

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-001265-MR

FARMER, KELLEY, BROWN,  
WILLIAMS AND BREEDING

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE GREGORY A. LAY, JUDGE  
ACTION NO. 03-CI-01125

PRAY, WALKER, JACKMAN,  
WILLIAMSON & MARLAR

APPELLEE

OPINION  
AFFIRMING

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BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

EMBERTON, SENIOR JUDGE: Appellant Farmer, Kelley, Brown, Williams and Breeding, a Kentucky law firm, appeals from the summary disposition of its claim for legal fees against appellee Pray, Walker, Jackman, Williamson & Marlar, an Oklahoma law firm. We affirm.

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<sup>1</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

This dispute arises from litigation initiated against Sterling Resources, a Texas Corporation, in the Lee Circuit Court concerning a stock purchase agreement. At the time that action was commenced, Sterling was represented by appellee Pray which subsequently contacted Farmer to act as local counsel. After that litigation was concluded, Farmer attempted to collect from Pray attorney's fees for services rendered Sterling alleging that Pray was liable for those fees under theories of agency and implied contract. The trial court granted Pray summary judgment on Farmer's claim, concluding that the record contained no factual basis upon which a contract could be found, or that Pray derived any benefit from the representation Farmer provided Sterling. The trial judge also rejected Farmer's agency theory concluding that Pray's situation with respect to Sterling was not analogous to an insurance agency's contractual obligation to provide legal services to a negligent insured. Finding no error in the trial judge's analysis, we affirm.

The single argument pressed for reversal focuses upon Farmer's claim that Pray was a third party beneficiary of its representation of Sterling. The benefits alleged to have been derived from local counsel's efforts to have the Kentucky default judgment against Sterling set aside are: (1) the avoidance of a malpractice action against Pray; (2) enhancement of Pray's relationship with Sterling; and (3) the avoidance of

"marks against the firm's reputation within its practice." We find these novel theories unpersuasive.

The fact of the matter is that regardless of the origin of Farmer's representation of Sterling, it is beyond dispute that Farmer and Pray were at all times acting as co-counsel in the representation of Sterling. The correspondence upon which Farmer relies confirms that it was brought into the case for the purpose of protecting Sterling's interests, not Pray's. As the trial court observed, "Nowhere in the record does this Court find that Pray, Walker ever contracted with or derived any benefit from the diligent services Plaintiff rendered on behalf of Sterling."

While we are directed to no Kentucky case law directly on point, we find persuasive the analysis of the Texas Supreme Court in Bashara v. Baptist Memorial Hospital System,<sup>2</sup> rejecting a similar implied contract claim:

It is not enough to show that attorney Bashara's efforts benefited Baptist Hospital, however. Those efforts must have been undertaken "for the person sought to be charged." *City of Ingleside*, 554 S.W.2d at 943. It is well settled that "[n]o one can legally claim compensation for ... incidental benefits and advantages to one, flowing to him on account of services rendered to another by whom the attorney may have been employed." *Landman v. State*, 97 S.W.2d 264, 265 (Tex.Civ.App. El Paso 1936, writ ref'd).

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<sup>2</sup> 685 S.W.2d 307, 311 (Tex., 1985).

Although Baptist Hospital may well have received benefits traceable to Bashara's efforts on Kelley Axtell's behalf, those benefits are only incidental, and create no claim for compensation.

It is abundantly clear from this record that from the inception of its representation Farmer's efforts, as they should have been, were directed at relieving the client Sterling from the directed verdict which had been entered against it. As in Bashara, any benefit to Pray was merely incidental.

The judgment of the Laurel Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Martha L. Brown  
London, Kentucky

BRIEF FOR APPELLEE:

Bryan K. Sergent  
London, Kentucky