This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0368

Anthony, Inc.,
Appellant,

vs.

Richard L. Morris, et al.,
Respondents.

Filed January 29, 2024
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-CV-21-15408

Keith D. Johnson, Law Office of Keith D. Johnson, P.L.L.C., Roseville, Minnesota (for appellant)

Brandon D. Meshbesher, Timothy J. O'Connor, William L. Davidson, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

On appeal from judgment on the pleadings, appellant-corporation challenges the dismissal of its conversion claim against respondent-attorney who represented the corporation and its sole shareholder in an action for dissolution of a limited liability company (LLC) in which the corporation held a 50% interest. Appellant also challenges the district court's denial of its motion to amend its complaint to add the sole shareholder's estate beneficiaries as plaintiffs. Because appellant's complaint fails to allege facts of conversion, the district court properly dismissed appellant's complaint. And, because the district court properly dismissed appellant's civil-conversion claim, and no other claim survives, we need not address appellant's second issue. We affirm.

FACTS

This dispute arises out of the dissolution of a nonparty-corporation, 415 LLC, and the sale of an apartment building owned by 415. James Lang and appellant Anthony Inc. each held a 50% interest in 415. Steven Meyer was the sole shareholder of Anthony. Lang and Meyer were the only two governors of 415.

In 2016, Lang brought a corporate-dissolution action against Anthony and Meyer. Respondents Richard L. Morris, et al.[1] represented Anthony and Meyer in the dissolution action. During the dissolution action, the parties agreed to an order directing the sale of the apartment building owned by 415 with the sale proceeds, less expenses, to be held in trust by 415's attorney. Thereafter, as part of the corporate dissolution, financial obligations of 415 were to be paid from this trust account.

415 was in the process of winding up its business activities when Meyer died in February 2019. Meyer's death prompted questions about Lang's authority, as the sole surviving governor, to make decisions and take action to complete 415's dissolution

[1] The original complaint named two law firms and Richard L. Morris as defendants. Anthony agreed to the dismissal of one of the law firms, leaving Richard L. Morris and his law firm as respondents. We refer to Morris, who personally represented appellant, for simplicity.

process. In June 2019, the parties agreed to an order confirming authority stating that "Lang became the sole governor [of 415] after Meyer's death" and, as the sole governor, Lang "has the full and complete authority of the Board of Governors to sign contracts, hire lawyers and accountants, compromise claims, bring claims, pay invoices, bills and expenses for the company." Morris signed the stipulation on behalf of Anthony.

Anthony and Meyer's estate sued Morris, asserting four causes of action: (1) negligence, (2) civil conversion, (3) civil theft, and (4) treble damages. The claims were predicated on the allegation that the June 2019 stipulation caused a "dwindling of funds" from the trust account.

Morris moved for judgment on the pleadings as to counts II (civil conversion), III (civil theft), and IV (treble damages) of the complaint. The motion also sought to dismiss Meyer's estate as a plaintiff, which Anthony did not oppose. Anthony moved to amend the complaint to add the beneficiaries of Meyer's estate as individual plaintiffs.

The district court granted Morris' motion and dismissed counts II-IV. The district court determined that Anthony's civil-conversion and theft claims failed as a matter of law because the remaining sale proceeds held in the attorney trust account belonged to 415, not Anthony. The district court dismissed Anthony's claim for treble damages after determining it was not an independent cause of action and it was unsupported by the remaining negligence claim.[2]

[2] The district court dismissed Anthony's negligence claim in January 2023 for failing to comply with statutory requirements. *See* Minn. Stat. § 544.42 (2022) (requiring an expert affidavit in negligence actions against professionals). Anthony does not challenge the dismissal of that claim on appeal.

The district court denied Anthony's motion to add the beneficiaries of Meyer's estate as plaintiffs, determining that the beneficiaries lacked standing because no attorney-client relationship existed between them and Morris.

Anthony appeals, challenging only the dismissal of its civil-conversion and treble-damages claims and the denial of its request to amend the complaint by adding the individual beneficiaries of Meyer's estate.

DECISION

On appeal from a grant of a motion for judgment on the pleadings pursuant to Minn. R. Civ. P. 12.03, appellate courts "consider only the facts alleged in the complaint, accepting those facts as true and drawing reasonable inferences in favor of the nonmoving party." *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017) (citation omitted). Appellate courts "review a district court's decision on a Rule 12.03 motion de novo to determine whether the complaint sets forth a legally sufficient claim for relief." *Id.* (quotation omitted).

A. The complaint fails to set forth a legally sufficient civil-conversion claim.

Anthony's complaint alleges that, by signing the June 2019 stipulation, Morris "committed civil conversion of the Remaining Sale Proceeds . . . in the amount of $440,224.39."

"Conversion occurs when a person willfully interferes with the personal property of another without lawful justification, depriving the lawful possessor of use and possession." *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 125 (Minn. App. 2017) (quotation omitted). "The elements of common law conversion are: (1) plaintiff holds a property interest; and (2) defendant deprives plaintiff of that interest." *Id.* "[A] plaintiff's lack of an enforceable interest in the subject property is a complete defense against conversion." *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 920 (Minn. App. 2008) (quotation omitted).

The complaint fails to allege that Anthony held an enforceable property interest in the funds being held in the attorney trust account. The complaint states that the "parties entered a stipulated order . . . directing the sale of the apartment building owned by 415, LLC, with the net proceeds of the sale to be held in [trust] . . . on behalf of 415, LLC." Although the complaint alleges that Anthony held a 50% interest in 415, it does not allege how, or why, Anthony is entitled to funds being held in trust on behalf of another company (here, 415). *See Seitz v. Michel*, 181 N.W. 102, 105 (Minn. 1921) (noting that corporate funds "do not belong to the stockholders, but to the corporation"); *see also Blohm v. Kelly*, 765 N.W.2d 147, 153 (Minn. App. 2009) (stating that corporate assets belong to the corporation, not its shareholders). Thus, the district court properly dismissed Anthony's civil-conversion claim because the complaint does not plead that it had an enforceable property interest in the funds held in trust at the time of the alleged conversion.[3]

[3] The district court concluded, in the alternative, that Anthony's conversion claim failed because it is derivative rather than a direct claim, which Anthony challenges on appeal. *See Wessin v. Archives Corp.*, 592 N.W.2d 460, 464 (Minn. 1999) ("Where the injury is to the corporation, and only indirectly harms the shareholder, the claim must be pursued as a derivative claim."). Because we determine that Anthony lacked an enforceable property interest in the funds being held in trust, which is necessary to support its civil-conversion claim, we need not reach this alternative ruling.

B. The complaint fails to set forth a legally sufficient treble-damages claim.

The complaint summarily alleges that "Morris and Morris Law Group committed deceit of their clients and collusion with the other parties in the litigation entitling plaintiff to treble damages under Minn. Stat. § 481.07 and § 481.071." Treble damages are available pursuant to Minn. Stat. §§ 481.07-.071 (2022) when an attorney injures a client by engaging in deceit or collusion, but neither section creates an independent cause of action, *see Baker v. Ploetz*, 616 N.W.2d 263, 272 (Minn. 2000) ("section 481.071 applies only to attorney fraud committed in the context of an action or judicial proceeding"); *Love v. Anderson*, 61 N.W.2d 419, 422 (Minn. 1953) (noting that section 481.07 "does not create a new cause of action"); *Smith v. Chaffe*, 232 N.W. 515, 517 (Minn. 1930) (noting section 481.071 "does not create any new cause of action"). Because it was the only remaining purported claim, and is not its own cause of action, the district court properly dismissed Anthony's treble-damages claim.

Affirmed.