

Anchin Alert

Anchin, Block & Anchin LLP
Accountants and Advisors

March 12, 2018

Anchin LFVS Briefing

The Litigation, Forensic and Valuation Services Group of Anchin, Block & Anchin is often retained by counsel to help compute or refute damages allegedly caused by a negligent act or breach of duty. However, in order for there to be damages, the plaintiff must demonstrate that there was a proximate cause between the alleged negligence and the alleged damages.

In a case recently reported in the *New York Law Journal*¹, a plaintiff had hired the defendant for representation during a real estate transaction in which the owner, a non-profit corporation, contracted with an intermediary, which assigned its rights in the sale contract to the plaintiff. After the sale, another entity filed suit to rescind the transaction, arguing that the owner's officers failed to obtain approval from the court or state attorney general. The plaintiff claimed malpractice on the part of the defendant and resulting damages; the defendant moved to dismiss the plaintiff's legal malpractice action.

The plaintiff filed the action alleging defendant failed to obtain the approval of the sale and clearance of title exceptions. In support of the defendant's motion, the defendant argued that his representation was not negligent, no proximate cause existed between the alleged negligence and damages, and that the plaintiff suffered no damage because the underlying action had been discontinued and the plaintiff remained in possession of the property.

The court agreed, ruling that although the plaintiff could be subject to another rescission claim, such harm had not yet ripened to support a malpractice claim. Moreover, the court held that the plaintiff had not adequately pleaded breach of duty of care, as it was the owner's responsibility to obtain approval for the real estate transaction.

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¹ *MIAMI CAPITAL LLC V. HURWITZ, 150310/2016 (SEPT. 12)*



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