

STATE OF MAINE  
CUMBERLAND, ss

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-17-116 ✓

ROBERT GOGUEN,

Plaintiff

STATE OF MAINE  
Cumberland, ss, Clerk's Office

v.

MICHAEL WAXMAN,

Defendant

FEB 16 2018  
4:20 pm  
RECEIVED

ORDER ON DEFENDANT'S  
MOTION TO DISMISS AND  
PLAINTIFF'S MOTION TO  
AMEND COMPLAINT

Before the court is defendant Michael Waxman's Motion to Dismiss, pursuant to M.R. Civ. 12(b)(6), and plaintiff's motion to amend complaint. For the following reasons, defendant's motion is denied and plaintiff's motion is denied.

#### DISCUSSION

For purposes of a motion to dismiss, the material allegations of the complaint must be taken as admitted. Ramsey v. Baxter Title Co., 2012 ME 113, ¶ 2, 54 A.3d 710. The complaint must be read in the light most favorable to the plaintiff to determine if it sets forth elements of a cause of action or alleges facts that would entitle plaintiff to relief pursuant to some legal theory. Bisson v. Hannaford Bros. Co., Inc., 2006 ME 131, ¶ 2, 909 A.2d 1010. Dismissal is appropriate only when it appears beyond doubt that the plaintiff is not entitled to relief under any set of facts that he might prove in support of his claim. Moody v. State Liquor & Lottery Commission, 2004 ME 20, ¶ 7, 843 A.2d 43.

The elements of legal malpractice are (1) breach of a duty by defendant attorney to conform to a certain standard of conduct, and (2) the plaintiff's damages were proximately caused by the defendant's breach. Niehoff v. Shankman & Assocs. Legal Ctr., P.A., 2000 ME 214, ¶ 7, 763 A.2d 121. Rule 1.1 of the Maine Rules of Professional Conduct states that "[a] lawyer shall provide competent representation to a client." M.R. Prof. Conduct 1.1. Comment 5 to Rule 1.1 indicates

that competent representation requires an attorney to conduct “inquiry into and analysis of the factual and legal elements of the problem” and to adequately prepare for proceedings. Id. Cmt. (5).

In his complaint filed on March 13, 2017, plaintiff asserts that defendant, attorney Waxman, failed properly to prepare, research legal questions, and conduct pretrial discovery. (Pl.’s Compl. ¶¶ 11, 15, 16.) Further, plaintiff asserts that defendant’s failure to conduct adequate discovery caused his case to be unsuccessful. (Pl.’s Compl. ¶¶ 18-20.) Taking these facts as admitted, this court cannot say that it is beyond doubt that plaintiff is entitled to no relief.<sup>1</sup> See Moody, 2004 ME 20 ¶¶ 7-8, 843 A.2d 43 (citation omitted).

Plaintiff’s proposed amended complaint contains 227 paragraphs. The pleading does not contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” M.R. Civ. P. 8(a).

The entry is

Defendant’s Motion to Dismiss is DENIED.

Plaintiff’s Motion to Amend Complaint is DENIED without prejudice.

Date: February 16, 2018

  
Nancy Mills  
Justice, Superior Court

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<sup>1</sup> Whether expert testimony will be offered at trial is not relevant to this motion to dismiss.