

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: September 23, 2015]

VINCENT AND DONNA MESOLELLA, :
27 Paddock Drive, Lincoln, RI 02865 :

VS. :

C.A. No. PC 14-1100

RICHARD RICCITELLI, d/b/a :
RICHARD RICCITELLI & CO., :
1 Worthington Road #2, :
Cranston, RI 02920 :

DECISION

(Denying Motion for Summary Judgment)

LANPHEAR, J. This matter came on for hearing before Mr. Justice Lanphear on September 22, 2015 on Plaintiffs’ Motion for Summary Judgment.

FACTS AND TRAVEL

Plaintiffs allege that Defendant was negligent in preparing Plaintiffs’ 2006 income tax returns, by applying an incorrect annual limitation when calculating the taxpayers’ charitable deduction to their income. Plaintiffs further allege that when the return was audited by the IRS years later, a deficiency was found which triggered interest payments due. Plaintiffs submitted an extensive, detailed memorandum referencing their expert’s report, defendant’s expert report, and depositions.

Defendant produced an extensive objection, and the Court scoured the record, leading it to believe that no issue of material fact existed. At hearing, counsel initially acknowledged that

facts were not in dispute. This seemed dispositive of the motion, particularly on the issue of liability. For example, Plaintiffs' memorandum had declared extensive facts, including:

“26. By using the incorrect 50% of plaintiffs' AGI on plaintiffs' amended 2006 tax returns to determine the non-cash bargain sale charitable deduction, plaintiffs' income taxes due were calculated by defendant at too low a figure.” Pls.' Mem. in Supp. of Summ. J., July 15, 2015. See also ¶¶ 23-30, inclusive.

The Court was also confronted with a one-page, self-serving affidavit by the Defendant declaring, “I prepared the tax returns in a careful and proper manner.” (Riccitelli Aff., July 21, 2015). Nevertheless, at deposition, Mr. Riccitelli testified that the increase in taxable income was due to his applying the incorrect percentage and not by changed valuation of the property. (See Pls.' Mem. 12-13, July 15, 2015).

Just when it seemed evident that no issue of material fact existed pertaining to negligence, and summary judgment on liability appeared appropriate, the tide turned.

First, Defendant began to question facts. He questioned whether the facts contained in Exhibit G to Plaintiffs' Reply Memorandum were correct, not having pointed out any factual dispute previously.

Second, Defendant focused on expert Dennis Stone's report appended to its objection. The report is vague and confusing. It focuses on the effect of carry-forward deductions, rather than on what Mr. and Mrs. Mesolella allege—that a change in 2006 tax liability resulted from Mr. Riccitelli's negligence, triggering interest and penalties. Mr. Stone's report includes some broad sentences, without clear foundation:

“In my opinion, all of the additional costs claimed by the Plaintiffs in this matter were incurred solely as a direct result of the inflated valuation of the Knowlesway Extension property used for the purpose of claiming the non-cash bargain sale charitable contribution deduction on their 2006 income tax returns.

Therefore, Mr. Riccitelli was not responsible for any of the additional costs claimed by the Plaintiffs in this matter.” Stone Letter 3, July 22, 2013.

ANALYSIS

Frankly, the Court found the hearing to be unfair. There was no previous issue of fact; however, at the hearing factual disputes were alleged. This occurred after deposition testimony, virtually admitting fault. It would seem appropriate to grant summary judgment, particularly on the issue of liability, allowing the finder of fact to focus only on the amount of damages.¹

The Court was also left with an expert’s report with little foundation and little explanation for its odd conclusion. Nevertheless, our high court was confronted with a similar situation before.

“This Court has recognized that when opinion testimony offered in an affidavit rests solely on an examination of third-party reports, and the conclusions developed in the affidavit are reliant on the documents and reports prepared by others, this testimony is properly classified as expert opinion testimony under Rule 702 of the Rhode Island Rules of Evidence.

Further, it is axiomatic that the court’s role during summary judgment is issue finding, not issue determination. Accordingly, when an expert affidavit is presented to a trial justice on a motion for summary judgment, the trial justice’s treatment of the affidavit, as well as the treatment of all other relevant documents, is limited to examining it in the light most favorable to the nonmoving party to determine whether or not it raises a material issue of fact. Thus, the trial justice’s belief in the reliability of the opinion or her impression of the expert is wholly irrelevant to this analysis. Such an opinion is more appropriate to a determination of the weight that should be accorded to the evidence, rather than the admissibility of the expert’s opinion, and has no place at a hearing on summary judgment.” Ferguson v. Wayland Manor Assocs., 771 A.2d 888, 892 (R.I. 2001) (citations omitted).

¹ Query the challenges at trial in presenting evidence on complex tax issues at a jury trial.

As expert testimony is required in this professional malpractice case, Jessup & Conroy, P.C. v. Seguin, 46 A.3d 835, 839 (R.I. 2012), the differing conclusions of the experts requires a denial of summary judgment. The Court is left to perform its gatekeeping functions at trial.

CONCLUSION

For the reasons stated, Plaintiffs' Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment are denied.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Vincent and Donna Mesolessa, et al. v. Richard Riccitelli, et al.

CASE NO: PC 2014-1100

COURT: Providence County Superior Court

DATE DECISION FILED: September 23, 2015

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: George E. Lieberman, Esq.

For Defendant: Mark P. Dolan, Esq.