

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Stake v. Harlan

Stake v. Harlan, 529 So. 2d 1183 (Fla. 2d DCA 1988) · No. No. 87-2714

SUMMARY

In Stake v. Harlan, 529 So.2d 1183 (Fla. 2d DCA 1988), the court held that an attorney who has actual knowledge of a certified question pending before the Florida Supreme Court that could materially affect a client’s interests has a duty to inform the client of the potential change in the law, even though attorneys generally are not required to predict changes in the law. The case involved a legal malpractice claim where the attorney advised clients to proceed with a “quiet assumption” of a mortgage containing a due-on-sale clause while the enforceability of such clauses was under review; the supreme court later upheld the clause, resulting in foreclosure. The appellate court reversed the dismissal of the complaint, ruling that the allegations stated a cause of action for breach of duty.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	LEHAN; RYDER; FRANK
JURISDICTION	Florida
DOCKET	No. 87-2714
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from dismissal with prejudice of amended complaint for legal malpractice.
STANDARD OF REVIEW	De novo review of dismissal for failure to state a cause of action
PRECEDENTIAL VALUE	published
PARTIES	David J. Stake, Deborah S. Stake v. Bruce M. Harlan

TOPICS

- professional negligence
- real estate
- appellate procedure
- motions to dismiss
- contracts

PRACTICE AREAS

- Legal Malpractice
- Professional Responsibility
- Real Estate

QUESTIONS PRESENTED

1. Whether an attorney has a duty to inform clients of a possible change in the law of which the attorney has actual knowledge.
2. Whether the amended complaint stated a cause of action for legal malpractice.

HOLDINGS

1. An attorney who has actual knowledge that a question of law bearing upon a client's interests has been certified to a higher court owes a duty to advise the client of that fact and its potential consequences, even though there is no general duty to predict changes in the law.
2. The amended complaint stated a cause of action for legal malpractice because the facts alleged, taken as true, show the attorney had a duty to advise his clients of the pending certified question and its implications, and his failure to do so caused loss.

KEY QUOTATIONS

“A lawyer, without express agreement, is not an insurer. He is not a guarantor of the soundness of his opinions, or the successful outcome of the litigation which he is employed to conduct, or that the instruments he will draft will be held valid by the court of last resort. He is not answerable for an error of judgment in the conduct of a case or for every mistake which may occur in practice. He does, however, undertake in the practice of his profession of the law that he is possessed of that reasonable knowledge and skill ordinarily possessed by other members of his profession. He contracts to use the reasonable knowledge and skill in the transaction of business which lawyers of ordinary ability, and skill possess and exercise. On the one hand, he is not to be held accountable for the consequences of every act which may be held to be an error by a court. On the other hand, he is not immune from responsibility, if he fails to employ in the work he undertakes that reasonable knowledge and skill exercised by lawyers of ordinary ability and skill.” (1184-1185)

“The basic issue on this appeal is not whether defendant had no duty to accurately predict a change in the law but is whether he had as a matter of law no duty to inform his clients of his awareness of a possible change in the law which could have a materially adverse effect upon them.” (1185)

“It is my opinion, simply stated, that although a lawyer cannot be held to a standard requiring certainty in anticipating the future state of the law, or an awareness of every question certified to a higher tribunal, when, as is the case here, the lawyer has actual knowledge that a question of law bearing upon a client's interests has been certified, a duty arises to advise the client that such certification may result in a change of the law.” (1186 (Frank, J., concurring specially))

FACTUAL BACKGROUND

Plaintiffs retained defendant attorney for their purchase of a condominium unit on April 11, 1985. The purchase involved paying \$5,000 cash, executing a \$12,000 promissory note secured by a balloon purchase money second mortgage, and assuming a first mortgage containing a due-on-sale clause. The due-on-sale clause required the prior written consent of the first mortgagee for assumption. Defendant advised plaintiffs they could effectuate a 'quiet assumption' without complying with the due-on-sale clause procedure by tendering the next monthly payment. At the time of closing, Florida law (Weiman I) held due-on-sale clauses unenforceable without showing impairment of security. That case had been certified to the Florida Supreme Court as a question of great

public importance. On May 2, 1985, the Florida Supreme Court in *Weiman II* reversed course, holding such clauses enforceable. Thereafter the first mortgagee declared the entire sum due, foreclosed, and plaintiffs suffered loss.

PROCEDURAL HISTORY

Plaintiffs sued their attorney for legal malpractice. The trial court dismissed the amended complaint with prejudice, ruling the attorney had no duty to anticipate changes in the law. Plaintiffs appealed to the Florida Second District Court of Appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reversed and remanded for proceedings consistent herewith.

CASES CITED

- *Weiman v. McHaffie*, 448 So. 2d 1127 (Fla. 1st DCA 1984)
- *Weiman v. McHaffie*, 470 So. 2d 682 (Fla. 1985)
- *Feil v. Wishek*, 193 N.W.2d 218 (N.D. 1972)
- *McCullough v. Sullivan*, 102 N.J.L. 381, 132 A. 102 (1926)
- *Kaufman v. Stephen Cahen P.A.*, 507 So. 2d 1152 (Fla. 3d DCA 1987)
- *Dillard Smith Const. Co. v. Greene*, *Dillard Smith Construction Co. v. Greene*, 337 So. 2d 841 (Fla. 1st DCA 1976)
- *Daytona Development Corp. v. McFarland*, 505 So. 2d 464 (Fla. 2d DCA 1987)
- *Ard v. Aulls*, 477 So. 2d 1032 (Fla. 5th DCA 1985)
- *Hatcher v. Roberts*, 478 So. 2d 1083 (Fla. 1st DCA 1985)
- *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982)