

STATE OF MICHIGAN
COURT OF APPEALS

SCHMIDT BAGEL CREATIONS, INC., and
ELIOT CHARLIP,

UNPUBLISHED
September 21, 1999

Plaintiffs-Appellants,

v

No. 206602
Oakland Circuit Court
LC No. 97-544829 NM

MICHAEL ALAN SCHWARTZ and FIEGER,
FIEGER & SCHWARTZ, P.C.,

Defendants-Appellees.

Before: Doctoroff, P.J., and Markman and J.B. Sullivan*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) in this legal malpractice action. We affirm.

Plaintiffs argue that the trial court erred in granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(8). We disagree. A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone.¹ *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). This Court reviews de novo a trial court's decision under MCR 2.116(C)(8) to determine whether the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. *Id.* All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.*

A plaintiff in a legal malpractice action has the burden of proving 1) the existence of an attorney-client relationship, 2) negligence in the legal representation of the plaintiff, 3) that the negligence was the proximate cause of an injury, and 4) the fact and extent of the injury alleged. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 585-586; 513 NW2d 773 (1994). In some cases, a plaintiff must show that, but for the attorney's negligence, the client would have completely prevailed in the underlying

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

lawsuit. *Id.* at 586. However, where the allegation is that the verdict against the plaintiff was greater than what would have been returned absent the defendant's negligence, a plaintiff need only show that he would have obtained a better result but for the defendant's negligence. *Schlumm v O'Hagan*, 173 Mich App 345, 359-360; 433 NW2d 839 (1988); *Basic Food Industries, Inc v Grant*, 107 Mich App 685, 693-694; 310 NW2d 26 (1981).

Here, plaintiffs claimed that, but for defendants' negligence in failing to advise them that they could avoid arbitration and instead litigate the underlying claim in circuit court, they would have pursued the litigation in circuit court and would have prevailed or at least obtained a more favorable result. However, the decision of the arbitration panel against Charlip is binding under the doctrine of collateral estoppel, *Cole v West Side Auto Employees Federal Credit Union*, 229 Mich App 639, 647; 583 NW2d 226 (1998), and precludes plaintiffs from relitigating the issue of Charlip's liability on the underlying claim, see *Alterman v Provizer, Eisenberg, Lichtenstein & Pearlman, PC*, 195 Mich App 422; 491 NW2d 868 (1992). Therefore, plaintiffs are unable to show either that they would have completely prevailed if the underlying claims were litigated in circuit court, or that at least a more favorable verdict would have been obtained in circuit court. Accordingly, plaintiffs cannot show that defendants' negligence was the proximate cause of their injury. Thus, the trial court properly granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(8).²

Affirmed.

/s/ Martin M. Doctoroff

/s/ Stephen J. Markman

¹ We note that the trial court incorrectly stated that plaintiffs were required to present evidence to defeat defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). Despite the court's erroneous statement, it correctly determined that summary disposition was appropriate under MCR 2.116(C)(8). We will not reverse where the trial court reached the right result for the wrong reason. *Lane v KinderCare Learning Centers, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

² Summary disposition was also properly granted in favor of defendants with respect to plaintiff Schmidt Bagel Creations, Inc., because Schmidt Bagel was not a party to the underlying arbitration proceeding and did not incur any legally enforceable liability as a result of defendants' alleged malpractice.