



Alerts

Trial Court's Error in Underlying Case Was Superseding Cause of Plaintiffs' Claimed Damages

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Stanfield v. Neubaum, 2016 WL 3536865 (Tex. June 24, 2016)

Brief Summary

The Texas Supreme Court held that in a legal malpractice case arising from an adverse verdict, the trial court's error in the underlying case was the superseding cause of plaintiffs' claimed damages — attorneys' fees incurred in appealing the verdict.

Complete Summary

Buck Glove Company (Buck) sued Jon and Barbara Neubaum (the Neubaums) for usury, alleging they made a usurious loan through an agent, Marvin March (March). Counsel for the Neubaums asserted defenses of usury cure, based on a usury cure letter sent by the Neubaums, and *bona fide* error. They then moved for summary judgment, arguing that the usury cure letter barred the usury claim, but the trial court denied the motion.

At trial, the Neubaums' attorneys did not argue or introduce evidence in support of the defenses of usury cure or *bona fide* error. Instead, they argued that March did not act as the Neubaums' agent when he made loans to Buck, and that the Neubaums were the victims of a Ponzi scheme operated by March and Buck. Over objections, the trial court submitted to the jury the question of whether March acted as Neubaums' agent. The jury found that he did, and that the Neubaums, through March, made a usurious loan to Buck. The jury also found that March defrauded the Neubaums. The jury awarded \$4 million to Buck and \$150,000 to the Neubaums on their counterclaim.

The Neubaums then retained new counsel, who successfully appealed. The appellate court held that the evidence was insufficient to support the jury's finding that March was Neubaums' agent. Although the Neubaums prevailed on appeal, they incurred more than \$140,000 in attorneys' fees. The Neubaums then sued their trial lawyers for legal malpractice. They claimed that their lawyers were negligent in failing to pursue the defenses of usury cure and *bona fide* error, and in failing to present expert testimony to support the claim that the Neubaums were victims of a Ponzi scheme. The Neubaums argued that but for the alleged negligence, the trial court's error on the agency issue would have been immaterial, and they would have prevailed in the underlying case.

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The attorneys moved for summary judgment based on the argument that the trial court's error on the agency issue was the cause of the attorneys' fees the Neubaums incurred for the appeal. The trial court agreed and granted summary judgment. The appellate court reversed and remanded, but the Texas Supreme Court reversed and rendered judgment in favor of the lawyers.

The Texas Supreme Court held that because the attorneys' alleged negligence did not contribute to the trial court's error, the trial court's error was a superseding cause of the Neubaums' injuries. The court noted that the question of whether an intervening cause is a superseding cause or a concurring cause depends on whether the intervening cause was reasonably foreseeable, whether the original negligence caused the intervening force to occur, and whether the negligence operated with the intervening force in creating the harm.

The court then stated that for a judicial error to be a superseding cause, the error must not have been a reasonably foreseeable result of the lawyer's alleged negligence. The court held that when an attorney does not contribute to the judicial error, the error is not reasonably foreseeable.

Here, the court concluded that the trial court's error in the underlying case on the agency issue was not a reasonably foreseeable result of the lawyers' alleged negligence. In the underlying case, the attorneys correctly argued the evidence did not support an agency relationship between the Neubaums and March. The lawyers therefore did not contribute to the trial court's error. The appellate court's reversal of the adverse judgment in the underlying case established that the adverse judgment would not have been entered absent the trial court's error. The court noted that although the lawyers' alleged negligence may have created a condition that allowed the Neubaums to be injured, their negligence did not contribute to the injuries.

Significance of Opinion

Whether the trial court erred in the underlying litigation is always an important part of the proximate (or "but for") causation analysis. This case is yet another that supports the proposition that an intervening cause, such as the retention of successor counsel when a client's claim is still viable or a trial court's error, relieves the attorney of liability.

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

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