

SUPERIOR COURT OF THE STATE OF DELAWARE

Margolis Edelstein v. Gene Kirschner and Gary Jefferson

Margolis Edelstein · No. C.A. No. N25C-09-018 FJJ · Decided January 29, 2026

SUMMARY

The Delaware Superior Court denied Margolis Edelstein’s motion to dismiss Gene Kirschner and Gary Jefferson’s legal malpractice counterclaim. The court held that the counterclaim adequately put the plaintiff on notice and that neither the stipulated judgment nor Superior Court Rule 11 barred the malpractice claim at the motion-to-dismiss stage.

CASE DETAILS

COURT	Superior Court of the State of Delaware
WRITING FOR THE COURT	Francis J. Jones, Jr.
JURISDICTION	Superior Court of the State of Delaware
DECIDED	January 29, 2026
DOCKET	C.A. No. N25C-09-018 FJJ
DISPOSITION	denied
PROCEDURAL POSTURE	Plaintiff moved under Superior Court Rule 12(b)(6) to dismiss defendants' counterclaim alleging legal malpractice.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, accepts vague allegations if they provide notice of the claim, draws reasonable inferences for the nonmoving party, and dismisses only when the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.
PRECEDENTIAL VALUE	Published

TOPICS

- motions to dismiss
- pleadings
- civil procedure
- affirmative defenses
- commercial litigation

PRACTICE AREAS

- civil procedure
- legal malpractice
- commercial litigation

QUESTIONS PRESENTED

1. Whether the legal-malpractice counterclaim pleaded sufficient facts to survive a Rule 12(b)(6) motion without pleading how defendants would prevail in the underlying case within a case or identifying an expert.
2. Whether the stipulated judgment or Superior Court Rule 11 barred the legal-malpractice counterclaim under judicial estoppel.

HOLDINGS

1. The counterclaim adequately stated a legal-malpractice claim because it alleged the substance of the claim and gave the law firm notice of the allegations. Defendants were not required at the pleading stage to plead the case within the case or identify an expert.
2. Judicial estoppel did not bar the counterclaim because defendants' agreement to the stipulated judgment was not inconsistent with their allegation that the agreement resulted from incorrect legal advice.
3. Superior Court Rule 11 did not require dismissal of the legal-malpractice counterclaim.

KEY QUOTATIONS

“At this stage of the proceedings, Plaintiff is not required to plead the ‘case within the case.’ Nor are defendants required to plea the identity of an expert or that one has been consulted.” (at 3)

“Nothing in the Stipulated Judgment is inconsistent with the defendants’ allegations that the plaintiff committed legal malpractice.” (at 4)

FACTUAL BACKGROUND

Margolis Edelstein represented Gene Kirschner and Gary Jefferson in the MASH action. That matter ended when defendants agreed to entry of a stipulated judgment for \$289,450 plus interest at 5% per month. The law firm alleged that defendants failed to pay a final legal bill of \$4,399.35, while defendants counterclaimed that the firm committed malpractice by recommending settlement through the stipulated judgment at an excessive amount and interest rate.

PROCEDURAL HISTORY

Margolis Edelstein represented Gene Kirschner and Gary Jefferson in an earlier action that ended in a stipulated judgment against them. After defendants allegedly failed to pay their final legal bill, the law firm filed this action to collect the bill, and defendants counterclaimed for legal malpractice based on advice to settle the earlier dispute by stipulating to judgment. The Superior Court denied the motion to dismiss the counterclaim.

DISPOSITION

denied

CASES CITED

- Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings, 27 A.3d 531, 535 (Del. 2011)

- Wyoming Concrete Indus., Inc. v. Hickory Commons, LLC II, 2007 WL 53805, at *1 (Del. Super. Ct. Jan. 8, 2007)
- Hedenberg v. Raber, 2004 WL 2191164, at *1 (Del. Super. Ct. Aug. 20, 2004)
- Chandler v. Bayhealth Medical Center, Inc., 2024 WL 4977010 (Del. Super. 2024)
- La Grange Cmtys., LLC v. Cornell Glasgow, LLC, 74 A.3d 653, 2013 WL 4816813, at *4 (Del. Sept. 9, 2013)
- In re Rural/Metro Corp. S'holders Litig., 102 A.3d 205, 247 (Del. Ch. 2014)

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