

Appellate Court Affirms \$700,000 Judgment Against Lawyer in Malpractice Action, in Part, Because Defendant Failed to File Post-Trial Motion

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Midwest Mailing & Shipping Sys., Inc. v. Schoenberg, Finkel, Newman & Rosenberg, 2023 IL App (1st) 220562-U (Jan. 26, 2023)

Brief Summary

An intermediate appellate court in Illinois held that defendant forfeited appellate review of expert testimony admitted at trial because he failed to file a post-trial motion on the issue. However, the appellate court proceeded to review the issue anyway, likely for the sake of judicial economy, and found that defendant was not substantially prejudiced by the admission of the testimony.

Complete Summary

Plaintiff is a Wisconsin corporation engaged in the business of selling, leasing, installing, and servicing postage meters. In 2002, defendants represented plaintiff in a breach of contract action to enforce an exclusive dealership agreement with a postage machine producer, which was resolved pursuant to a 2004 settlement agreement. In 2015, plaintiff engaged defendants to file another action against the producer for breach of the 2004 settlement agreement.

At the same time plaintiff was seeking to enforce the 2004 settlement agreement, plaintiff engaged defendants to advise on potential corporate reorganization. Pursuant to defendants' advice, plaintiff created a new Illinois corporation, assigned its business to the new Illinois entity, and terminated its incorporation in Wisconsin. A week later, the producer filed a separate declaratory judgment action to terminate the dealership agreement, alleging that the reorganization violated a non-assignment clause contained therein. Plaintiff and the producer later

resolved their dispute, with plaintiff agreeing to relinquish its rights under the dealership agreement in exchange for \$300,000.

Plaintiff subsequently filed a legal malpractice action against defendants, alleging that their advice on reorganization prejudiced its position in the dispute with the producer. Plaintiff retained a damages expert who testified that but for defendants' legal malpractice, plaintiff and the producer would have resolved their dispute for \$2.73 million instead of \$300,000. Defendants filed a partial motion for summary judgment, arguing that there was simply no evidence to support the expert's opinion. The motion for summary judgment was denied in its entirety. Defendants filed a motion *in limine* on the same grounds, which was also rejected. Finally, defendants objected both before and after the expert's testimony at trial, and were overruled both times. The jury awarded plaintiff \$700,000 in damages on the legal malpractice claim against one of the individual defendants. Following the verdict, the individual defendant appealed without filing a post-trial motion.

On appeal, defendant argued that the trial court abused its discretion by admitting into evidence testimony from plaintiff's damages expert that was based upon guess, speculation and conjecture. The appellate court, however, found that defendant forfeited any issue on appeal when he failed to file a post-trial motion. See 735 ILCS 5/2-1202 (West 2020); Ill. S. Ct. R. 366 (eff. Feb. 1, 1994). In reaching its decision, the appellate court rejected various theories as to why a post-trial motion was unnecessary.

Nevertheless, the appellate court went on to assess the merits of defendant's appeal. The appellate court concluded that defendant would have lost this appeal on the merits because defendant was not substantially prejudiced by the admission of the testimony. The appellate court found that the \$700,000 jury award was evidence itself that the jury did not fully credit the expert's \$2.73 million valuation, and that the \$700,000 jury award was independently supported by other evidence elicited at trial.

Significance of Decision

This decision underscores the importance of knowing how to preserve issues for appeal, and suggests that appellate courts are willing to resolve issues that are not properly before them if they believe it will conserve judicial resources.

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