NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ALLEGHENY VALVE AND COUPLING, INC., Appellant v. QUINN, BUSECK, LEEMHUIS, TOOHEY & KROTO, INC. AND JOHN W. MCCANDLESS, Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 731 WDA 2012

Appeal from the Judgment of April 23, 2012,
in the Court of Common Pleas of Warren County,
Civil Division at No. 778-2008

BEFORE: BOWES, LAZARUS and COLVILLE*, JJ.

CONCURRING STATEMENT BY BOWES, J.: **FILED MAY 22, 2013**

I agree with my distinguished colleagues that reversal of the summary judgment entered in favor of Law Firm is warranted. I write only to express my belief that Appellant's amended complaint alleged facts sufficient to set forth both a cause of action for breach of contract premised on Law Firm's alleged failure to render professional services commensurate with the profession at large, and a claim for professional negligence.

"A cause of action for legal malpractice contains three elements: the plaintiff's employment of the attorney or other grounds for imposition of a

* Retired Senior Judge assigned to the Superior Court.

duty; the attorney's neglect to exercise ordinary skill and knowledge; and the occurrence of damage to the plaintiff proximately caused by the attorney's misfeasance." ***Epstein v. Saul Ewing LLP***, 7 A.3d 303, 313 (Pa.Super. 2010). Appellant pled that it retained the services of Law Firm to prosecute civil claims on its behalf against former corporate officers for breach of corporate fiduciary duty. Amended Complaint at ¶4. The Law Firm did so until November 22, 2006. ***Id***. at ¶6. Several weeks prior to that date, the Law Firm, based on a determination that the former officers were judgment proof, advised that a voluntary discontinuance would be prudent to avoid incurring additional attorneys' fees. ***Id***. at ¶¶13, 14. When Appellant expressed concern that a discontinuance would subject it to indemnity for former officers' attorneys' fees, the Law Firm reassured it, *i.e.*, guaranteed, that the voluntary discontinuance would not trigger a duty to indemnify. ***Id***. at ¶¶15, 16. In reliance on the Law Firm's recommendation, Appellant authorized discontinuance of the underlying action. ***Id***. at ¶17. Subsequently, as a direct and proximate result of that legal advice, a $75,003.19 judgment for indemnification was entered against Appellant, and it was anticipated that another such judgment would be entered in an identical action filed by the estate of another former officer.[1] ***Id***. at ¶18.

[1] The record reflects that this action was settled on July 19, 2010, for the sum of $44,638.47. Plaintiffs' Brief in Opposition to Defendants' Motion for Summary Judgment at ¶12.

I find these factual allegations, together with the reasonable inferences arising therefrom, sufficient to state a claim against Law Firm for breach of its contract to provide professional services consistent with those expected from the profession at large. ***See Wachovia Bank, N.A. v. Ferretti***, 935 A.2d 565 (Pa.Super. 2007) (holding it implicit in such a contract that professional services provided will be consistent with those expected of the profession at large); ***see also Gorski v. Smith***, 812 A.2d 683, 694 (Pa.Super. 2002). In essence, Appellant pled that it had an ongoing cause of action against former officers, that Law Firm's professional services were deficient in recommending termination of the lawsuit to save the costs of litigation and in representing that no indemnity would lie, and that it sustained actual loss as a direct result.

Regarding the professional negligence claim, the amended complaint contains specific factual allegations of negligence in Law Firm's prosecution of the underlying case. In addition, Appellant pled that as a direct result of that negligence, it suffered the judgment for indemnity and incurred legal expenses and costs in defending those actions. Again, I find the amended complaint sufficient to state a professional negligence claim.

For these reasons, I agree that summary judgment should be reversed and this matter remanded for further proceedings.

Judge Lazarus joins this Concurring Statement.