



Alerts

New Jersey Supreme Court Rejects Two Potential Bars to Legal Malpractice Cause of Action

June 24, 2010

Lawyers for the Profession® Alert

Guido v. Duane Morris LLP, ___A.2d___, 2010 WL 2195445 (N.J. 2010)

Brief Summary

The New Jersey Supreme Court rejected two potential bars to a legal malpractice claim that were based on plaintiff's prior entry into a settlement agreement in the underlying case. First, the fact that the malpractice plaintiff agreed to and understood the terms of the settlement does not estop that plaintiff from bringing a malpractice claim. Second, the fact that the malpractice plaintiff did not move to vacate or set aside the settlement, although relevant to mitigation of damages, is not a condition precedent to bringing such a claim.

Complete Summary

Plaintiff sued his former lawyers for legal malpractice alleging that they had negligently advised him regarding the potential effects of a settlement agreement. Defendant lawyers moved for summary judgment arguing that that plaintiff had testified before the settlement-hearing judge that he understood and agreed to the terms of the settlement, and had not sought to vacate or set aside the settlement. The trial court initially granted defendants' motion, but later reconsidered and vacated the order. Defendants appealed.

The New Jersey Supreme Court affirmed. The Court reaffirmed that a party who has acknowledged in the underlying litigation that a settlement was "adequate" and "fair" will be equitably estopped from later bringing a malpractice action based on that settlement. However, here such a statement was "glaringly absent," even though plaintiff had agreed to and understood the settlement. The Court also held that the absence of efforts to vacate or set aside a settlement does not necessarily bar a malpractice claim, rejecting the argument that such efforts are a necessary prerequisite for a malpractice action based on the lawyer's advice on the settlement. Such efforts, however, may in some cases be relevant to the plaintiff's failure to mitigate damages.

Significance of Opinion

The New Jersey Supreme Court's opinion provides that a plaintiff may bring malpractice claims based on a lawyer's advice related to settlement agreements, even without having sought to undo the settlement, but that there is a limited equity-based exception when the plaintiff has made a representation during litigation that the agreement was "adequate" and "fair." In balancing between the interests of clients and lawyers in malpractice actions, the Court in its decision walks a careful line between the parties. It recognizes that a client

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may be bound by a statement that a settlement is fair and adequate even though such a statement may have been ill-advised, while also refusing to force a client to seek to undo a settlement as a threshold requirement for a malpractice action.

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