



Alerts

Plaintiff Failed to Establish Collectibility of Underlying Judgment

January 9, 2013

Lawyers for the Profession® Alert

Schmidt v. Coogan, 287 P.3d 681 (Wash. App. 2012)

Brief Summary

The Court of Appeals of the State of Washington held that plaintiff client failed to prove that the judgment she was entitled to from the underlying defendant, a grocery store, was collectible, and that defendant attorney was thus entitled judgment as a matter of law.

Complete Summary

In 1995, the client slipped and fell at a Tacoma, Washington, grocery store. In January 1996, she retained the attorney to represent her in her slip-and-fall tort case. The attorney failed to timely file the client's tort claim, and the client consequently sued him and his associates for legal malpractice. The case went to trial in November 2003, and a jury entered a verdict against the attorney for \$32,000 in past economic damages and \$180,500 for noneconomic damages. The appellate court affirmed a "grant of a new trial on damages."

After the client rested her case in the damages trial, the attorney moved for a judgment as a matter of law asserting that the client failed to present any evidence that had the attorney timely filed the underlying case against the grocery store and won a jury verdict, the verdict would have been collectible. The trial court denied the motion, finding that the attorney should have raised questions of collectibility at the first trial, not at the damages-only trial. The jury ultimately awarded the client \$3,733.16 in past economic damages and \$80,000 in noneconomic damages. The attorney moved for judgment as a matter of law and/or a new trial. The trial court denied the motion, and the attorney appealed.

The attorney argued that the trial court improperly denied his motion for a judgment as a matter of law because the client failed to establish collectibility, a necessary element of damages in a legal malpractice claim. The appellate court agreed. The court held that because collectibility is a component in determining legal malpractice damages, and the client failed to prove collectibility at trial, the trial court improperly denied his motion for judgment as a matter of law.

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The court noted that the measure of damages in legal malpractice actions is the amount of loss actually sustained as a proximate result of the attorney's conduct. *Matson v. Weidenkopf*, 101 Wash. App. 472, 484, 3 P.3d 805 (2000). The collectibility of the underlying judgment is a "component of damages in a legal malpractice action." *Matson*, 101 Wash. App. at 484. Courts consider collectibility of the underlying judgment to prevent the plaintiff from receiving a windfall because it would be inequitable for the plaintiff to be able to obtain a greater judgment against the attorney than the judgment that the plaintiff could have collected from the third party.

Plaintiff argued that two pieces of evidence established collectibility. First, she argued that she "testified the grocery store was a large, busy going concern." Second, she argued that five photographs, apparently showing the shampoo aisle inside the grocery store, demonstrated the grocery store's solvency and the collectibility of a judgment. The appellate court rejected her arguments and held that the evidence was insufficient to prove collectibility.

The court concluded that unlike in *Matson*, where the record contained sufficient evidence showing that the plaintiffs could have collected the judgment on unpaid promissory notes, plaintiff here simply submitted five photos of the grocery store's shampoo aisle and offered a blanket statement that her observation was that the grocery store's business was bustling. The court held that given the dearth of evidence proving collectibility of a judgment against the grocery store—an essential component in determining damages in plaintiff's legal malpractice action—the trial court erred in denying the attorney's motion for judgment as a matter of law.

Significance of Opinion

This decision underscores the importance of not only pleading and proving that but for the defendant's alleged negligence, the plaintiff would have prevailed in the underlying case, but also proving that any judgment against the defendant(s) in the underlying litigation would have been collectible.

For more information, please contact [Terrence P. McAvoy](#).

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