



Alerts

Plaintiff's Failure to Disclose Expert Was Fatal to Legal Malpractice Claim

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Rosemann v. Sigillito, ___ F.3d ___, 2015 WL 1963634 (8th Cir. 2015)

Brief Summary

The United States Court of Appeals for the Eighth Circuit held that under Missouri law, expert testimony was required to establish client's legal malpractice claim, and client could not pursue a claim for breach of fiduciary duty based on same conduct.

Complete Summary

Plaintiff hired the defendant in 2002 to help him invest millions of dollars from the sale of plaintiff's shares in a family business, after defendant falsely informed plaintiff that he was an expert in international investments. Defendant assured plaintiff there would be no risk in investing the money in a foreign company and that plaintiff's interest would be protected. As part of this investment, defendant charged plaintiff \$15,000 to incorporate Braithwaite Consulting Limited, a Belize company; Braithwaite purportedly would invest the money to reduce taxes on the investment.

In January 2007, plaintiff received a \$15.6 million buyout from the sale of shares of his family's company. Defendant instructed plaintiff to loan \$5 million of the buyout to METAG Insaat Ticaret A.S., a Turkish contractor, referred to by both parties as "Metis." When plaintiff resisted, defendant told him "the loan was guaranteed by [North Atlantic Treaty Organization] contracts and that defendant would structure the deal to protect plaintiff and defer taxes." Defendant assured plaintiff the NATO contracts could be seized if Metis did not repay the loan. Plaintiff transferred the entire \$15.6 million to defendant, who then wrote a \$5 million check to Metis. For that service, defendant charged plaintiff \$100,000. Defendant took other portions of the \$15.6 million for his own use and loaned \$10.8 million to another party in England. Only approximately \$2.75 million was repaid.

Two years later, in January 2009, Metis defaulted on the loan. In September 2009, Metis filed for bankruptcy protection in Turkey. Defendant filed suit against Metis but assigned Braithwaite's interest to a St. Louis-based company owned by defendant. The suit eventually was dismissed. The loan remained in default, and according to plaintiff, the total amount owed was \$7,464,041.

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In April 2012, defendant was convicted of nine counts of wire fraud, four counts of mail fraud, six counts of money laundering, and one count of conspiracy to commit mail and wire fraud. He was sentenced to a total term of 480 months' imprisonment. See *United States v. Sigillito*, 759 F.3d 913, 922 (8th Cir. 2014). After defendant's convictions, plaintiff filed this legal malpractice action regarding the defendant's handling of plaintiff's investments.

The district court granted defendant's motion for summary judgment on the basis that plaintiff failed to disclose an expert who could testify regarding the appropriate standard of care. The appellate court affirmed. In doing so, the court noted that expert testimony is generally required in legal malpractice actions. To establish that an attorney was negligent, a plaintiff must show that he failed to exercise that degree of skill and diligence ordinarily used under the same or similar circumstances by members of the legal profession. The court also noted that expert testimony is not required if the negligence in question is "clear and palpable to a jury of laymen." See *Hart v. Steele*, 416 S.W.2d 927, 932 (Mo. 1967) (explaining exception to expert-testimony requirement applies if "the want of skill or lack of care is so apparent as to be within the comprehension of laymen and requires only common knowledge and experience to understand and judge it"). A claim of legal malpractice would not require expert testimony if, for example, a lawyer failed to file a claim within the statute of limitations.

Here, plaintiff alleged that defendant negligently prepared the promissory note sent from Braithwaite, a Belize corporation, to Metis, a Turkish contractor. To determine whether defendant negligently handled the note, a jury would need to know what an attorney, "under the same or similar circumstances," would have done and why defendant's actions were unacceptable. The court concluded that this subject goes beyond the "common knowledge and experience" of most lay persons, and the "common knowledge" exception thus did not apply.

The court also held that the plaintiff's alleged breach of fiduciary duty claim was based on defendant's alleged "negligent behavior," *i.e.*, his malpractice. The court held that although plaintiff characterized the alleged breach "as both a breach of the standard of care ... and a breach of a fiduciary obligation," the only claim he could pursue, under Missouri law, was legal malpractice. Summary judgment in favor of defendant was thus affirmed.

Significance of Opinion

This decision is significant because the court held that plaintiff's failure to disclose an expert on the applicable standard of care and defendant's breach thereof was fatal to plaintiff's alleged legal malpractice claim, and plaintiff could not pursue a claim for breach of fiduciary duty which was based on the same conduct.

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