

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

VERON MATTHEW,

Plaintiff,

v.

GREGORY MILLER, ESQ.,

Defendant.

CIVIL NO. 988/1992

**ACTION FOR NEGLIGENCE
AND BREACH OF CONTRACT**

JURY TRIAL DEMANDED

MEMORANDUM

THIS MATTER is before the Court on the claim of Plaintiff for damages from Defendant for legal malpractice. A hearing was had on April 29, 1996. Based thereon the Court makes the following findings and conclusions; significantly incorporating herein Plaintiff's submissions.

The Plaintiff's claim in this action is essentially a claim for attorney malpractice. There are four elements of a cause of action for malpractice: (1) an attorney-client relationship giving rise to a duty; (2) breach of that duty; (3) a causal connection between the negligent conduct and the resulting injury; and (4) damages. *Moorhead v. Miller*, 21 V.I. 79, 85 (D.V.I. 1984).

A. ATTORNEY-CLIENT RELATIONSHIP GIVING RISE TO A DUTY

There is no dispute as to the existence of an attorney-client relationship between the Plaintiff and the Defendant in this case.¹ That relationship gives rise to a duty. *Moorhead, supra*, 21 V.I. at 86; Restatement (Second) of Torts § 299A. Competence and diligence are the two most important facets of the duty a lawyer owes his client. American Bar Association and the Bureau of National Affairs, Inc., ABA/BNA Lawyers' Manual on Professional Conduct 301:117 (1984).

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In paragraph 4 of her September 22, 1992 Complaint in this action, Plaintiff alleges that she "retained defendant to represent her in the matter of Veron Mathew v. Inverness Hotel Corporation, d/b/a Chenay Bay Beach Resort, Richard Locke, and Victoria Locke, T.C. No. 466/1998". In his Answer and Affirmative Defenses dated October 8, 1992, Defendant admits paragraph 4 of Plaintiff's Complaint.

The twofold duty of the lawyer has been characterized as follows:

An attorney must (1) display that minimum amount of legal knowledge, skill, and judgment that is displayed by other attorneys in similar circumstances, and (2) use reasonable care in applying that legal knowledge, skill and judgment to legal matters entrusted to the attorney's care.

Id. Based on the foregoing, the first element of the Plaintiff's cause of action, an attorney-client relationship giving rise to a duty, is satisfied.

B. BREACH OF DUTY

Evidence adduced at the hearing, as well as the pleadings, establish that the Defendant breached his duty by failing to keep his client informed of the status of her case; by withholding information concerning her case and failing to be truthful to his client ²; and by failing to diligently prosecute the case by filing an opposition to the defendants' motion seeking judgment on the pleadings, dismissal, and alternatively, summary judgment. See Plaintiff's September 22, 1992 Complaint at ¶¶ 6-12.

Because Defendant failed to comply with the Court's Order in this case dated March 27, 1996, his Answer was accordingly stricken. Therefore, the allegations of breach of duty set forth in Plaintiff's Complaint are conceded. In addition, Plaintiff presented expert testimony at the April 29, 1996 hearing to establish the breach of duty through illustrative examples of Defendant's want of due care in handling the Plaintiff's case, including his: failure to bring relevant law to the court's attention by filing an opposition to the dismissal motion; failure to take certain depositions and carry out other discovery in order to properly oppose the motion; and failure to obtain appropriate affidavits for use in opposing the motion. Transcript of April 29, 1996 Hearing at 30.

Various courts have held that a lawyer has an obvious duty to timely file and properly prosecute his client's case, and to keep the client informed of its progress. E.g., Gautam v. DeLuca, 215 N.J. Super. 388, 521 A.2d 1343, 1347 (N.J. 1987); see also Moores v. Greenberg, 834 F.2d 1105, 1108 (1st Cir. 1987) (lawyer must use degree of skill and diligence ordinarily

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The failure to keep a client informed as to the status of her case, or the providing of false information to a client regarding her case are also actionable under the law of Agency, as a claim for failure to satisfy an agent's duty to provide information to his principal. Lempert v. Singer, 26 V.I. 326, 346-47 (D.V.I. 1991); Restatement (Second) Agency §§ 381, 399, 401.

expected in locality and must keep client seasonably apprised of relevant developments); Builders' Square, Inc. v. Saraco, 868 F. Supp. 748, 749 (E.D. Pa. 1994) (lawyer has duty to timely communicate information important to the objectives of the representation). Based on the foregoing evidence and case law, Plaintiff has also established the second element of her cause of action: Defendant's breach of duty.

C. CAUSATION

The third element of a cause of action for legal malpractice is causation, as there must be a causal connection between the malpractice and the resulting injury. E.g., Moorhead v. Miller, supra, 21 V.I. 79, 86 (D.V.I. 1984). In other words, the Plaintiff must be able to show, by a preponderance of the evidence, that but for the Defendant's negligent handling of her case, she would have prevailed. Id. The Plaintiff has clearly met this element of her cause of action.

First, there is the opinion of Plaintiff's legal expert that within a reasonable degree of certainty, Plaintiff would have survived summary judgment and would have succeeded on the merits of her case. See Transcript of April 29, 1996 Hearing, at 28-36. The only assertion to the contrary was in the Defendant's Answer, which was never proven up and in any event was stricken by the court. Moreover, a review of the court's file in the underlying case ³ reveals that the Plaintiff had a bona fide cause of action and that summary judgment would not have been granted had it been properly opposed.

At the April 29, 1996 Hearing, Plaintiff presented evidence that summary judgment would not have been granted, and that she had a bona fide case that would have succeeded on the merits or settled in the \$75,000 to \$100,000 range. See Transcript of April 29, 1996 Hearing at 30-34. Based on the foregoing, Plaintiff has established the third element of her cause of action: that *but for* the failure of her counsel to prosecute her case, or to keep her informed of the failure so she could retain counsel who would handle the case, Plaintiff would have survived summary judgment and would have prevailed at trial or settled advantageously ⁴

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Veron Matthews v. Inverness Hotel Corporation, d/b/a Chenay Bay Beach Resort, Richard Locke and Victoria Locke, Civil No. 466/1989.

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"The measure of damages in [a] legal malpractice action is that amount which the plaintiff would have received from a jury or through settlement of her state court action". Duncan v. Lord, 409 F. Supp. 687, 693 (E.D. Pa. 1976).

Not only would Plaintiff have prevailed on summary judgment, she would have also won on the merits. The employer's only non-frivolous defense to the wrongful discharge claim was that the discharge was permitted under 24 V.I.C. § 76(c); but that claim is refuted by the facts conceded by the employer. Therefore, Plaintiff would have prevailed on the merits and would have either won a jury award or settled in the range testified to by her expert, but for the negligence of her counsel.

D. DAMAGES

The final element of a cause of action for attorney malpractice is damages. Damages available in malpractice are as follows: (1) loss of the value of the cause of action; (2) compensatory damages for mental anguish, loss of enjoyment of life, and suffering; (3) punitive damages; and (4) costs and attorney's fees.

At the April 29, 1996 Hearing, Plaintiff presented evidence on each of these damage elements. She presented expert testimony that the value of her cause of action was in the range of \$75,000 to \$100,000. Transcript of April 29, 1996 Hearing at 34. She and her husband testified as to the severe mental anguish she suffered in seeking to communicate with her attorney and being thwarted, and upon discovering that he had failed to prosecute the action, thus allowing the essential claims of it to be dismissed. Transcript of April 29, 1996 Hearing at 17-19, 23, 26.

The record as a whole would also support an award of punitive damages in light of Defendant's reckless disregard of Plaintiff's rights. Defendant assumed the representation of the Plaintiff but discontinued any efforts on her behalf, and failed to inform her that he had done so. While Defendant has claimed that various reasons prevented him from properly handling Plaintiff's claim, he was never able to offer a reason why he failed to inform the Plaintiff that he was unable to represent her with diligence, so that Plaintiff could retain substitute counsel. To allow Plaintiff's valuable case to flounder without affording her the opportunity to retain another lawyer constitutes a reckless indifference to Plaintiff's rights and warrants a punitive sanction. See Restatement (Second) of Torts § 908.

Defendant's failure to exercise candor with his client, which misled her to her detriment, compounded the failure to diligently represent her and entitles her to punitive damages, which will also have the salutary effect of putting other members of the bar on notice that abandonment

of their clients and concealment of their misfeasance are a stain on the profession, and that taking advantage of the public trust in such a flagrant manner will not be tolerated by an officer of the court.

Finally, as a direct and foreseeable result of Defendant's malfeasance, Plaintiff has had to hire an attorney to prosecute this action, thus incurring costs and expenses she would not otherwise have been forced to incur. Therefore an award of fees and costs in this action is also manifestly appropriate.

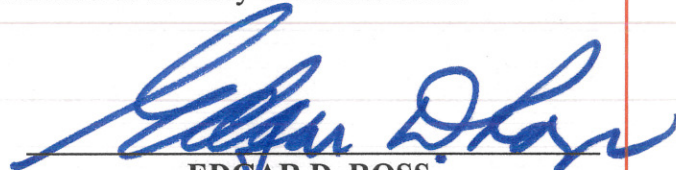
CONCLUSION

Based on the foregoing, the law and the evidence show that Plaintiff would have prevailed in her case had the Defendant prosecuted her case with customary diligence and skill, and that his failure to do so, as well as his concealment of that failure from her, has damaged her.

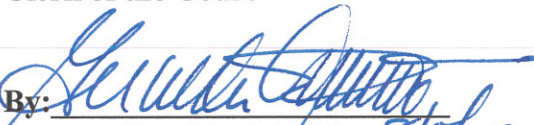
The Plaintiff has satisfied the four elements of her cause of action. She has established by a preponderance of the evidence that (1) she had an attorney-client relationship with the Defendant giving rise to a duty; (2) that the Defendant breached that duty; (3) that the Defendant's breach was the proximate cause of her injury; and (4) that she suffered monetary damages as a result.

Plaintiff is accordingly entitled to an award representing the loss value of her cause of action reduced by the 1/3 Defendant would have been paid in fees and to compensate her for her mental anguish as a result of the Defendant's conduct; along with a punitive award in light of Defendant's deceptive and reckless conduct; and an award of attorney's fees and costs.

Dated: August 4th, 2003


EDGAR D. ROSS
Judge

ATTEST:
DENISE D. ABRAMSEN
Clerk of the Court

By: 
Gerald A. Miller 8/5/03
Chief Deputy Clerk