



Alerts

New Jersey Appellate Court Affirms Summary Judgment in Favor of Malpractice Defendants Due to Plaintiff's Failure to Establish Duty and Proximate Cause

March 27, 2023

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Morris Properties, Inc. v. Jonathan Wheeler, et al., Docket No. A-2653-20 (2/28/23)

Brief Summary

The Superior Court of New Jersey Appellate Division affirmed a trial court's order granting summary judgment in favor of the defendant attorneys and law firm, ruling that plaintiff had failed to establish that defendants owed a duty to plaintiff, or that defendants' alleged negligence in an underlying coverage action had proximately caused plaintiff's damages.

Complete Summary

Plaintiffs, Morris Properties, Inc. (MPI) and MPI president, Karen Morris (Morris) (collectively "plaintiffs") filed a legal malpractice action against defendant law firm and two attorneys at the firm (defendants) arising out of defendants' representation of MPI in an underlying bad faith/breach of contract case against MPI's former property insurer, West American Insurance Company (West American).

In the underlying coverage action, MPI claimed that a building it owned sustained wind and water damage in October 2012 during Hurricane Sandy. MPI retained Metro Public Adjustment (Metro) to assist it in pursuing an insurance claim against West American. Metro submitted a claim to West American for wind and water damage to MPI's building. Thereafter, West American denied coverage to MPI under the policy because West American's inspector had concluded that hurricane-related wind damage was isolated to one area of the roof, and the cost to repair the damage was less than MPI's \$51,590.76 deductible.

MPI retained defendants to represent the company in a lawsuit against West American. Defendants filed a complaint on behalf of MPI alleging that West American had acted in bad faith and had breached its contractual obligations by refusing to pay benefits allegedly owed to MPI under the policy. At an initial court conference, counsel for West American advised defendants that a pre-

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litigation settlement offer of \$34,000 (which MPI had previously rejected) might "still be on the table." Defendants conveyed the offer to MPI.

Thereafter, defendants served MPI's responses to West American's first set of interrogatories. The responses asserted that MPI had never had a roof problem or made any claims for damage to the roof prior to the subject loss. Morris signed a verification indicating that the responses were accurate to the best of her knowledge, information, and belief.

Several months later, Morris was deposed as corporate designee for MPI. Defendants met with Morris on the morning of her deposition and represented MPI at the deposition. Morris testified that MPI had no history of roof leaks or tenant complaints about roof leaks prior to the damage from Hurricane Sandy. However, counsel for West American showed Morris letters sent to MPI from tenants complaining about roof leaks before Hurricane Sandy. Morris testified that she had never seen the letters before.

Following the deposition, the trial court granted West American's motion for leave to amend its answer to assert a counterclaim for insurance fraud. Defendants filed a motion to withdraw as counsel for MPI, which the court ultimately granted. MPI retained new counsel and entered into a settlement agreement with West American wherein the parties released their claims against each other, and West American would pay MPI \$10,000.

MPI and Morris then filed a malpractice case against defendants, alleging that defendants had committed malpractice by (1) failing to name experts and submit an expert report, (2) failing to communicate a \$34,000 settlement offer to Morris, and (3) failing to properly prepare Morris for her deposition in the coverage action. Plaintiffs sought compensatory and punitive damages on behalf of MPI and punitive damages on behalf of Morris.

In support of their claims, plaintiffs produced an expert report prepared by William Hildebrand, Esq., in which Hildebrand opined that defendants had breached the applicable "reasonably prudent" standard of care in their representation of MPI. Hildebrand did not opine as to whether defendants' alleged breach of the standard of care proximately caused plaintiffs' damages nor what damages, if any, plaintiffs had sustained.

Defendants moved for summary judgment alleging that Hildebrand failed to opine on proximate cause and damages, and that Morris had no standing to present an individual claim against defendants. The trial court agreed and granted summary judgment in favor of defendants.

The appellate court subsequently affirmed, ruling that plaintiffs had not established proximate cause as a matter of law, as Hildebrand's report failed to demonstrate that MPI would have succeeded in obtaining a better result at trial (more than the \$10,000 settlement that it ultimately accepted), but for defendants' alleged negligence. Plaintiffs' argument regarding defendants' alleged failure to communicate the \$34,000 settlement offer was invalidated on appeal because Morris had failed to produce any written evidence that she would have accepted the offer had she known about it.

The appellate court also affirmed the trial court's ruling that the claims brought by Morris individually should be dismissed because MPI was defendants' client, not Morris.

Significance of Decision

This decision is significant because it demonstrates the well-established principle that a plaintiff must generally have a competent legal expert to opine on (1) the applicable standard of care, (2) the defendant's breach, and (3) "but for" proximate cause and damages, unless the "common knowledge" exception applies, such as a blown statute of limitations case. The case illustrates how easily a malpractice claim can be dispatched due to plaintiff's failure to prove, by competent expert testimony, each element of their claim.