

No. 98-1521

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

96 CV 1749

FILED

WILLIAM A. PANGMAN AND MARY PANGMAN SCHMITT,

April 16, 1999

PLAINTIFFS-RESPONDENTS,

CLERK OF
COURT OF APPEALS
OF WISCONSIN

v.

RICHARD WILLIAM KING AND LAW OFFICES OF RICHARD
WM. KING, S.C.,

DEFENDANTS-APPELLANTS,

GARTEN BRAU HOLDINGS COMPANY, INC. AND CAPITAL
BREWERY COMPANY, INC.,

DEFENDANTS,

WISCONSIN LAWYERS MUTUAL INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

96 CV 2141

MARY PANGMAN SCHMITT AND THOMAS D. PANGMAN,

PLAINTIFFS,

WILLIAM PANGMAN,

NECESSARY-PARTY-INVOLUNTARY-
PLAINTIFF,

v.

RICHARD WILLIAM KING, GARTEN BRAU HOLDINGS
COMPANY, INC., AND XYZ INSURANCE COMPANY,

DEFENDANTS.

ERRATA SHEET

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PLEASE TAKE NOTICE that the attached pages 2, 3, and 12 are to be substituted for pages 2, 3 and 12 in the above-captioned opinion which was released on April 8, 1999.

WILLIAM PANGMAN,

**NECESSARY-PARTY-INVOLUNTARY-
PLAINTIFF,**

V.

**RICHARD WILLIAM KING, GARTEN BRAU HOLDINGS
COMPANY, INC., AND XYZ INSURANCE COMPANY,**

DEFENDANTS.

APPEAL from a judgment and an order of the circuit court for Dane County: ROBERT DE CHAMBEAU, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

DYKMAN, P.J. Richard William King appeals from a judgment and an order dismissing his insurer, Wisconsin Lawyers Mutual Insurance Company (WILMIC), from further liability for claims brought by William Pangman and Mary Pangman Schmitt, regarding King's legal representation in various business dealings. King argues that WILMIC has not been absolved of its duty to defend him against these claims. We disagree and affirm.

BACKGROUND

William Pangman (Pangman) and King met while they were classmates in law school. In the early 1980s, Pangman, King and Schmitt, who is Pangman's sister, invested in a business together. In the years that followed, they engaged in various other business pursuits as well. However, by 1995, Pangman and Schmitt's relationship with King began to sour. In 1997, Pangman and Schmitt jointly filed suit against King and his insurer, WILMIC, alleging

numerous causes of action.¹ Some of the alleged facts giving rise to these causes of action are set out later in this opinion.

King and WILMIC each filed separate answers to this complaint. WILMIC raised the affirmative defense that its professional liability policy with King does not cover claims that arise directly or indirectly out of “intentional, dishonest, fraudulent, criminal or malicious acts or omissions.” Therefore, it did not have a duty to indemnify King against any such claims.

In 1997, King moved for summary judgment on all of Pangman and Schmitt’s claims. On January 28, 1998, the trial court issued its decision, granting and denying parts of King’s motion. It denied summary judgment on: (1) Schmitt’s tort malpractice claim; (2) Schmitt’s contract malpractice claim; (3) Schmitt’s and Pangman’s conversion claim; (4) Pangman’s constructive trust claim; and (5) Schmitt’s and Pangman’s intentional misrepresentation claims.

¹ According to Schmitt and Pangman’s second-amended complaint, the claims filed are as follows: (1) Schmitt’s tort claim of malpractice against King and King Law Offices; (2) Schmitt’s contract claim for legal malpractice against King and King Law Offices; (3) William Pangman and Schmitt’s claims for misappropriation and conversion against King and King Law Offices; (4) William Pangman and Schmitt’s claims for imposition of a constructive trust against King and King Law Offices; (5) Thomas Pangman (William’s brother) and Schmitt’s claims for declaratory judgment against Garten Brau Holdings Company (GBH) and Capital Brewery; (6) Schmitt’s claim for breach of fiduciary duty against King, King Law Offices, GBH and Capital Brewery; (7) William Pangman and Schmitt’s claims for intentional misrepresentation against King and King Law Offices; (8) William Pangman and Schmitt’s claims for negligent misrepresentation against King and King Law Offices; (9) William Pangman and Schmitt’s claims for strict responsibility misrepresentation against King and King Law Offices; and (10) Schmitt’s claim against WILMIC.

King maintains that he is now in a position of having to pay for counsel to again prepare for trial on the noncovered claims, as well as to represent him in determining whether Pangman's constructive trust claim is covered under the policy.

We conclude that none of these claims of alleged prejudice have anything to do with the notice that was given to King. Rather, they are all claims of how King was prejudiced when the trial court granted WILMIC's motion.³ Because King has not provided any explanation as to how he was prejudiced by the inadequate notice, we conclude that there is no reasonable possibility that the court's failure to provide adequate notice harmed King.

Moreover, we view this motion as an extension of the settlement agreement. WILMIC advised King when it gave him a copy of the settlement documents that if he consented to the settlement arrangement, it would promptly implement the settlement, which would settle all claims made against King that were covered under his policy. WILMIC further stated that once the covered claims were settled, it intended to obtain a dismissal of all claims against King and WILMIC for which WILMIC provides liability coverage, as well as a declaration from the court terminating any further duty on WILMIC's part to defend King against the remaining non-covered claims. Therefore, King was aware of WILMIC's intentions when he agreed to the settlement. We believe that if King did not want WILMIC's duty to defend to end, he should not have agreed to the settlement arrangement.

³ King does not allege that the trial court erred in granting WILMIC's motion on the merits; he instead argues that the motion should not have been granted, and WILMIC should not be dismissed from its duty to defend, because he was given inadequate notice of the motion.

