does not describe with any definition the terms of the alleged verbal agreement," making it impossible to determine whether respondent breached the alleged partnership agreement. Because the district court concluded that the complaint did not sufficiently allege an employment agreement, the district court also concluded that respondent was an at-will employee and that the implied covenant of good faith and fair dealing did not apply to respondent's relationship with the firm. The district court further determined that the allegations of fraud and negligent misrepresentation were not specific enough to meet the heightened pleading requirements of Minn. R. Civ. P. 9.02. The district court dismissed the tortious-interference claim, which is not challenged on appeal.

With respect to respondent's motion to strike, the district court found that certain paragraphs in the complaint and the documents that appellants attached to the complaint contained irrelevant allegations and information that served only to scandalize and embarrass respondent. As a result, those portions of the complaint were struck from the record. This appeal follows.

## DECISION

### I.

When reviewing the dismissal of a complaint for failure to state a claim, we must determine only whether the complaint sets forth a legally sufficient claim for relief. *Wiegand v. Walser Auto. Grps., Inc.*, 683 N.W.2d 807, 811 (Minn. 2004). A reviewing court must treat the allegations in the complaint as true and make all assumptions and inferences in favor of the nonmoving party. *Id.* (treating allegations in the complaint as true); *St. James Capital Corp. v. Pallet Recycling Assocs. of N. Am., Inc.*, 589 N.W.2d 511, 514 (Minn. App. 1999) (making all assumptions and inferences in favor of the nonmoving party). Whether a complaint sets forth a legally sufficient claim is a question of law, which we review de novo. *Stead-Bowers v. Langley*, 636 N.W.2d 334, 338 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002).

#### A. Breach of Contract and Implied Covenant

Appellants allege a cause of action against respondent for breach of contract and breach of the implied covenant of good faith and fair dealing. The notice-pleading practice in Minnesota permits the pleading of broad, general statements as long as the adverse party has fair notice of the theory upon which the claim for relief is based. *Goeb v. Tharaldson*, 615 N.W.2d 800, 818 (Minn. 2000); *see also Swenson v. Holsten*, 783 N.W.2d 580, 585-86 (Minn. App. 2010) (concluding that the complaint when viewed as a whole was sufficient to put the defendant on notice of the plaintiff's claims).

To establish a claim for breach of contract, the plaintiff must show that “(1) a contract was formed; (2) the plaintiff performed any conditions precedent; and (3) the

defendant breached the contract.” *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). Appellants’ complaint alleges the existence of an oral partnership agreement that allowed respondent to become a non-equity partner and to take advance draws based on his promise that he would generate income for the firm. The complaint also alleges that the partnership agreement required respondent to build an immigration worksite-compliance practice at the firm. These facts, if true, demonstrate the existence of a contract between appellants and respondent. While the complaint does not allege the terms of the contract with specificity, the allegations in the complaint are specific enough to demonstrate respondent’s obligations under the agreement and to put respondent on notice as to the bases of appellants’ claims.

The complaint also alleges facts demonstrating respondent’s breach of the contract. According to the complaint, respondent did not perform substantive work, failed to assist with firm management, failed to follow up with potential clients, and brought in minimal firm income despite receiving substantial draws. These facts are sufficient to support appellants’ allegation that respondent breached his agreement to build an immigration worksite-compliance practice that would be a source of income for the firm.

Appellants also allege that respondent breached an implied covenant of good faith and fair dealing. Every contract includes an implied covenant of good faith and fair dealing, meaning that there is an implied condition that each party will not unjustifiably hinder the other from performing. *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995). The scope of the underlying contract limits the implied

covenant of good faith and fair dealing. *See id.* at 503; *Minnwest Bank Cent. v. Flagship Props. LLC*, 689 N.W.2d 295, 303 (Minn. App. 2004) (holding that because there was no contractual duty there could be no breach of an implied covenant based on the same argument).

The district court held that the failure of appellants' breach-of-contract claim was necessarily fatal to the implied-covenant claim based on its conclusion that, without a contractual relationship between the parties, respondent was an at-will employee of the firm. Because we conclude that the district court erred by dismissing the breach-of-contract claim, the implied-covenant claim must also be reinstated, as its dismissal was based on the erroneous dismissal of the underlying contract action.

#### **B. Fraud and Negligent Misrepresentation**

When pleading fraud or a negligent-misrepresentation claim, "the circumstances constituting fraud . . . shall be stated with particularity." Minn. R. Civ. P. 9.02; *see also Juster Steel v. Carlson Cos.*, 366 N.W.2d 616, 618 (Minn. App. 1985) (stating that a misrepresentation "whether negligent or fraudulent, constitutes fraud under Minnesota law"). Rule 9.02 does not specify what constitutes sufficient particularity. But the supreme court has stated that "[t]he requirements for a plea of fraud are satisfied when the ultimate facts are alleged." *In re Estate of Williams*, 254 Minn. 272, 283, 95 N.W.2d 91, 100 (1959).

To properly plead a cause of action for fraud, the complaint must allege that (1) the defendant made a false representation about a past or present fact; (2) the fact is material and susceptible of knowledge; (3) the defendant knew the representation was

false or made the representation without knowing whether it was false; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff was induced to act based on the representation; (6) the plaintiff suffered damages; (7) and the defendant's representation was the proximate cause of the plaintiff's damages. *Vandeputte v. Soderholm*, 298 Minn. 505, 507-08, 216 N.W.2d 144, 146 (1974). To sufficiently state a claim of negligent misrepresentation, the plaintiff must plead facts to demonstrate that (1) the defendant had a duty of care in conveying information, (2) the defendant breached that duty by negligently providing false information, (3) the plaintiff reasonably relied on the representations, and (4) the plaintiff suffered pecuniary damages that were proximately caused by the plaintiff's reliance. *Flynn v. Am. Home Prods. Corp.*, 627 N.W.2d 342, 350-51 (Minn. App. 2001).

A representation or promise as to future acts or expectations may not form the basis of a claim for fraud or negligent misrepresentation. *Dollar Travel Agency, Inc. v. Nw. Airlines, Inc.*, 354 N.W.2d 880, 883 (Minn. App. 1984) ("Fraud must relate to past or existing fact and cannot be predicated on statements of intention or opinion."), *review denied* (Minn. Dec. 21, 1984). Further, statements or opinions that are "general and indefinite" are not representations of fact. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 747 (Minn. 2000).

The basis for appellants' fraud and negligent-misrepresentation causes of action is respondent's alleged promise that he would generate income for the firm. But this is a promise as to a future act or expectation. The nonoccurrence of this event is not actionable as a fraud or negligent-misrepresentation cause of action unless the complaint

also sets forth specific facts demonstrating that, at the time of the statement, respondent did not intend to fulfill his promise. Because the complaint contains no such factual statements, the district court properly dismissed this cause of action for failure to state a claim upon which relief can be granted.

## II.

Appellants contend that the district court abused its discretion by granting respondent's motion to strike portions of the complaint. Minn. R. Civ. P. 12.06 allows the district court to strike from any pleading any matter that it finds to be "redundant, immaterial, impertinent or scandalous." When material in a pleading "neither states a cause of action nor assists other parts in so stating," that material is irrelevant and may be stricken. *Hayward Farms Co. v. Union Sav. Bank & Trust Co.*, 194 Minn. 473, 474, 260 N.W. 868, 869 (1935). It is within the district court's discretion to grant or deny a motion to strike matters in the pleadings. *Haug v. Haugan*, 51 Minn. 558, 561, 53 N.W. 877, 875 (1892).

Here, the district court granted respondent's motion to strike the portions of the complaint that described respondent's alleged inappropriate behavior at the firm. The district court also granted the motion with respect to the numerous pages of attachments to the complaint submitted in the public record. The district court granted respondent's motion in part because it concluded that the information was not relevant to appellants' claims.

The complaint alleges a breach of contract based on respondent's failure to assist in building an immigration worksite-compliance practice at the firm. While the



attachments and descriptions of respondent's activities at the firm may provide evidence or proof that respondent did not engage in the legal work that he promised he would perform, these allegations, at the pleading stage, are immaterial given that the courts are required to take all allegations in a complaint as true. Appellants claim that they had to submit proof of their allegations, but this is incorrect; the attachments and the descriptions of respondent's conduct are irrelevant at this stage of the proceedings. We therefore conclude that the district court did not abuse its discretion by striking these matters from the complaint.

### **III.**

Appellants argue that the district court abused its discretion by rejecting their post-hearing brief and ordering appellants to pay the attorney fees that respondent incurred in responding to appellants' July 14 motion for leave to file a post-hearing brief. A district court's decision to award attorney fees is reviewed for an abuse of discretion. *Buscher v. Montag Dev. Inc.*, 770 N.W.2d 199, 211 (Minn. App. 2009). Appellants attempted to submit their post-hearing brief more than two months after the hearing. The district court refused to accept the brief on the grounds that it was untimely and not properly served. The district court's decision to award attorney fees to respondent was within its discretion.

**Affirmed in part and reversed in part.**