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Attorneys Don't Have to Share In Judgment Against Ex-Client



TUCKER

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Of the Legal Staff

Attorneys who represented a couple in a RICO suit against a Bucks County township are not partially liable for \$3 million in damages against the couple after a subsequent law firm failed to file a response to the township's Dragonetti action, a federal judge in Philadelphia ruled.

U.S. District Court Judge Petrese B. Tucker of the Eastern District of Pennsylvania granted the summary judgment motions of attorneys Robert M. Stengel, Kevin Berry and Berry's firm, Ledgewood Law Firm, in the case of *Travelers Indemnity Co. v. Stengel*.

Travelers is the insurer of insurance law boutique Nelson Levine de Luca & Horst, which represented Craig and Mary Jo Sanford in the Dragonetti action against the couple. It was Nelson Levine's failure to file an answer in that case that led to the \$3 million default judgment against the couple, according to the opinion.

When the Sanfords filed a malpractice action against Nelson Levine, Travelers ultimately settled with the Sanfords and the two township supervisors of Falls Township who sued the Sanfords for abuse of civil process. The settlement, which covered both the Dragonetti action damages and the legal malpractice suit, was for \$1.5 million. Travelers then brought an action for contribution against Stengel,

Berry and Ledgewood, the attorneys who represented the Sanfords in filing the RICO action against Falls Township, Tucker said.

According to the opinion, Stengel initially represented the Sanfords in 1998, advising them about a zoning appeal for their property in Monroeville Borough, Falls Township. Stengel drafted a federal RICO lawsuit against the township, its solicitor, the zoning hearing board and members of the township's board of supervisors. The Sanfords then filed that complaint pro se in the Eastern District of Pennsylvania.

Immediately after the filing in 1999, the Sanfords retained Berry and Ledgewood to file an amended complaint in the RICO action to include substantive due process claims. That amended complaint was dismissed in September 2000. An appeal was filed and the 3rd U.S. Circuit Court of Appeals ultimately affirmed the dismissal in December 2001, Tucker said.

That November, two members of the board of supervisors who were defendants in the RICO action filed the Dragonetti action against the Sanfords. The couple's homeowner's insurance company, Shelby Mutual Insurance Co., hired Nelson Levine and attorney Daniel de Luca to defend the action.

Tucker said that de Luca failed to file an answer and, despite receiving a 10-

day notice of the supervisors' intent to seek default judgment, failed to file for an extension of time to file an answer. Default judgment was entered in 2002 and a bench trial was held in Bucks County Common Pleas Court in 2007 in which the \$3 million verdict against the Sanfords was entered, according to the opinion.

In the current action, Stengel argued he was not a joint tortfeasor with de Luca because the two attorneys' actions were severable as to time, they did not have the opportunity to guard against the acts of the other and they owed different duties to the Sanfords that would require different testimony at trial, according to the opinion.

Stengel argued he represented the Sanfords two years before de Luca was hired, which did not give him the opportunity to foresee and guard against de Luca's actions in a later and different lawsuit. He argued the RICO action filed in federal court raised separate legal theories than the Dragonetti action filed in state court. He said different expert testimony would be required to determine whether the applicable standard of care was met by each attorney given the different circumstances surrounding their representations of the Sanfords, Tucker said.

Travelers, on the other hand, argued Stengel and de Luca were joint tortfeasors in that they both created a

single, indivisible injury in the form of a \$3 million judgment against the Sanfords, according to the opinion.

But Tucker said Pennsylvania common law supports a finding of no joint-tortfeasor status in this case. In order for Travelers to prove joint-tortfeasor status, Tucker said the state's Uniform Contribution Among Tortfeasors Act requires the insurer to show that two or more people were found jointly and severally liable in tort and that one of the tortfeasors has paid more than his fair share of the common liability.

Tucker said joint-tortfeasor status has been found in cases where the cumulative harms inflicted by the tortfeasors created a single, indivisible injury to the plaintiff. Joint-tortfeasor status has been denied when the tortious conduct is clearly independent and creates different injuries, she said.

"The present case involves an initial injury caused by an original tortfeasor, defendant Stengel, with such injury being the dismissal of Sanford's complaint which included the RICO claims," Tucker said. "The subsequent actions by de Luca, another negligent tortfeasor who did not act jointly with defendant Stengel, caused a separate and distinct injury that did not naturally flow from the actions of defendant Stengel."

Tucker said Stengel owed the Sanfords a different duty than de Luca owed the couple because they provided two different types of counsel in "two vastly different actions." She said evidence to support a legal malpractice claim against the two attorneys would be "wholly dissimilar." Tucker also said the gap in time between the two representations supported that joint-tortfeasor status is not warranted.

Tucker also evaluated the issue of proximate cause in the case, finding the Dragonetti action and subsequent default judgment against the Sanfords were not foreseeable to Stengel at the time he represented the couple.

"Defendant Stengel's brief representation of the Sanfords started

at the very beginning of the chain of events, nine years prior to the \$3,030,000 in damages awarded against them," Tucker said. "He could not have foreseen the large monetary judgment that would befall the Sanfords as a result of a third attorney's legal malpractice on non-substantive issues."

After spending the bulk of her opinion regarding Stengel, Tucker briefly addressed Berry and Ledgewood's role in the case. She found the Ledgewood defendants were similarly situated to Stengel in that their representation of the Sanfords was severable as to time from de Luca's representation. She said the Ledgewood defendants were also incapable of guarding against de Luca's subsequent procedural negligence.

She said the Ledgewood defendants merely amended the complaint based on good-faith diligence and legal research. Tucker also found that the Ledgewood defendants had different obligations to the Sanfords than de Luca did and that the defendants were not the proximate cause of the judgment against the Sanfords.

"A portion of this \$3.03 million judgment was paid out by [Travelers] in settlement on behalf of its insured, de Luca, who admitted his own procedural negligence was the cause of such judgment, and that there existed meritorious defenses to the Dragonetti Act that were never presented to the court due to the entry of default judgment," Tucker said in her Dec. 22 opinion.

Christopher J. Brill of Newtown, Pa., and Peter C. Kennedy of Gibbons in Philadelphia represented Travelers, as the subrogee of de Luca and Nelson Levine.

Marshall L. Schwartz of O'Brien & Ryan represented Stengel and Arthur W. Lefco of Marshall Dennehey Warner Coleman & Goggin represented Berry and Ledgewood.

Brill said he is reviewing the opinion with an eye toward appealing. He said he thought the judge relied on some older opinions, whereas newer

case law on this issue suggests that if the conduct of several people contributes to the same harm, then all participants should be included as joint tortfeasors.

Lefco said he was happy with the opinion. He also reiterated that he didn't think Berry ever did anything improper in his representation of the Sanfords.

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(Copies of the 20-page opinion in *Travelers Indemnity Co. v. Stengel, PICS No. 11-4730*, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information.) •