

SUPREME COURT OF UTAH

Crestwood Cove Apartments Business Trust dba Cottonwood Creek
Apartments and Shangri-La UBO v. Shawn Turner and Larsen,
Kirkham & Turner

164 P.3d 1247 (Utah 2007) · No. No. 20050896 · Decided June 22, 2007

SUMMARY

The Utah Supreme Court held that settling an underlying redemption lawsuit before completion of an appeal did not categorically abandon a legal malpractice claim. However, summary judgment for the attorney was proper because judicial error, rather than the attorney's conduct, proximately caused the client's loss, where the attorney had raised the relevant objections to treble damages and the applicable redemption rule.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Parrish; Chief Justice Durham; Associate Chief Justice Wilkins; Justice Durrant; Justice Nehring
JURISDICTION	Utah
DECIDED	June 22, 2007
DOCKET	No. 20050896
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a grant of summary judgment for the defendants in a legal-malpractice action arising from defendants' representation of Shangri-La in an underlying redemption lawsuit.
STANDARD OF REVIEW	Summary judgment is reviewed for correctness, with no deference to the trial court. Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Utah; precedential.
PARTIES	Crestwood Cove Apartments Business Trust dba Cottonwood Creek Apartments, Shangri-La UBO v. Shawn Turner, Larsen, Kirkham & Turner

TOPICS

professional negligence

proximate cause

summary judgment

standard of review

appellate procedure

PRACTICE AREAS

professional negligence

torts

civil procedure

appellate procedure

real estate remedies

QUESTIONS PRESENTED

1. Whether settling the underlying redemption lawsuit before completion of appellate review abandoned or forfeited Shangri-La's legal-malpractice claim.
2. Whether judicial error, rather than Turner's alleged malpractice, proximately caused Shangri-La's claimed damages.
3. Whether summary judgment was proper where Turner had raised the relevant objections to the unlawful-detainer statute and Rule 69(j) before the underlying trial court entered its final ruling.

HOLDINGS

1. Settlement of the underlying redemption lawsuit before completion of appellate review did not, by itself, abandon or forfeit Shangri-La's legal-malpractice claim. The court declined to adopt the abandonment doctrine as a categorical rule.
2. When an attorney raises and preserves the relevant legal arguments in an appropriate procedural manner, and the court nevertheless commits judicial error, the attorney's conduct is not the proximate cause of the client's resulting loss. Summary judgment is appropriate when the undisputed facts establish that judicial error, rather than attorney malpractice, caused the injury.
3. Summary judgment for Turner was proper because the undisputed facts showed that Turner's actions did not proximately cause Shangri-La's damages.

KEY QUOTATIONS

"To prove proximate cause in legal malpractice cases . . . the plaintiff must show that absent the attorney's negligence, the underlying suit would have been successful." (164 P.3d at 1254)

"Where an attorney has raised and preserved all relevant legal considerations in an appropriate procedural manner and a court nevertheless commits judicial error, the attorney's actions cannot be considered the proximate cause of the client's loss." (164 P.3d at 1256)

"Were it otherwise, an attorney would be subject to liability every time a judge erroneously ruled against the attorney's client." (164 P.3d at 1256)

FACTUAL BACKGROUND

Shangri-La's apartment property was sold at a sheriff's sale for \$8,000 to satisfy a \$4,767 judgment, despite the property's alleged value of approximately \$4 million. Shangri-La remained in possession and collected rents, later filing an action challenging the sale and seeking an extension of the redemption period. While representing Shangri-La, Turner argued that Utah's unlawful-detainer statute and treble-damages provision did not apply and

later invoked Utah Rule of Civil Procedure 69(j), but the trial court nevertheless awarded nearly \$1 million as the redemption price. Shangri-La settled the underlying litigation during the appeal and then alleged that Turner's allegedly untimely arguments caused the excessive redemption fee.

PROCEDURAL HISTORY

After a trial court applied Utah's unlawful-detainer treble-damages statute and calculated the redemption price at nearly \$1 million, Shangri-La retained new counsel and appealed. Shangri-La later settled the underlying action and dismissed its appeal with prejudice, then sued Turner and the law firm for malpractice. The district court granted Turner summary judgment, concluding both that Turner was not negligent and that Shangri-La had forfeited its malpractice claim by settling before appellate review. The Utah Supreme Court rejected the forfeiture rationale but affirmed on the alternative ground that judicial error, rather than Turner's conduct, proximately caused the alleged loss.

DISPOSITION

affirmed

CASES CITED

- Swan Creek Vill. Homeowners Ass'n v. Warne, 2006 UT 22, 134 P.3d 1122
- Arndt v. First Interstate Bank of Utah N.A., 1999 UT 91, 991 P.2d 584
- Pa. Ins. Guar. Ass'n v. Sikes, 590 So. 2d 1051 (Fla. Dist. Ct. App. 1991)
- Segall v. Segall, 632 So. 2d 76 (Fla. Dist. Ct. App. 1993)
- E.B.P., Inc. v. Cozza & Steuer, 119 Ohio App. 3d 177, 694 N.E.2d 1376 (1997)
- Rodriguez v. Fredericks, 213 A.D.2d 176, 623 N.Y.S.2d 241 (1995)
- Chem. Bank of N.J. Nat'l Ass'n v. Bailey, 296 N.J. Super. 515, 687 A.2d 316 (Ct. App. Div. 1997)
- Parker v. Graham & James, 715 So. 2d 1047 (Fla. Dist. Ct. App. 1998)
- Lenahan v. Forkey, 702 So. 2d 610 (Fla. Dist. Ct. App. 1997)
- Fusco v. Fauci, 299 A.D.2d 263, 749 N.Y.S.2d 715 (2002)
- Jones Lang Wootton USA v. LeBoeuf, Lamb, Greene & MacRae, 243 A.D.2d 168, 674 N.Y.S.2d 280 (1998)
- Lattimore v. Bergman, 224 A.D.2d 497, 637 N.Y.S.2d 777 (1996)
- Eastman v. Flor-Ohio, Ltd., 744 So. 2d 499 (Fla. Dist. Ct. App. 1999)
- Harline v. Barker, 912 P.2d 433 (Utah 1996)
- Hewitt v. Allen, 118 Nev. 216, 43 P.3d 345 (2002)
- Jankele v. Texas Co., 88 Utah 325, 54 P.2d 425 (1936)
- Doty v. Town of Cedar Hills, 656 P.2d 993 (Utah 1982)
- Thurston v. Box Elder County, 892 P.2d 1034 (Utah 1995)
- Cedeno v. Gumbiner, 347 Ill. App. 3d 169, 282 Ill. Dec. 600, 806 N.E.2d 1188 (2004)

