

Defendant Wins Legal Malpractice Lawsuit

By Mike Mosedale

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It's no easy feat to win a legal malpractice lawsuit in Minnesota.

Consider, for example, the recent case of Patrick O'Neill Jr.

The veteran St. Paul attorney never disputed that his error led to the dismissal of the client's lawsuit, but he still managed to defeat the client's malpractice claim.

The irony: O'Neill's defense was premised on the argument that his blunder didn't matter because the lawsuit he was hired to pursue — a legal malpractice action against the client's prior counsel — was doomed to fail all along.

Following a six-day trial before Hennepin County District Court Judge Ronald Abrams last Tuesday, a jury agreed and zeroed out O'Neill's client-turned-adversary, Ryan Contracting Company.

Paul Sortland, the attorney for Ryan, attributed that "very disappointing" outcome to a botched jury instruction.

"We think we've got a good chance for a new trial and, if that doesn't work, for another appeal," Sortland said Thursday morning, two days after the verdict. "We've been to hell and back but I guess we'll be taking the boat across the river again."

The origins of the unusual "case within a case" stretch back to 2003 when Ryan Contracting was hired to make utility and street improvements for a mixed-use real estate development in Otsego called Kittredge Crossing.

By 2006, the project was in financial trouble and Ryan terminated its contract with the developer, Darrel A. Farr Development, over nonpayment. It then retained the law firm of Meagher & Geer to recover the \$362,000 it claimed Farr still owed.

After Meagher & Geer filed 26 lien statements on 289 lots in the development — each for the entire \$362,000 — Farr responded by suing Ryan for breach-of-contract and slander-of-title.

In the ensuing summary judgement fight, the presiding district court judge voided the liens on the lots which Farr

had already sold because the total liens exceeded the amount "justly due" Ryan.

Following that setback, Ryan hired a new lawyer and, in 2010, settled its claim against Farr for \$280,000.

But Ryan still blamed Meagher & Geer and attorney Karl Yeager for the less-than-desired result and turned to O'Neill to bring a malpractice claim. In the subsequent lawsuit, Ryan sought compensation for both the voided liens and \$155,000 in attorney's fees and costs racked up in course of the subsequent legal wrangling.

That action came to a quick, ignominious end when O'Neill missed the 180-day statutory deadline for filing the requisite expert witness disclosures.

Undeterred, Ryan hired Sortland to sue O'Neill and his former firm, O'Neill & Murphy, for bollixing the malpractice action.

O'Neill never contested his error with the missed deadline. But now he argued that Ryan could not prove that Ryan would have gotten a better result than the \$280,000 settlement had Meagher & Geer done anything differently.

In 2014, Abrams granted O'Neill's motion to dismiss. In part, Abrams ruled that all the liens at Kittredge Crossing were void because, prior to retaining Meagher & Geer, Ryan never filed a pre-lien notice. Because Ryan's malpractice claim against Meagher & Geer was not viable, Abrams held, the claim against O'Neill failed as a matter of law.

That triggered a pair of trips to the appellate courts, which culminated with a Minnesota Supreme Court ruling last August that revived Ryan's malpractice claim against O'Neill.

In its decision, the high court ruled that there was nothing in law to preclude Meagher & Geer from filing a blanket lien, rather than individual liens, and then spreading the amount of the blanket lien on a pro-rata basis. In other words, since Meagher & Geer arguably breached the standard of care in its handling of the liens, the malpractice action against O'Neill remained viable.

In the view of Phillip Cole, O'Neill's attorney, the jury's verdict reflected the view that Yeager — the Meagher & Geer lawyer — simply was not negligent in his

work for Ryan. Six attorneys testified in the course of the trial, Cole noted, "and they all agreed that this among the most complex mechanics lien cases they'd ever seen."

So what can practitioners learn from the verdict?

"The judgment rule in professional liability cases gives professionals leeway to make judgments," said Cole, a litigator at the Minneapolis firm of Lommen Abdo. "I think that's the main lesson here: Don't mess with the judgment rule."

Given the timing of the underlying litigation over the liens, Cole added, the \$280,000 settlement was not a bad outcome for Ryan. "It ran into the recession of 2008 and there were overwhelming claims by the mortgage holders, which brought the whole thing down," he said. "Ultimately, I think Ryan did well with the settlement. It wasn't perfect but there were a lot of imperfect deals in 2008, 2009 and 2010."

Sortland, Ryan's attorney, said he is confident his client will get another bite at the apple because of problems in Judge Abrams' instructions to the jury.

"He said that the foreclosure statute precludes a contractor from foreclosing a blanket lien against a third party, which is the absolute opposite of what the Supreme Court held. Basically, it blew our case apart," Sortland said. "And when we asked the judge to correct it, he simply told the jury, 'If some of the written instructions conflict with what I told you, follow the written instructions.'"

Although the erroneous statement was not included in the written instructions given to the jury the following day, according to Sortland, the instructions still did not include the language from the Supreme Court ruling that contractors are not barred from foreclosing blanket liens against third parties.

Still, legal malpractice cases are virtually an uphill climb for plaintiffs. The climb for Ryan may be a bit steeper than most.

"You always have to prove the case within the case," Sortland acknowledged. "But in this case, we had a case within a case within a case, so it was doubly difficult."