TRAUB LIEBERMAN

NEWS & EVENTS

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Traub Lieberman Partners Mark Wolfe and Jessica Kull Prevail in Appellate Court of Illinois, First District On Behalf of Professional Client

Related Attorneys: Mark F. Wolfe, Jessica N. Kull

Traub Lieberman Partners Mark Wolfe and Jessica Kull obtained affirmation of the Circuit Court's judgment in a quasi-legal malpractice matter brought before the Appellate Court of Illinois, First Judicial District.

Plaintiff-Appellant ("Plaintiff") filed a lawsuit seeking reimbursement for legal fees and expenses that he paid on behalf of his stepchildren in their efforts to recover money from their biological father's estate. Plaintiff claimed that his stepchildren agreed to reimburse him for such payments in the event that they were successful in recovering from the estate. The stepchildren were successful in recovering from the estate and trusts were set up in relation to their recoveries. Traub Lieberman's client, an attorney and CPA ("Attorney"), was appointed to serve as a trustee for the trusts. The stepchildren denied an obligation to reimburse Plaintiff. Settlement discussions commenced between the Plaintiff and the stepchildren. Given the strained relationship, the Attorney acted as a messenger to convey settlement communications between the parties. Settlement negotiations broke down and Plaintiff filed a lawsuit against his step children and the Attorney. The Plaintiff sought to enforce the alleged settlement agreement with the stepchildren and this claim remains pending.

Plaintiff also asserted a claim against the Attorney for negligent misrepresentation for the Attorney's role in the settlement of the reimbursement dispute. Specifically, it was alleged that the Attorney "represented" or otherwise acted as legal counsel for the stepchildren in connection with the settlement of the reimbursement dispute and that he misrepresented his authority and the position of the stepchildren in regard to the settlement. At the trial court level, Wolfe and Kull argued that Plaintiff failed to allege a duty because an attorney only owes a duty to his or her client, and this Attorney made clear that he did not represent the stepchildren in the settlement. In their combined motion to dismiss, Wolfe and Kull pointed to the email exhibits attached to the complaint where the Attorney expressly advised the Plaintiff that he did not have authority to represent stepchildren and was merely acting as a messenger to convey communications back and forth. Wolfe and Kull argued that an attorney does not owe a duty to third parties, except in limited circumstances that were not relevant in this case.

In response, Plaintiff argued that a common law duty to communicate information accurately applied. Specifically, Plaintiff argued that where purely economic damages are sought, Illinois courts impose a duty on a party to avoid negligently conveying false information if the party is in the business of supplying information for the guidance of others in their business transactions. Plaintiff claimed the Attorney fell within this category of persons who owed a duty because he was an attorney who made an offer and engaged in settlement negotiations when the Attorney lacked the authority to do so. The trial court concluded that Plaintiff could not satisfy the element of establishing a duty as a matter of law because (1) an attorney does not owe a duty to non-clients in such circumstances, and (2) that the settlement of a dispute over reimbursement for fees paid is not a 'business transaction' contemplated by the common law rule. Therefore, the case was dismissed with prejudice against the Attorney.

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The same arguments were asserted on appeal and the Appellate affirmed the trial court's decision. Specifically, the Appellate Court noted that, despite plaintiff's protestations to the contrary, the complaint did in fact contain allegations that the Attorney was acting as the stepchildren's attorney with respect to negotiating a settlement of Plaintiff's claim for reimbursement and that the email communications made this information clear. Therefore, there was no duty owed by the Attorney to a non-client. With regard to the claim that the attorney owed a common law duty to convey information accurately, the Appellate Court held that Plaintiff failed to allege facts in the complaint that supported this contention. Specifically, absent allegations that a defendant was in the business of supplying information to aid a plaintiff in his business transactions, no set of facts could be proven which would entitle a plaintiff to relief for negligent misrepresentation and dismissal was therefore proper. Finally, the Appellate Court held that even if the complaint did contain such allegations, Plaintiff's complaint alleged that the Attorney improperly "misrepresented that he was authorized to enter settlement negotiations" and "misrepresented that [the Attorney] had the authority to bind the [stepchildren] to a settlement agreement." The Appellate Court held that the exhibits attached to the complaint contradicted these allegations and the exhibits controlled. Therefore, the trial court's decision was affirmed and the case against the Attorney was dismissed with prejudice.

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