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One day, the 2nd District, three disputes with lawyers

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It does not seem that assignment dates for oral argument is entirely random. Maybe it is, but April 15, when Justices George Bridges, Kathryn Zenoff, and Joseph Birkett heard three similar disputes, would belie such a contention.

Just as was written in this space on Nov. 25, 2020, when two weeks before the 7th U.S. Circuit Court of Appeals heard several cases the same day involving federal jurisdiction, the justices heard three disputes between lawyers and their former clients, including two legal malpractice cases in which the plaintiffs-appellants were represented by the same lawyer.

In a warning for those who use alternative fee arrangements, *Camelot, Inc v. Burke Burns & Pinelli* concerns a fee dispute dating from 1996(!) wherein the clients paid an initial, non-refundable retainer, and the lawyers took a 20% interest in the property that was disputed in the underlying litigation. There seemed to be a series of revised agreements, some signed, some not, that attempted to clarify the obligation to pay and whether the former clients were required to pay the 20% based on a valuation of the property at a particular time or only pay the that amount upon the sale of the property. Depending on when the valuation was to be performed (before or after 2008) made a huge difference in the value of the property, and there was also an issue of whether the former clients had to sell the property before they were obligated to pay the lawyers. The trial court ruled in favor of the clients, but however this turns out, it is a cautionary tale in drafting something other than a standard hourly or contingency fee agreement.

In *Crowe v. Taradash*, the court will consider a legal malpractice claim with regard to the settlement of a workers' compensation case the plaintiff alleges was inadequate, the defendant lawyer knew the settlement was inadequate, and tried to conceal the malpractice in the handling of the underlying matter by telling the plaintiff that was the best deal he would be able to get. The trial court dismissed the complaint for breach of the statute of limitations (735 ILCS 5/13-214.3) and was unpersuaded by a claim of fraudulent concealment (735 ILCS 5/13-215). The timeline was that the underlying settlement was entered into on June 11, 2015, the legal malpractice attorney for the plaintiff sent correspondence advising the defendant of the claim on Feb. 27, 2017, but then that lawyers did not file the complaint until Aug. 23, 2019.

Citing *Brummel v. Grossman*, 2018 IL App (1st) 170516, the defendant argued that the case was properly dismissed. When asked why there was a 30-month delay between the sending of the letter (when there was four months remaining on the statute of limitations and even if there was fraudulent concealment there was likely sufficient time to file the suit making an concealment irrelevant) and the filing of the suit, counsel for the plaintiff asserted that he was investigating the case and would not have filed without speaking with, and getting a favorable opinion from, an expert. The plaintiff also contended that leave should have been granted to amend, but the plaintiff did not file a proposed amended complaint or provide the trial court what facts

could be pleaded to defeat the motion to dismiss. It seems that if the judgment is affirmed, this dispute could lead to a third case being filed.

Finally, in *Brunning and Associates, P.C. v. Eversman*, the justices heard argument in a legal malpractice case in which the trial court granted summary judgment to the defendant lawyer after the plaintiff failed to submit a Rule 191(b) affidavit seeking discovery or the affidavit of an expert that might have created a question of fact to defeat the motion. The case arose out of a prove up of a dissolution of marriage action in which the husband claimed that he was not provided sufficient information about the $75,000 lump sum he was paying and QDROs were improperly set up by his counsel.

The plaintiff-appellant contended that the time for expert disclosures had not come despite the fact that 735 ILCS 5/2-1005 allows a defendant to file a motion for summary judgment at any time and the remedy for a party opposing a motion for summary judgment who claims they need discovery is to file the appropriate affidavit.

What makes this situation particularly interesting is that counsel for the plaintiff contended he had not identified an expert, when in the argument he stated that he does not file legal malpractice cases until he has spoken with an expert and that was the reason for the delay in the filing of the complaint in that case. It will be interesting to see if the appellate court addresses this apparent incongruity in position by counsel for the plaintiff.

Rarely do unrelated cases heard by the appellant court have a theme, but this recent call of the docket certainly did. It will be notable if it affects the outcome (though that may never be known). Maybe coincidence or maybe with purpose, but the April 15 oral arguments before the 2nd District were interesting.
