

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Caso v. Miranda Sambursky Slone Sklarin Verveniotis LLP

2020 N.Y. Slip Op. 01384 (App. Div. 1st Dep't Feb. 27 2020) · No. 10920; 159192/15 · Decided February 27, 2020

SUMMARY

The Appellate Division, First Department reversed the denial of defendants' motion for summary judgment in a legal malpractice action arising from an underlying personal injury case. The court held that, even if defendants may have departed from the applicable standard of care in preparing a witness, the plaintiff's claim that the underlying jury would have reached a favorable verdict was speculative. The court directed entry of judgment dismissing the case.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Richter, J.P.; Gische, J.; Mazzairelli, J.; Gesmer, J.
JURISDICTION	New York
DECIDED	February 27, 2020
DOCKET	10920; 159192/15
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from an order of the Supreme Court, New York County, denying their motion for summary judgment dismissing a legal malpractice complaint.
STANDARD OF REVIEW	The Appellate Division reviewed the denial of summary judgment and determined whether defendants established, as a matter of law, that plaintiff could not prove causation in the legal malpractice action.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Miranda Sambursky Slone Sklarin Verveniotis LLP, Michael Miranda, Richard Sklarin, Ondine Slone v. Thomas Caso

TOPICS

- professional negligence
- summary judgment
- standard of review
- appellate procedure
- negligence

PRACTICE AREAS

legal malpractice

professional negligence

summary judgment

appellate procedure

QUESTIONS PRESENTED

1. Whether defendants in the legal malpractice action were entitled to summary judgment because plaintiff could not establish that, but for defendants' alleged negligence in preparing the eyewitness, he would have prevailed in the underlying personal injury action.
2. Whether factual disputes concerning defendants' alleged departure from the applicable standard of care precluded summary judgment despite the absence of competent proof of causation.

HOLDINGS

1. A legal malpractice plaintiff cannot survive summary judgment on causation by speculating that better attorney preparation would have produced a favorable verdict in the underlying action; the plaintiff must show that, but for the alleged negligence, the underlying action would have been successful.
2. Issues of fact regarding whether attorneys departed from the applicable standard of care do not preclude summary judgment where the plaintiff cannot establish the separate element of causation.

KEY QUOTATIONS

"[M]ere speculation of a loss resulting from an attorney's alleged omissions . . . is insufficient to sustain a claim" for legal malpractice" (*1)

"It does not eliminate speculation about what the jury's verdict would have been, given that Arenas's description of the truck otherwise lacked detail, and the absence of any additional proof identifying defendants' truck and driver as being involved in underlying accident." (*2)

FACTUAL BACKGROUND

Caso was struck and badly injured by a hit-and-run commercial garbage truck. His underlying personal injury action largely depended on eyewitness Ted Arenas, whose descriptions of the truck were inconsistent and did not match defendants' allegedly involved truck, which had a flat front. The underlying jury returned a defense verdict, and Caso later alleged that his attorneys negligently failed to prepare Arenas so that he would recall statements recorded by a police detective. The court concluded that even if Arenas might have testified differently, it was speculative whether the jury would have returned a verdict for Caso because the eyewitness's description lacked detail and there was no additional proof identifying defendants' truck and driver.

PROCEDURAL HISTORY

Thomas Caso brought a legal malpractice action against his former attorneys, alleging that their negligence in preparing the sole eyewitness in an underlying personal injury action caused him to lose that action. The Supreme Court denied defendants' motion for summary judgment. The Appellate Division unanimously reversed, granted summary judgment to defendants, and directed entry of judgment dismissing the case.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order denying defendants' motion for summary judgment was reversed, the motion was granted, and the Clerk was directed to enter judgment dismissing the case.

CASES CITED

- Gallet, Dreyer & Berkey, LLP v. Basile, 141 A.D.3d 405 (1st Dep't 2016)
- Geller v. Harris, 258 A.D.2d 421 (1st Dep't 1999)
- Rudolf v. Shayne, Dachs, Stanisci, Corker & Sauer, 8 N.Y.3d 438 (2007)
- Bookwood v. Alston & Bird, LLC, 146 A.D.3d 662 (1st Dep't 2017)
- Caso v. Miranda Sambursky Slone Sklarin Verveniotes LLP, 150 A.D.3d 422 (1st Dep't 2017)
- Tenzer, Greenblatt, Fallon & Kaplan v. Capri Jewelry, 128 A.D.2d 467 (1st Dep't 1987)

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