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STATE COURT OF CHATHAM COUNTY

IN THE STATE COURT OF CHATHAM COUNTY  
STATE OF GEORGIA 2010 OCT 12 PM 2:49

CHRISTY TOLER, BRENDA GREEN, )  
JOYCE GREEN and STEPHANIE JUNG- )  
NASH, )  
Plaintiffs, )

*Brian K. Harsh*

v. )

Civil Action No. STCV0603262-CO

ARROWHEAD CLINIC INCORPORATED, )  
JOHN E. KING and ASSOCIATES LLC, )  
ARROWHEAD MANAGEMENT INC., H. )  
BROWN MANAGEMENT COMPANY )  
LLC, HARRY W. BROWN, INC., HARRY )  
W. BROWN, Sr., HARRY W. BROWN, Jr., )  
and JOHN E. KING, )  
Defendants. )

**ORDER**

This Court, having read and considered the Arrowhead Clinic Incorporated, Arrowhead Management, Inc., H. Brown Management Company, LLC, Harry W. Brown, Inc., Harry W. Brown, Sr., and Harry W. Brown, Jr., (hereinafter the "Brown Entities), and John E. King and Associates, LLC, and John E. King, (hereinafter "King") and collectively as "Plaintiffs' Motion for Summary Judgment and Christy Toler (hereinafter "Toler"), Joyce Green (hereinafter "J. Green"), Brenda Green (hereinafter "B. Green"), and Stephanie Jung-Nash (hereinafter "Jung-Nash") and collectively as Defendants' Response, and having heard argument on the Motion on June 30, 2010, finds as follows:

## FINDINGS OF FACT

The Complaint, as amended, asserts class claims against King and the Brown Entities, with professional negligence, fraud, constructive fraud, negligence and breach of fiduciary duty. The Plaintiffs request damages, attorney fees and punitive damages. Specifically, the Plaintiffs allege that the Defendants used their chiropractic centers, managed through various Brown entities, to encourage incoming accident victims to use the services of attorney King or his LLC to handle the legal aspects of their accident claims. In return for these referrals, King would ensure that the Brown Entities were paid through the accident settlements, whether or not other medical providers were paid.

## CONCLUSIONS OF LAW

### **I. Standard of Review**

To prevail at summary judgment under O.C.G. A. §9-11-56, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts viewed in the light most favorable to the non-moving party, warrant judgment as a matter of law. O.C.G.A. §9-11-56 (c). A *defendant* may do this by showing the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of the plaintiff's case. If there is no evidence sufficient to create a genuine issue as to any essential element of the plaintiff's claim, that claim tumbles like a house of cards.<sup>1</sup>

King and the Brown Entities filed Motions for Summary Judgment and therefore, “[t]he burden is on the moving party, and the party opposing the motion is given the benefit of all reasonable doubts and all favorable inferences that may be drawn from the evidence.”<sup>2</sup> “To prevail on a motion for summary judgment... a defendant-movant is required to pierce the allegations of

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<sup>1</sup> Lau's Corp. v. Haskins 261 Ga. 491; 405 S.E.2d 474 (1991).

<sup>2</sup> Colonial Stores v. Turner 117 Ga. App. 331, 333; 160 S.E.2d 672 (1968 *citing* Holland v. Saxfax Corp. 106 Ga. App. 1; 126 S.E.2d 442 (1962)).

the complaint and to establish as a matter of law that the plaintiff could not recover under any theory fairly drawn from the pleadings and the evidence.”<sup>3</sup> “Once he pierces the pleading of the plaintiff and shows the court that one essential element, under any theory, is lacking and incapable of proof, the defendant-movant is entitled to summary judgment as a matter of law, irrespective of any issue of fact with regard to other essential elements.”<sup>4</sup>

The Plaintiffs contend that they each suffered damages in this action based upon loss of loyalty and the payment of fees to medical providers under the guise that King and the Brown Entities exercised independent judgment regarding the Plaintiffs as the patients-clients. The Plaintiffs argue that they were unaware of the specific financial relationship between King and the Brown Entities although they may have known of the general relationship between the two.<sup>5</sup> Further, the Plaintiffs contend that their entry into an attorney-client relationship with King when there was an additional relationship between King and the Brown Entities creates a loss of loyalty, which is an injury. King and the Brown Entities argue that the Plaintiffs have not established damages and therefore King and the Brown entities are entitled to summary judgment.

The Plaintiffs argue that at the very least they are entitled to nominal damages. However, evaluating the record in the light most favorable to the Plaintiffs, the Court concludes that the record does not establish damages to the Plaintiffs. As stated by the Court of Appeals in its analysis for the claim for class certification, “...we note that the record shows that the named

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<sup>3</sup> Holiday Inns, Inc. v. Newton 157 Ga. App. 436; 278 S.E.2d 85 (1981), *citing* Werbin & Tennenbaum v. Heard 121 Ga. App. 147 (2); 173 S.E.2d 114 (1970); Scheer v. Cliatt 133 Ga. App. 702, 703; 212 S.E.2d 29 (1975); Farris v. Sneed 144 Ga. App. 448; 241 S.E.2d 605 (1978).

<sup>4</sup> *Id.* *citing* Waldrep v. Goodwin 230 Ga. 1,2; 195 S.E.2d 432 (1973); Farris v. Sneed 144 Ga. App. 448; 241 S.E.2d 605 (1978).

<sup>5</sup> Plaintiffs Response to the King Defendant Motion for Summary Judgment, Pg. 28.

plaintiffs all testified that they were aware of the relationship between the clinics and the law firm.

Further, none of the named plaintiffs was able to articulate any injury received from either the clinic or law firm.”<sup>6</sup> “Here, although the record is well-developed, the named plaintiffs have as yet identified no injuries, however small, from either the breach of fiduciary duty claim or the other claims listed in the complaint”<sup>7</sup>

Although the Plaintiffs have supplemented the record with affidavits from Attorney Thomas Herndon and Dr. Alan Bragman, in an attempt to bolster the record, these documents do not alleviate the lack of evidence from these Plaintiffs that they suffered any damages. Although Mr. Herndon makes averments such as his belief that the Greens and Jung-Nash settlements were low and that there was not enough attorney involvement in working the files. This however is mere speculation. Nothing in the record supports the position that higher settlements should have or could have been obtained on the Plaintiffs’ behalf. Further, all of the plaintiffs accepted the settlement of their claims.

Dr. Bragman indicates that he believes that the services rendered to the Plaintiffs were an over-utilization of services which would increase the amounts due to the Brown Entities. Further, Dr. Bragman contends that the injuries sustained by the Plaintiffs should have resolved sooner. Again, these positions are merely speculation, as the record does not reflect that any services were over-utilized, and the Plaintiffs state that the treatments helped improve their injuries. Although the Plaintiffs attempt to establish an issue of material fact with these additional affidavits, the Court concludes that these statements without additional support provided from the record are

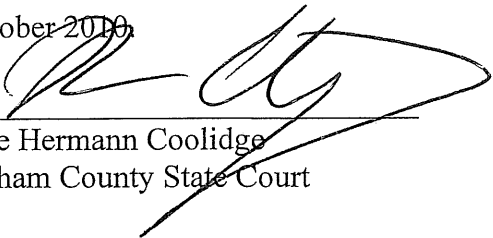
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<sup>6</sup> King & Asso., et al v. Toler, et al., 296 Ga. App. 577, 579; 675 S.E.2d. 492 (2009).

<sup>7</sup> Id. at 582.

insufficient to establish damages. Therefore, John E. King and Associates, LLC, and John E. King's Motion for Summary Judgment is HEREBY GRANTED and Arrowhead Clinic Incorporated, Arrowhead Management, Inc., H. Brown Management Company, LLC, Harry W. Brown, Inc., Harry W. Brown, Sr., and Harry W. Brown, Jr. Motion for Summary Judgment is HEREBY GRANTED.

**SO ORDERED** this 12<sup>th</sup> day of October 2010.

  
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Judge Hermann Coolidge  
Chatham County State Court

cc: Brent Savage, Esq.  
James Grant, Esq. Esq.  
Patrick T. O'Conner, Esq.  
Christian J. Steinmetz, III, Esq.