

Date Submitted: October 17, 2002

Date Decided: January 31, 2003

Ms. Karen E. Starr  
305 Carya Court  
Bear, DE 19701

Edward M. McNally, Esquire  
Morris, James, Hitchens & Williams  
222 Delaware Avenue  
P.O. Box 2306  
Wilmington, DE 19899

***Re: Karen E. Starr v. Morris, James, Hitchens & Williams***  
**C.A. No. 01C-08-285-FSS**

Upon Defendant's Motion for Summary Judgment -- ***DENIED.***

Dear Ms. Starr and Mr. McNally:

On April 28, 1998, Starr retained Defendant in connection with her impending separation from her employer, an accounting firm. Two days later, on April 30, 1998, Starr resigned. After that, Defendant discussed possible litigation with Starr. And Defendant began discussing Starr's wage claim with her former employer. Initially, Defendant made some progress on Starr's behalf. But on September 22, 1998, Defendant notified Starr that she had three options: bring the unresolved matter to the Delaware Department of Labor, accept the former employer's offer of binding arbitration, or commence litigation.

Starr started with the first option. She called the Department of Labor and learned that her claim exceeded what the department would handle. It is unclear whether Starr then discussed litigation with Defendant, again. It appears, however, that Defendant sent Starr an estimate of the cost associated with litigation. Starr did not respond and she pursued other options to an unknown extent. Eventually, around July 12, 1999, Starr contacted another law firm and inquired about litigating her wage claim. The new law firm informed Starr almost immediately that she had missed the one year statute of limitations.<sup>1</sup>

Starr then filed this action against Defendant, claiming legal negligence based on Defendant's alleged failure to warn Starr that she was up against a one year statute of limitations. Defendant has moved for summary judgment claiming that after Defendant told Starr about the cost of litigation, she had roughly six months until the statute of limitations ran. Defendant claims that under the circumstances, it had no duty to warn Starr about the statute of limitations and, more importantly, at the point when Defendant informed Starr about the cost of litigation and she did not respond, her claim was viable.

Defendant relies on *Mitchell v. Schain, Fursel & Burney, Ltd.*<sup>2</sup> *Mitchell* is distinguishable because the client actually retained new counsel while the client's claim still was potentially viable. Thus, the client's original counsel's alleged dereliction, as a matter of law, was not the proximate cause of the client's injury. If Starr had hired new counsel before the statute of limitations on her wage claim had

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<sup>1</sup> *Del. Code Ann. tit. 10 § 8111 (1999 & Supp. 2000).*

<sup>2</sup> 773 N.E. 2d 1192 (Ill. App. Ct. 2002).

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run, then *Mitchell* would apply here.

As a matter of law, Defendant's duty of care was to provide reasonable legal representation for Starr, including informing her about matters that reasonable attorneys would have informed Starr about. The court cannot conclude, as a matter of law, that Defendant's conduct did, or did not, meet the standard of care. That issue will have to be developed through further discovery and, perhaps, trial.

It is clear that the parties will need expert opinions about what a reasonable attorney would have done under this case's circumstances. The jury cannot be left to its own, lay judgment about whether Defendant met a professional standard of care. Although there is no statute requiring expert opinions in legal negligence cases, the situation otherwise is analogous to medical negligence cases. And the court will take its lead here from the traditional approach to medical negligence litigation.

Accordingly, **Ms. Starr shall** identify her standard of care and damages expert and produce the expert's report within sixty days. In the event that Starr identifies an expert as required, but the expert needs a thirty day extension, the court intends to provide the additional time. In the event that Starr does not identify an expert within sixty days, the court will entertain Defendant's second motion for summary judgment. If Starr produces an expert opinion as required, then **Defendant shall** identify its expert and produce its expert's report within forty-five days after Starr produces her expert's report.

Finally, with respect to pending discovery motions the court will not reach them now. If further consideration is necessary in the expert discovery

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context, the court will address those issues as they arise. The court, however, does not intend to devote further attention to this litigation until the parties have retained experts and also not before the case has been through mediation.

Meanwhile, for the foregoing reasons, Defendant's motion for summary judgment is ***DENIED***, without prejudice to Defendant's proceeding as provided above.

**IT IS SO ORDERED.**

Very truly yours,

FSS/sb

oc: Prothonotary