

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STEVEN CHASE, et al.,

Plaintiffs,

v.

DAVID J BRITTON,

Defendant.

CASE NO. C16-5984 RBL

ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT

THIS MATTER is before the Court on Plaintiff<sup>1</sup> Chase’s Motion for Partial Summary Judgment [Dkt. # 12] on his legal malpractice claim against his former attorney, Defendant Britton. The underlying case arose out of a commercial and real estate transaction between Chase on the one hand and entities named Simon and Garage Plus on the other. Chase lost a bench trial before Judge Van Dorninck in Pierce County Superior Court. He sued Britton in this Court, claiming he committed malpractice in his representation of Chase and that absent that malpractice, he would have instead won the underlying lawsuit.

<sup>1</sup> This Order will refer to the plaintiffs in the singular for clarity. The Court is aware there are two plaintiffs.

1 Chase now seeks partial summary judgment on all elements of his legal malpractice  
2 claims except damages. He claims there are no disputed issues of material fact on the remaining  
3 elements of his claim: duty, breach, and causation, and he seeks a ruling as a matter of law that  
4 Britton is liable to him for legal malpractice. The amount of damages to which he is entitled  
5 would remain for future adjudication.

6 Chase claims that Britton erroneously advised him to discontinue rent payments to  
7 Garage Plus, and that he failed to meet various pre-trial deadlines<sup>2</sup>. He claims that after trial,  
8 Britton failed to prepare alternate proposed Findings of Fact and Conclusions of Law, and failed  
9 to object to the Findings and Conclusions that Judge Van Doorninck ultimately entered—  
10 including particularly that she dismissed one of Garage Plus’s against him *without* prejudice,  
11 leaving it free to sue him again. [*See generally* Dkt. # 12 at 5-7].

12 A plaintiff claiming negligent representation by an attorney in a civil matter bears the  
13 burden of proving four elements by a preponderance of the evidence: (1) The existence of an  
14 attorney-client relationship which gives rise to a **duty** of care on the part of the attorney to the  
15 client; (2) an act or omission by the attorney in **breach** of the duty of care; (3) **damage** to the  
16 client; and (4) proximate **causation** between the attorney’s breach of the duty and the damage  
17 incurred. *Hizey v. Carpenter*, 119 Wash.2d 251, 260–61, 830 P.2d 646 (1992); *Bowman v. John*  
18 *Doe Two*, 104 Wash.2d 181, 185, 704 P.2d 140 (1985) (noting that, in legal malpractice suits,  
19 proof of attorney-client relationship is grafted onto customary elements of negligence claim)  
20 (emphasis added).

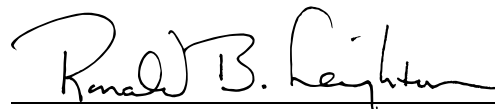
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24 <sup>2</sup> Britton argues (and Chase concedes) that some or all of the untimely documents were either  
considered anyway, or ultimately excluded for other reasons.

1 The fourth element, proximate causation, includes “[c]ause in fact and legal causation.”  
2 *Hartley v. State*, 103 Wash.2d 768, 777, 698 P.2d 77 (1985). Cause in fact, or “but for”  
3 causation, refers to “the physical connection between an act and an injury.” *Id.* at 778, 698 P.2d  
4 77. In a legal malpractice trial, the “trier of fact will be asked to decide what a reasonable jury or  
5 fact finder [in the underlying trial or ‘trial within the trial’] would have done *but for* the  
6 attorney's negligence.” *Daugert v. Pappas*, 104 Wash.2d 254, 258, 704 P.2d 600 (1985)  
7 (emphasis added). *See also Ang v. Martin*, 154 Wash. 2d 477, 482, 114 P.3d 637, 640 (2005).

8 It is clear that Britton owed his client a duty. But even if the Court accepts that Britton’s  
9 efforts fell below the standard of care as a matter of law<sup>3</sup>, Chase’s motion for summary judgment  
10 on causation and the fact of (but not the amount of) damage must be denied. The Court cannot  
11 say as a matter of law that *but for* Britton’s conduct, the outcome would have been different<sup>4</sup>;  
12 i.e., that Chase would have won. This is an inherently factual dispute. The Motion for Summary  
13 Judgment is DENIED.

14 IT IS SO ORDERED.

15 Dated this 13<sup>th</sup> day of April, 2018.

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18 Ronald B. Leighton  
19 United States District Judge

20 <sup>3</sup> The Court is more than a little reluctant to hold that missing *any* deadline is malpractice as a  
21 matter of law, even where the trial court ultimately allows the document to be filed or used.

22 <sup>4</sup> Chase submits an expert report which opines that Britton failed to meet the standard of care in a  
23 variety of ways, and simply concludes:

24 As a *result* of the foregoing breaches, the Chase plaintiffs were unable to satisfy  
their burden of proof and *lost* on all claims presented for trial.

[Dkt. # 14 at 6 (emphasis added)] This is not nearly enough to obtain summary judgment  
on causation, which is at inherently a factual inquiry.