

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NATIONSTAR MORTGAGE LLC,

Plaintiff,

v.

WEINSTEIN & RILEY P.S.,

Defendant.

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Civil Action No. 3:22-CV-02922-N

ORDER

This order addresses Defendant Weinstein & Riley P.S.’s (“Weinstein”) motion to dismiss Plaintiff Nationstar Mortgage LLC d/b/a Mr. Cooper’s (“Nationstar”) breach of contract claim against it. The Court concludes that the claim violates the Texas anti-fracturing rule for malpractice claims and accordingly grants the motion.

Nationstar retained Weinstein to defend it in separate litigation. Complaint ¶ 17 [1]. Nationstar alleges that Weinstein was negligent in its defense, and its malpractice caused Nationstar to lose an unmeritorious case, resulting in damages of more than \$450,000. *Id.* ¶¶ 60, 62. The parties’ retention agreement contained an indemnification provision:

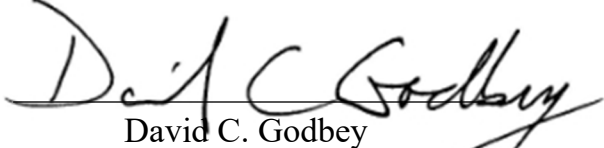
[Weinstein] agrees to indemnify, protect and hold harmless [Nationstar] . . . from any liability claims, losses, penalties, fines, forfeitures, legal fees and related costs, judgments, and any other costs, fees and expenses . . . directly or indirectly relating to or arising out of . . . the alleged or actual negligent or wrongful actions or omissions of [Weinstein] . . . as it relates to the legal services provided under this Agreement and/or the handling of Loans.

Id. ¶ 21. Nationstar sent Weinstein & Riley a demand letter, but it did not pay. *Id.* ¶¶ 72–73. Nationstar filed this suit asserting legal malpractice as well as a breach of the indemnification provision.

The parties agree that Texas law applies, and in Texas, an “anti-fracturing rule prevents plaintiffs from converting what are actually professional negligence claims against an attorney into other claims such as fraud, breach of contract,” or “breach of fiduciary duty.” *Won Pak v. Harris*, 313 S.W.3d 454, 457 (Tex. App. — Dallas 2010, pet. denied) (quoting *Beck v. Law Offices of Edwin J. (Ted) Terry, Jr. P.C.*, 284 S.W.3d 416, 426–27 (Tex. App. — Austin 2009, no pet.)). “For the anti-fracturing rule to apply, however, the gravamen of [the] complaint[] must focus on the quality or adequacy of the attorney’s representation.” *Beck*, 284 S.W.3d at 426–27 (citing *Murphy v. Gruber*, 241 S.W.3d 689, 692–93 (Tex. App. — Dallas 2007, pet. denied)).

Here, the gravamen of Nationstar’s breach claim is that Weinstein violated a contractual obligation to pay Nationstar’s damages. But even if Nationstar can show independent damages from the alleged breach, the existence of Weinstein’s obligation to pay is entirely dependent on whether Weinstein’s conduct was professionally negligent or wrongful, and thus the contract claim is an improper conversion of a malpractice claim. The Court grants Weinstein’s motion to dismiss Nationstar’s breach of contract claim. This ruling does not affect Nationstar’s malpractice claim.

Signed June 6, 2023.


David C. Godbey
Chief United States District Judge