



Settlement of Underlying Case Does Not Preclude Malpractice Action

June 7, 2012

[Brassette v. Exnicios, ___ S.3d ___, 2012 WL 1714137 \(La. App. 2012\)](#)

Brief Summary

A Louisiana appellate court held that plaintiff client's settlement of her underlying personal injury case did not necessarily preclude her legal malpractice action.

Complete Summary

The client retained defendants, a law firm and a lawyer in it, to pursue a personal injury action against the United States of America, through the U.S. Food & Drug Administration (FDA) and one of its employees, for injuries sustained by the client in an automobile accident with the employee, who was acting within the scope of his employment at the time of the accident. Defendants filed suit on the client's behalf, and the FDA moved to limit the *ad damnum*. Defendants failed to file a memorandum in opposition to the motion. The motion was thus granted as unopposed, thereby limiting the client's claim to \$30,000, which the client contended was far lower than the amount she was entitled to considering her injuries.

The client alleged that defendants subsequently settled her case for \$22,000, although the client claimed she did not authorize defendants to settle, and she was still seeking treatment for her injuries. Shortly thereafter, the client discharged defendants and settled the underlying case for \$22,000. She then sued defendants for legal malpractice. The trial court granted defendants' motion for summary judgment on the basis that the client's settlement and release contained no reservation of rights, thereby entitling defendants to summary judgment. The client appealed.

Defendants contended that no malpractice was committed in the handling of the underlying case, and because the client settled the underlying suit with no reservation of rights against defendants, she was unable to prove damages and was estopped from pursuing her legal malpractice claim. The court distinguished *Murphy v. Gilsbar*, 834 S.2d 669 (2002), in which the court held that plaintiff was equitably estopped from pursuing the legal malpractice claim where, despite the federal court's attempts to involve plaintiff in a hearing to reconsider an adverse judgment finding that plaintiff's claim was time-barred, plaintiff declined to participate and advised the court that she instead chose to file a legal malpractice claim. The court noted that ultimately, the Louisiana Supreme Court addressed equitable estoppel in *MD Industries, LLC v. CNA Insurance Company*, 74 So. 3d 1173 (La. 2011), and held that a party does not waive its right to file a legal malpractice suit by not filing an appeal of an



underlying judgment unless it is determined that a reasonably prudent party would have filed an appeal, given the facts known at the time and avoiding the temptation to view the case through hindsight.

Here, the court concluded that a party does not waive his or her right to file a legal malpractice suit by settling an underlying suit, unless it is determined that a reasonably prudent party would not have settled, given the facts known at the time and avoiding the temptation to view the case through hindsight. The court noted that if the client could have cured the effects of the federal court's limitation of her damage award, her decision to settle might constitute a failure to mitigate. However, after the client learned that defendants failed to oppose the motion, she asked a relative of hers, a lawyer in New Orleans, to review the federal court pleadings to see if there was any action the client could take to challenge the \$30,000 damage limitation resulting from the federal court ruling. The relative advised the client that the limitation was "set" and that there was no action she could take to challenge it.

The court concluded that defendants failed to establish, as a matter of law, that the client's decision to settle her underlying case was outside the bounds of a reasonably prudent person, given the facts known to her at the time. The court found that genuine issues of material fact remained as to whether the client acted as a "reasonably prudent party" in entering into the settlement agreement, which precluded summary judgment.

Significance of Opinion

This decision is noteworthy for the fact that the appellate court noted that under certain circumstances, a plaintiff's settlement of an underlying case may preclude the plaintiff from pursuing a legal malpractice action. Here, however, the court found questions of fact as to whether or not the client acted reasonably in entering into the settlement agreement.

For further information, please contact [Terrence P. McAvoy](#).

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