Florida Probate & Trust Litigation Blog

STOKES | MCMILLAN | ANTÚNEZ
P.A.
A TRUSTS & ESTATES LAW FIRM

Can someone other than your client sue you for drafting an invalid quitclaim deed?

By Juan C. Antúnez on August 10, 2017

Dingle v. Dellinger, 134 So.3d 484 (Fla. 5th DCA February 7, 2014)

There's nothing like the threat of a malpractice suit to focus the mind. And in the trusts-and-estates context this risk is exponentially greater for all sorts of reasons, including the fact that you can get sued by lots of people who were never even your clients.

The general trend in Florida is that a third-party beneficiary of your legal services can sue you for malpractice — and it doesn't matter that the third party was *never* your client and had *zero* **privity of contract** with you. Examples of this trend include cases in which the

beneficiaries of a deceased ward's estate had standing to sue the guardian's lawyers for malpractice (see **here**), estate beneficiaries had standing to sue a decedent's estate planning attorneys for malpractice (see **here**), a successor personal representative had standing to sue his predecessor's attorney for malpractice (see **here**), and an elderly man who had been improperly subjected to a guardianship proceeding had standing to sue the attorney for his former court-appointed guardian for malpractice (see **here**). This case is yet another example of that trend.

Case Study:

In this case a man hired a lawyer to draft a quitclaim deed that would gift certain real estate titled in the name of a corporation that he was the sole owner of. The client died a few months after the deed was recorded. The client's surviving spouse then challenged the validity of the deed her husband had executed, ultimately winning that case (and thus presumably getting to keep the contested property for herself). For more on that backstory, see **Dingle v. Prikhdina, 59 So.3d 326 (Fla. 5th DCA 2011)**.

The intended third-party beneficiaries of the now invalidated deed sued the drafting attorney for malpractice. The attorney filed a motion to dismiss, arguing that because the plaintiffs were never her clients they couldn't sue her. The trial judge agreed and dismissed the case.

Not so fast said the 5th DCA. The rule in Florida is that the third-party beneficiaries of your legal services can sue you for malpractice, even if they were *never* your clients and had *zero* privity of contract with you.

> **"If the parties are not in privity, to bring a legal malpractice action, the plaintiff must be an intended third-party beneficiary of the lawyer's services. *See Espinosa*, 612 So.2d at 1380. To assert a third-party beneficiary claim, the complaint must allege: (1) a contract; (2) an intent that the contract primarily and directly benefit the third party; (3) breach of the contract; and (4) resulting damages to the third party. [FN1] *See, e.g., Caretta Trucking, Inc. v. Cheoy Lee Shipyards, Ltd.*, 647 So.2d 1028, 1031 (Fla. 4th DCA 1994). A party is an intended beneficiary only if the parties to the contract clearly express, or the contract itself expresses, an intent to primarily and directly**

> **benefit the third party or a class of persons to which that party claims to belong. *See id.; see also Jenne v. Church & Tower, Inc.*, 814 So.2d 522, 524 (Fla. 4th DCA 2002) (explaining that courts look to nature or terms of contract to find parties' clear or manifest intent that it is for third party's benefit). Thus, it is not necessary that the third-party beneficiary is named in the contract. *See Fla. Power & Light Co. v. Mid–Valley, Inc.*, 763 F.2d 1316, 1321 (11th Cir.1985). Rather, the parties' pre- or post-contract actions may establish their intent. *Id.***
>
> **[FN1] Although an intended third-party beneficiary may maintain a legal malpractice action in theories of either tort (negligence) or contract (third-party beneficiary), the contractual theory is conceptually superfluous because the crux of the action must lie in tort as there can be no recovery without negligence. *McAbee v. Edwards*, 340 So.2d 1167, 1169 (Fla. 4th DCA 1976).**

What if it's a two-sided deal?

The lawyer-defendant argued the deed she drafted was a two-sided real estate transaction, which meant she couldn't ethically represent both sides of the same deal, which meant she couldn't be sued by the other side either. Here's how that argument was made:

> **"[Lawyer] insists that she did not have a duty of care to the [plaintiffs] because the requirement of privity in attorney malpractice actions has only been relaxed where there is only one "side" to a transaction (e.g., wills, trusts, estate planning and adoptions), and this case involved a two-sided real estate transaction. Thus, [lawyer] contends that because she was employed by [the party executing the deed], she could not ethically represent the [plaintiffs'] interests or be held responsible to them.**
>
> **. . . Courts usually reject the contention that the attorney for a seller, buyer, lender, or mortgagor owed**

> **a duty to another party. Thus, as a general rule, when a transaction involves two interests to be protected, an attorney employed by one of the parties to the transaction cannot be held responsible to other parties unless it is alleged and proved that the attorney committed some nonnegligent tort such as fraud or theft. *See, e.g., Adams v. Chenowith*, 349 So.2d 230, 231 (Fla. 4th DCA 1977).**

This defense works . . . *unless* the entire purpose of the deal was to benefit the non-clients. In those cases lawyers can still be sued, even if the deal is usually considered a two-sided transaction. So saith the 5th DCA:

> **"This case involved a real estate transaction, typically a two-sided transaction. However, here, based on the allegations contained in the complaint, there was no adversarial relationship or differing interests to be protected, as the [plaintiffs'] interests were not in conflict with [the client's interests], thus suggesting a one-sided transaction. *See generally Freedom Mortg. Corp. v. Burnham Mortg., Inc.*, 720 F.Supp.2d 978 (N.D.Ill.2010) (holding that mortgage lender sufficiently pled that primary purpose and intent of attorney's representation of mortgage broker and title insurer were to influence lender, giving rise to duty of care running from attorney to lender, as third-party beneficiary of attorney-client relationship; although broker and title insurer hired attorney as closing agent presumably to act in their best interests, attorney's work was nonadversarial as to lender in sense that attorney's services as closing agent were typically relied upon by all parties to real estate transaction); *Kirby v. Chester*, 174 Ga.App. 881, 331 S.E.2d 915 (1985) (concluding that closing attorney owed duty to nonclient lender that relied on attorney's title certification to loan money); *Flaherty v. Weinberg*, 303 Md. 116, 492 A.2d 618, 629–30 (1985) (determining that unrepresented mortgagor-buyer's complaint, which alleged that mortgagee-lender**

retained attorney to intentionally benefit both parties, who had identical interests in the property, alleged sufficient facts to survive dismissal); 4 Legal Malpractice § 34:4 (2013 ed.) ("The rule of privity of contract prevails where a nonclient sues the attorney for errors in handling a transfer of property interests, in creating a security interest, searching title or representing a client in the transaction, who is sued by another party to the transaction.") (collecting cases); *see also Jimerson v. First Am. Title Ins. Co.*, 989 P.2d 258, 261 (Colo.App.1999) (explaining that professional supplier of information may be liable for its negligence to person with whom it has no contractual relationship, providing that supplier of information knows that recipient of information will provide it to that person or knows that information is to be used to influence transaction); *Stuart v. Freiberg*, 142 Conn.App. 684, 69 A.3d 320 (2013) (holding that genuine issue of material fact existed as to whether estate beneficiaries were intended beneficiaries of accountant's work for estate executor, and therefore, whether accountant owed them duty of care, precluded summary judgment in professional malpractice claim against accountant).

Note to readers:

The linked-to opinion was published in 2014. I try to report on cases as they're published. I don't always succeed. This blog post is part of an ongoing project to report on older cases I wasn't able to get to previously.

Florida Probate & Trust Litigation Blog

Published By: Juan C. Antúnez of Stokes McMillan Antúnez P.A.