

“fantasy” of being “lead counsel for toxic tort” litigation and consequently refused “opportunities to work with other attorneys on non-toxic tort matters.” That argument evaporated when the Defendants’ counsel realized, from the Plaintiff’s discovery responses, that absolutely none of the Plaintiff’s work as Mr. Bailey’s assistant did involve toxic torts. Their replacement argument, asserted during the oral argument, was that the Plaintiff worked exclusively as Mr. Bailey’s assistant because he never requested other work during the firm’s weekly meetings. Now, according to their proposed Finding of Fact 13, the Plaintiff was never “dissatisfied” with his work as Mr. Bailey’s assistant. Likewise, the Defendants’ argued orally that *Janssen et al. v. Carolina Lumber Co.* required the dismissal of the Plaintiffs’ fraud claims; however, their proposed Conclusion of Law 27 substituted the case of *Gaddy Eng’g Co. v. Bowles Rice McDavid Graff & Love, LLP* in place of *Janssen*. That makes no difference because both of those cases stand for the proposition that a fraud claim cannot be based solely on the fact that a promised event did not occur. As the Plaintiff discussed in his proposed Conclusion of Law 5, the factor that is present here – but was not present in *Janssen* (or in *Gaddy*) – is the allegation that when Mr. Bailey made his promises, he had no intention of keeping them.

Summary

The Plaintiff’s proposed Conclusion of Law 2 cites the standards applicable to a ruling on a motion to dismiss and differentiates them from the standards applicable to a ruling on a motion for summary judgment. The basic difference is that a motion to dismiss tests the legal sufficiency of the allegations in a complaint; and a motion for summary judgment – which is typically filed after the completion of discovery – tests the factual support for those allegations. Most significantly – as the Plaintiff has asserted at every argument stage for the past 14 months,