SUPREME COURT OF SOUTH DAKOTA

Weiss v. Van Norman

562 N.W.2d 113 (S.D. 1997) · No. No. 19742 · Decided April 16, 1997

SUMMARY

The Supreme Court of South Dakota affirmed summary judgment against Charles Weiss in his legal malpractice action against attorney Robert Van Norman. The court held that any allegedly erroneous advice about terminating a realtor listing agreement was not the proximate cause of Weiss's obligation to pay the commission, because that obligation arose from a preexisting contract. The court also concluded that the alleged advice did not prevent Weiss from negotiating a reduced commission.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Sabers, Justice; Miller, Chief Justice; Amundson, Justice; Konenkamp, Justice; Gilbertson, Justice
JURISDICTION	South Dakota
DECIDED	April 16, 1997
DOCKET	No. 19742
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a summary judgment dismissing a legal malpractice claim.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the moving party demonstrated the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. The evidence is viewed most favorably to the nonmoving party, and affirmance is proper if any basis supports the trial court's ruling.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Charles W. Weiss, f/d/b/a Black Hills Catering Service v. Robert Van Norman

TOPICS

professional negligence · proximate cause · summary judgment · contracts · civil procedure

PRACTICE AREAS

legal malpractice · professional negligence · civil procedure · contract law

QUESTIONS PRESENTED

1. Assuming Van Norman's alleged advice constituted legal malpractice, whether that advice was the proximate cause of Weiss's obligation to pay Kahler's commission.
2. Whether summary judgment was proper when the commission obligation was established by contract before the alleged malpractice.

HOLDINGS

1. The alleged advice did not proximately cause Weiss's obligation to pay the 6% commission because that obligation was contractual and had been established before Van Norman allegedly gave the advice.
2. Summary judgment for Van Norman was proper because no genuine issue of material fact existed regarding causation, an essential element of Weiss's malpractice claim.

KEY QUOTATIONS

> *"We hold that no genuine issue of material fact exists regarding whether the actions or omissions of attorney Van Norman caused Weiss' loss because the obligation to pay the commission was contractually fixed prior to the alleged legal advice."* (562 N.W.2d at 117)

> *"The burden is on Weiss to demonstrate that, absent Van Norman's advice, he would have suffered no injury:"* (562 N.W.2d at 116)

FACTUAL BACKGROUND

Weiss owned Black Hills Catering Service and entered into an exclusive listing agreement with realtor Rick Kahler providing for a 6% commission if the business was sold during the agreement's term or within the specified post-expiration period. Kahler offered to reduce the commission to 3% on April 7, 1992, and Weiss terminated Kahler by certified letter on April 22, 1992, without informing him that the ultimate buyer had already signed an offer on March 30. Kahler later obtained judgment for the 6% commission, and Weiss sued Van Norman for allegedly advising him that termination would eliminate the commission obligation.

PROCEDURAL HISTORY

Weiss sued attorney Robert Van Norman, alleging that Van Norman negligently advised him that terminating a real-estate listing agreement would eliminate his obligation to pay the realtor's commission. The circuit court granted Van Norman summary judgment. Weiss appealed, and the Supreme Court of South Dakota affirmed because the alleged advice could not have proximately caused the commission obligation, which was fixed by contract before the advice was given.

DISPOSITION

affirmed

CASES CITED

- Kahler, Inc. v. Weiss, 539 N.W.2d 86, 88, 90-92 (S.D. 1995)
- Lamp v. First Nat'l Bank of Garretson, 496 N.W.2d 581, 583 (S.D. 1993)
- State Dep't of Revenue v. Thiewes, 448 N.W.2d 1, 2 (S.D. 1989)
- Farmland Ins. Cos. v. Heitmann, 498 N.W.2d 620, 622 (S.D. 1993)
- Stroh v. Town of Java, 463 N.W.2d 923 (S.D. 1990)
- Bego v. Gordon, 407 N.W.2d 801 (S.D. 1987)
- Trapp v. Madera Pacific, Inc., 390 N.W.2d 558 (S.D. 1986)
- Ford v. Moore, 1996 SD 112, ¶ 7, 552 N.W.2d 850, 852
- Keegan v. First Bank of Sioux Falls, 519 N.W.2d 607, 611 (S.D. 1994)
- Haberer v. Rice, 511 N.W.2d 279, 284 (S.D. 1994)
- Musch v. H-D Coop., Inc., 487 N.W.2d 623, 624 (S.D. 1992)
- Staab v. Cameron, 351 N.W.2d 463, 466 (S.D. 1984)
- Martinson Bros. v. Hjellum, 359 N.W.2d 865 (N.D. 1985)
- LPN Trust v. Farrar Outdoor Adver., Inc., 1996 SD 97, ¶ 13, 552 N.W.2d 796, 799
- Trammell v. Prairie States Ins. Co., 473 N.W.2d 460, 463 (S.D. 1991)
- Parsons v. Dacy, 502 N.W.2d 108, 110 (S.D. 1993)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)
- Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)
- Transamerica Ins. Co. v. Keown, 451 F. Supp. 397, 402 (D.N.J. 1978)