



Alerts

Expert Testimony Not Required For Attorney's Mishandling of Client Checks

April 2, 2014

Lawyers for the Profession® Alert

Cammarota v Guerrero, ___ A.3d ___, 2014 WL 928701 (Conn.App. 2014)

Brief Summary

A Connecticut appellate court held that expert testimony was not necessary to establish negligence by a lawyer for mishandling checks. The defendant represented the plaintiff and his brother in their joint development of a condominium project. Plaintiff provided the lawyer a check in his name and checks in the name of the joint entity which the defendant or an employee gave to his brother. Plaintiff's brother deposited the checks in his own account without proper endorsements.

Although the plaintiff labeled his claims as legal malpractice (and fiduciary breach), the court disagreed. It concluded that the evidence in dispute did not involve an issue that implicated professional judgment, but only ordinary negligence. The court said that this kind of alleged negligence was within the common knowledge of jurors without the need for expert testimony regardless of the label of the cause of action.

Summary

Plaintiff and his brother were involved in the development of real estate. They retained the defendant to create a development company in which the brothers were equal shareholders. According to the plaintiff, he warned the defendant that he had "concerns" about his brother.

Following the construction of a number of condominium units, the defendant (or someone from his office) handed four checks to plaintiff's brother: three checks payable to the development company, and one check payable to the plaintiff. Plaintiff's brother deposited the check payable to the plaintiff in his own personal account without proper endorsement.

The plaintiff sued the defendant based upon the delivery of the plaintiff's check to his brother, alleging legal malpractice, conversion, and breach of fiduciary duty. Following the plaintiff's case in chief, the court granted the defendant's motion for directed verdict on all three causes of action.

The appellate court reversed as to the negligence cause, concluding that the nature of the claim was not for professional negligence, which required negligence of a "specialized professional nature" or "arcane issue implicating

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professional judgment." Rather, the case "presented a simple matter of the defendant's handing a person a check, payable to someone else, after the defendant had been warned about that person." The court determined that such negligence, if any, was within the realm of the jury's ordinary knowledge. The court cited several supporting cases.

On the issue of fiduciary duty, the court upheld the directed verdict, reasoning that there was no suggestion of dishonesty or disloyalty on the part of the defendant: "Negligence alone is insufficient to support a claim of a breach of fiduciary duty."

Significance of Opinion

This decision is significant because it provides an example of a negligence claim against lawyer that does not require expert opinion. It is not just the professional decisions that can give rise to claims, but also the commonplace. The analysis of the court regarding the fiduciary duty claim should be useful in defending such claims where only negligence, and not dishonesty or disloyalty, is at issue.

For more information, please contact [Terrence P. McAvoy](#) or [Noah D. Fiedler](#).

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