



Alerts

California Court Holds Unforeseeable Injury From Malpractice Supports Dismissal

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Professional Lines Alert

Kumaraperu v. Feldsted, 2015 WL 337761 (Cal. App. May 26, 2015)

In an unusual departure from existing precedent, a California court held that an injury from an attorney's legal advice may be so unforeseeable as to warrant dismissal.

In *Kumaraperu* plaintiff client sued defendant attorneys for negligence in advising her to draw a check on an account that she owned, but on which she was not a signatory. The trial court granted a dismissal motion on the grounds that the client, who had been charged with criminal forgery, had not been found factually innocent of forgery. The appellate court affirmed but on different grounds. It found that the prosecution itself was such an unusual consequence of the advice as to be unforeseeable as a matter of law.

The client and her late husband owned a private day care school. When the husband died, the client became the school's sole owner and operator. However, she was not a signatory on the school's checking account. When the school director accidentally deposited tuition checks into the checking account rather than the operating account, the operating account lacked the funds necessary to pay expenses. The client sought legal advice from the attorneys to determine how to move the money into the operating account.

The attorneys advised the client to draw a check from the checking account payable to herself, sign a signatory's name to the check, and then deposit the check in the operating account. The client followed the attorneys' advice. The Los Angeles County District Attorney charged her with forgery. The charges were later dismissed on the basis of insufficient evidence.

Question Before the Court

Could the attorney potentially have foreseen that the withdrawal, which, on the surface, was made by an unauthorized signatory, would lead to a criminal prosecution?

The court of appeal sustained the lower court's dismissal on the grounds that the results of the advice were so unusual that they were unforeseeable as a matter of law. Among the reasons the court found these consequences unforeseeable were:

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- The client informed attorneys that she owned the school, and the school she rightfully owned and managed owned the funds in the checking account.
- A transfer of funds — that one exclusively owns — from one account to another does not, by itself constitute fraud, even if the transfer is effected by a forgery that violates the account agreement.
- A key element to the crime of forgery is intent to defraud, and a depositor cannot intend to defraud himself or herself.

What the Court's Decision Means for Practitioners

As the court acknowledged, injury from tortious conduct is usually considered legally foreseeable and the question of foreseeability is ordinarily treated as a question of fact for the jury. However, the court concluded that the prosecutor could not meet the key element of intent to defraud because the client actually owned the funds transferred. As such, the prosecutor's decision to prosecute the case was considered legally unforeseeable as a matter of law. Looked at another way, the court questioned whether the attorney genuinely caused the prosecutor's superseding decision to prosecute a victimless crime. Essentially, the lawyer technically set in motion the chain of events that led to injury as in the seminal case of *Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339 (1928). The *Palsgraf* court focused on the objective foreseeability of the net result of the chain of events at the outset and not with hindsight. It found the prosecutor's subsequent conduct was too unforeseeable to support liability.

The case is important because it shows that the independent and superseding conduct of third parties needs to be carefully evaluated in defending malpractice cases. There are similar cases in California and precedent holding that a third party's intervening tort may be a superseding cause of loss (*Purdy v. Pacific Auto Ins. Co.*, 157 Cal. App. 3d 59, 76-78 (1984)) or that a wrong decision by a judge may be raised defensively. *Lombardo v. Huysentruyt*, 91 Cal. App. 4th 656, 700 (2001); *Church v. Jamison*, 143 Cal. App. 4th 1568, 1584 (2006).

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