THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS

DERRICK CAMPBELL,	:	**CIVIL TRIAL DIVISION**
Appellant/Plaintiff,	:	**SEPTEMBER TERM, 2002 No. 2693**
v.	:	
PICARD LOSIER & ASSOCIATES	:	**Superior Court Docket No. 198 EDA 2006**
Appellees/Defendants.	:	

O P I N I O N

PROCEDURAL HISTORY

Plaintiff appeals from the Order dated December 7, 2005, wherein this Court granted Defendants' Motion for Summary Judgment and dismissed Plaintiff's Complaint.

FACTUAL BACKGROUND

On April 28, 1995, Plaintiff suffered a fire at his home located at 5522 W. Oxford Avenue, Philadelphia, PA. (Memorandum of Law in Support of Motion for Summary Judgment, 12/7/05 pg. 1). At the time of the fire, Campbell had a fire insurance policy with St. Paul Re-insurance Co. LTD obtained through Fair Plan Insurance Placement Facility of Pennsylvania (hereinafter insurers). (Id. at pg. 2) Plaintiff engaged the services of ABC Adjusters (hereinafter "ABC") to assist him in preparing and submitting his claim to insurers. Id. On June 15, 1995, Joseph DeStefano (hereinafter DeStefano), who is a claims adjuster employed by ABC, prepared and submitted to insurers an inventory of the contents of his home and a repair estimate. Id. The estimate totaled

Plaintiff's property loss to be in excess of $100,000.00. Id. Insurers denied this claim by Plaintiff. Id. As a result, Plaintiff instituted three separate actions against insurers for breach of contract and bad faith. Id.[1]

In their answer to Plaintiff's Complaint, the insurers did not deny the existence of an insurance contract with Plaintiff; rather, they alleged that Plaintiff had made material fraudulent representations of fact regarding his losses and that under the terms of the insurance policy, they were entitled to deny his claims. Id.

During discovery the insurers deposed ABC claim adjuster DeStefano. (Id at 3). DeStefano stated that he prepared only the first three pages of Plaintiff's inventory of contents, while Plaintiff had prepared the last two pages. (Deposition of Joseph Destefano, pg. 25-27, 69-70). DeStefano also stated that on the date of inspection, he did not see any of the items listed on the last two pages of the inventory of contents, which were prepared by Plaintiff (Deposition of Joseph DeStefano, pg. 25-27, 69-70). DeStefano also testified that some of the inventory of contents that Plaintiff filled out did not appear to be damaged at all. (Memorandum of Law in Support of Motion for Summary Judgment, 12/7/05 pg. 1).

Trial of the underlying case began on February 2, 1999 before Honorable Thomas Watkins. Plaintiff was represented by Mr. Alex Pierre of Picard Losier and Associates. Id. at 3. Mr. DeStefano failed to appear and testify for Plaintiff at trial. After Plaintiff's case-in-chief was complete, insurers moved to strike Plaintiff's inventory of contents because Pierre did not move the Court to admit the insurance contracts into evidence. Id. Judge Watkins granted Compulsory Nonsuit on February 3, 1999 (See Docket, April

[1] These three actions were consolidated for trial under the lead case of Campbell v. St. Paul Reinsurance Co., LTD, and Fair Plane Insurance Placement Facility of Pennsylvania (April Term, 1996, No. 3362).

Term 1996, No. 3362). Plaintiff appealed, however he was unsuccessful on removing the Nonsuit on appeal. Id.

On October 4, 2001, the Superior Court affirmed the trial Court's granting of Nonsuit. Id. As a result, Plaintiff instituted this action, proceeding in forma pauperis[2], by Complaint dated September 19, 2002 against Picard Losier & Associates (hereinafter Picard Losier) alleging negligent legal representation of Plaintiff by one of their employees, Alex Pierre, Esquire. (See Docket, September Term, 2002, No. 2693). Picard Losier joined Alex Pierre as an additional defendant by cross-claim on September 14, 2004. (Answer To Plaintiff's Complaint With New Matter And Cross-Complaint Of Defendant Picard Losier & Associates). However, by Order dated January 12, 2005, the Court granted Defendant Alex Pierre's preliminary objections to the joinder and he was dismissed from the case as an additional defendant (See Docket).[3]

On October 24, 2005, Defendant filed their Motion for Summary Judgment and Plaintiff responded thereto on December 5, 2005, outside the thirty (30) day response period. (See Docket). Despite plaintiff doing so, this Court reviewed the motion and plaintiff's response and entered a ruling on the merits. By Order dated December 7, 2005, this Court granted the Motion for Summary Judgment and dismissed Plaintiff's Complaint. (See Docket). Plaintiff filed their Notice of Appeal on January 6, 2006.

Plaintiff withdrew his appeal on February 15, 2006, thereby effectively ending this action. However, the Superior Court, by Order dated November 3, 2006, allowed

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[2] Plaintiff was granted in forma pauperis status pursuant to Order dated October 9, 2002 (See Docket).

[3] An separate action was also brought by Plaintiff against Defendant Alex Pierre only (January Term, 2001 No. 4926). On May 7, 2004, this Court granted defendant Pierre's Motion for Summary Judgment. (See Docket, January Term, 2001, No. 4926). This action was never consolidate with the September Term, 2002 No. 2693 action and remains independent from the current action and is only mentioned as it discusses the procedural history and background of the parties.

Plaintiff to reinstate his appeal. (See Docket). The plaintiff subsequently submitted his 1925(b) Statement of Matters on January 30, 2007.

The sole issue to be addressed by this Court is whether this Court committed an error of law and/or abused its discretion in granting Summary Judgment.

Preliminarily, we must first determine if the Plaintiff's 1925(b) statement is adequate. See Pa.R.A.P. 1925(b). In *Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306, 309 (Pa. 1998), the Supreme Court of Pennsylvania held that issues not included in a Rule 1925(b) statement are deemed waived on appeal. *Wells v. Cendant Mobility Fin. Corp.*, 2006 PA Super 363, 913 A.2d 929 (2006).

Specifically, the Court stated:

> The absence of a trial court opinion poses a substantial impediment to meaningful and effective appellate review. Rule 1925 is intended to aid trial judges in identifying and focusing upon those issues which the parties plan to raise on appeal. Rule 1925 is thus a crucial component of the appellate process. Id. (Citing *Lord*, 719 A.2d at 308).

Similarly, "[w] hen an appellant fails adequately to identify in a concise manner the issues sought to be pursued on appeal, the trial court is impeded in its preparation of a legal analysis which is pertinent to those issues." Id. (citing *In re Estate of Daubert*, 2000 PA Super 219, 757 A.2d 962, 963 (Pa. Super. 2000)). If the Rule 1925(b) statement is so overly broad and vague that the trial court has to guess what issues an appellant is appealing, then the statement is insufficient to enable meaningful review. *Commonwealth v. Dowling*, 2001 PA Super 166, 778 A.2d 683, 686 (Pa. Super. 2001). "In other words, a Concise Statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no Concise Statement at all." *Dowling*, 778 A.2d at

686-87. Therefore, the issues contained in a vague Rule 1925(b) statement will be deemed waived on appeal. *Dowling*, 778 A.2d at 687.

In *Lineberger v. Wyeth*, 2006 PA Super 35, 894 A.2d 141 (Pa. Super. 2006), the Superior Court extended *Dowling's* vagueness doctrine into the arena of civil torts. *Wells*, 913 A.2d 929 (citing, *Lineberger*, 894 A.2d at 148 n. 4). "Since the Rules of Appellate Procedure apply to criminal and civil cases alike, the principles enunciated in criminal cases construing those rules are equally applicable in civil cases.") (citation omitted). In that case, the appellant took the diet pill fen-phen and later developed mitral valve regurgitation and aortic insufficiency. Id. (citing, *Lineberger*, 894 A.2d at 143). The appellant sued the manufacturer, alleging that the company's failure to issue a warning concerning the potential side effect of valvular heart disease was the proximate cause of her injuries. Id. After summary judgment was entered against the appellant for failing to present evidence of proximate cause, the appellant filed a Rule 1925(b) statement, which contained the following issue: "the Court committed an error of law by granting [defendant's] Motion for Summary Judgment based on lack of proximate cause[.]" Id. On appeal, a panel of this Court noted that the appellant's Rule 1925(b) statement was not specific enough for the trial court to conduct meaningful review. *Lineberger*, 894 A.2d at 148-49. Particularly, this Court suggested that the Rule 1925(b) statement could have been as detailed as the arguments that the appellant raised in opposition to the defendant's motion for summary judgment. Id. at 149. The Superior Court found that the Rule 1925(b) statement "announced a very general proposition" and was so overly broad and vague that the appellant's issues were waived under *Dowling.* Id.

As a Pro Se Plaintiff, the three questions that he presents in his 1925(b) Statement of Matters in no way articulate, with any amount of minimal specificity, an alleged redressable error. The Statement of Matters is insufficient for this Court to compose an Opinion, which would satisfactorily address a specified error by presenting supporting authority for its ruling based on both the law and facts. (See Plaintiff's 1925(b) Statement of Matters, Exhibit A). The first contention references the separate action involving Alex Pierre, stating that the granting of summary judgment in that action was not based on the merits. The second contention also refers to Pierre's lawsuit and that the granting of summary judgment based on Plaintiff's failure to produce an expert in that case was an error. Plaintiff's initial two statements concerning Pierre involve a completely different lawsuit against Pierre only and are not subject of this matter now under appeal. Any matters involving the Pierre action, are not before this Court as this action was adjudicated and never previously consolidated with action against Picard Losier. Lastly, Plaintiff makes the assertion that Picard Losier was an employer who hired Pierre. However, this contention does not make any allegation of error by this Court and Plaintiff fails to raise any legal issues which would subject Picard Losier to liability based upon the elements of legal malpractice.

At best, Plaintiff's statements would amount to a general allegation that summary judgment was improperly granted. According to the principle as stated in *Dowling*, general statements amount to a waiver of one's appellate rights. In situations like this, where the Rule 1925(b) statement is obviously vague and abstract, the trial court may find waiver and disregard any argument. *Commonwealth v. Reeves*, 2006 PA Super 196, 907 A.2d 1, 2 (Pa. Super. 2006).

In the event the appellate court is not compelled to dismiss the appeal on this basis, this Court additionally addresses the merits of its granting the Motion for Summary Judgment.

STATUTE OF LIMITATIONS

One of the arguments raised in defendant's Motion for Summary Judgment was that the legal malpractice action against Picard Losier was barred by the statute of limitations. Pursuant to 42 Pa.C.S.A. §5524(7), Pennsylvania's has a two year statute of limitations governing claims for legal malpractice sounding in tort. *Robbins & Seventko Orthopedic Surgeons Inc. v. Geisenberger*, 449 Pa. Super. 367, 372, 674 A.2d 244, 246 (1996).

With regard to the respective statutes of limitations, the rule in this Commonwealth is that the statutory period commences at the time the harm is suffered or, if appropriate, at the time the alleged malpractice is discovered. *Pocono Int'l Raceway v. Pocono Produce, Inc.*, 503 Pa. 80, 84, 468 A.2d 468, 471 (1983). As a matter of general rule, a party asserting a cause of action is under a duty to use all reasonable diligence to be properly informed of the facts and circumstances upon which a potential right of recovery is based, and to institute suit within the proscribed statutory period. Id.

In determining when the statutory period begins to run, Pennsylvania Courts follow the "occurrence" or "discovery" rule, depending on the circumstances. In Pennsylvania, the occurrence rule is used to determine when the statute of limitations begins to run in a legal malpractice action. Under the occurrence rule, the statutory period commences upon the happening of the alleged breach of duty. *Bailey v. Tucker*, 533 Pa. 237, 251, 621 A.2d 108, 115 (1993). An exception to this rule is the equitable discovery

rule which will be applied when the injured party is unable, despite the exercise of due diligence, to know of the injury or its cause. *Pocono Int'l Raceway*, 468 A.2d at 471 (1983). Lack of knowledge, mistake or misunderstanding, will not toll the running of the statute. Id. The applicable rule in this case would be the occurrence rule. In *Ammon v. McCloskey*, 655 A.2d 549, 440 Pa. Super. 251 (1995), our Superior Court held that a judgment entered against a client was held to be sufficient notice to make an injured party aware of the attorney's breach.

The transcript of Plaintiff's trial in the underlying case shows that the Court granted Nonsuit in favor of insurers after Plaintiff's attorney, Alex Pierre, failed to introduce into evidence the insurance contract between Plaintiff and the insurers. In granting Nonsuit for insurers, the trial Court discussed at length, the reasons why attorney Pierre should have admitted into evidence the insurance contract between Plaintiff and the insurers, and why Pierre's failure to do so was fatal to Plaintiff's case. (N.T. dated 2/3/99, April Term 1997, No. 3362, pgs. 172-175). Therefore as of February 3, 1999, Plaintiff was aware of both Pierre's negligent representation of him and the actual loss suffered by the termination of his case.

The Court actions made Plaintiff aware of Pierre's negligent representation and the resulting injury of his lost ability to recover monetary damages in the underlying action. Plaintiff then had two (2) years from February 3, 1999 to file his legal malpractice action against Picard Losier. The fact that Pierre took an appeal of the trial Court's decision of Nonsuit is irrelevant to the calculation of the statute of limitations. In *Robbins & Seventko Orthopedic Surgeons, Inc,* 674 A.2d at 247, our Superior Court held

that in a legal malpractice claim, the statute of limitations is not tolled while an appeal of the underlying civil action is pending.

In Pennsylvania "the limitation period begins to run when the alleged breach of duty occurs. It is tolled only until the injured party should reasonably have learned of this breach." Id. (citing *Garcia v. Community Legal Services Corp.*, 362 Pa. Super. 484, 497; 524 A.2d 980, 986 (1987).

Plaintiff argues that Pierre's continued representation of him on appeal in the underlying action tolled the statute of limitations. However, the Supreme Court of Pennsylvania has not adopted the "continuous representation" rule. Id. The Court in *Robbins* specifically states that Pennsylvania has never adopted the approach postulated by the panel in *Garcia*. Id. The *Garcia* Court held that the statute of limitations is tolled in a legal malpractice claim until the appeals of the underlying claim have been exhausted. Id. This principle is specifically rejected by Superior Court in *Robbins*. Id.

Plaintiff failed to file his action against Picard Losier until September 17, 2002, which is approximately 19 months past the expiration of the applicable statute of limitations. Therefore, Plaintiff's suit against Picard Losier is statutorily time-barred under 42 Pa.C.S.A. §5524(7) because it was not brought within two (2) years from the date of the Nonsuit of February 3, 1999.

EXPERT TO ESTABLISH LEGAL MALPRACTICE

In addition to the issue raised by Defendant above, the Court also granted summary judgment due to the Plaintiff's failure to submit an expert report to establish the elements of his legal malpractice claim.

Pursuant to Pa.R.C.P. 1035.2 pertaining to Summary Judgment:

> After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law
>
> (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
>
> (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R. C. P. 1035.3(c) also makes it clear that the trial judge, reviewing the nonmoving party's response to a motion for summary judgment, possesses a wide range of discretion. *Gerrow v. John Royle & Sons*, 572 Pa. 134, 142; 813 A.2d 778, 783 (2002). Pa. R. C. P. 1035.3(c) states: The court may rule upon the motion for judgment or permit affidavits to be obtained, depositions to be taken or other discovery to be had or make such other order as is just. Under Pa. R. C. P. 1035.3(c), the trial court has broad discretion in regulating discovery. Id. Despite the Court’s indulgence in extending the time for seeking an expert report and advising Plaintiff to seek experts in its Orders, Plaintiff failed to submit or identify an expert at any stage of the litigation, who would testify to establish the elements of legal malpractice.

By way of procedural background, this Court initially issued a Case Management Order on October 6, 2004, wherein the deadline for Plaintiff’s submission of expert reports should be submitted no later than February 7, 2005 and a trial date of June 6, 2005. (See Docket). On June 23, 2005, this Court denied a Motion in Limine filed by

Plaintiff on July 27, 2004. (See Docket). In denying the motion, the Court stated "It is ordered that the Motion in Limine to admit hearsay evidence is denied without prejudice to plaintiff to raise certain discrete issues at trial. *Further, plaintiff must present a competent expert at trial*." (emphasis added). (See Docket, Order dated June 23, 2005, Control #77-05074577). On September 15, 2005, the Court further indulged Plaintiff's request in his Motion For Extraordinary Relief, wherein it granted the motion and extended all deadlines an additional sixty (60) days. (See Docket, Control # 95-05081095). The extraordinary relief extended Plaintiff's deadline to submit his expert report to April 8, 2005 and the trial date to August 6, 2005. However, eight (8) months after the Plaintiff's expert report deadline and four (4) months after the proposed trial date had passed, Plaintiff had still failed to submit his expert report and the Court thus granted Summary Judgment, December 7, 2005. Plaintiff in failing to submit an expert report, leaves the Court without evidence necessary to establish a prima facie case of legal malpractice.

In order to establish a claim of legal malpractice, appellant must demonstrate: (1) employment of the attorney or other basis for a duty, (2) the failure of the attorney to exercise ordinary skill and knowledge, (3) and that such negligence was the proximate cause of damage to the plaintiff. Kituskie v. Corbman, 552 Pa. 275, 281, 714 A.2d 1027, 1029 (1998).

In *Storm v. Golden*, 371 Pa. Super. 368, 375-377, 538 A.2d 61, 64-65 (1998), our Superior Court affirmed the trial court's granting of Nonsuit. In so holding, it found that the issue of whether an attorney failed to exercise a reasonable degree of care and skill related to common professional practice in handling a real estate transaction was a

question of fact outside the normal range of the ordinary experience of laypersons and required competent expert testimony to establish a legal malpractice claim. Id. Both courts found that the appellant did not provide competent expert testimony to establish appellee deviated from the standard of care. Id. Although the *Storm* Court refrained from a universal application of this rule, they cite broadly- interpreted caselaw to support their principles.

Specifically, the court stated:

> Whether expert evidence is necessary or required in a legal malpractice case to establish an attorney's breach of his duty of care is a question of first impression in Pennsylvania. However, we are not without guidance in this area. As a general rule, our Supreme Court has held that '*expert testimony is necessary to establish negligent practice in any profession.*' *Powell v. Risser*, 375 Pa. 60, 65, 99 A.2d 454, 456 (1953); *Bierstein v. Whitman*, 360 Pa. 537, 541, 62 A.2d 843, 845 (1949). *Although such a general statement is not a concrete pronouncement as to any one profession, it exhibits a recognition that when dealing with the higher standards attributed to a professional in any field a layperson's views cannot take priority without guidance as to the acceptable practice in which the professional must operate.* The standard of care in a legal malpractice case is whether the attorney has exercised ordinary skill and knowledge related to common professional practice. *Ei bon ee baya ghananee v. Black*, 350 Pa.Super. 134, 504 A.2d 281 (1986), *Hoyer v. Frazee*, 323 Pa.Super. 421, 470 A.2d 990 (1984). *By its very nature, the specific standard of care attributed to legal practitioners necessitates an expert witness' explanation where a jury sits as the fact finder.* Id. (emphasis added).
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> Expert testimony becomes necessary when the subject matter of the inquiry is one involving special skills and training not common to the ordinary lay person. *Reardon, supra; Hayes Creek Country Club, Inc. v. Central Penn Quarry Stripping & Construction Company*, 407 Pa. 464, 181 A.2d 301 (1962); *Pirches v. General Accident Insurance Company*, 354 Pa.Super. 303, 511 A.2d 1349 (1986). The requirement of expert testimony has been

> applied to physicians, see e.g. *Chandler v. Cook*, 438 Pa. 447, 265 A.2d 794 (1970), dentists, see e.g. *Lambert v. Sotis*, 422 Pa. 304, 308, 221 A.2d 173, 176 (1966) and architects, see *National Cash Register Company v. Haak*, 233 Pa.Super. 562, 335 A.2d 407 (1975). We hold the requirement applies equally to legal malpractice claims under the circumstances presented here. Id.

The Superior Court also noted that the aforementioned principle has been the rule in federal courts applying Pennsylvania law since the United States Court of Appeals for the Third Circuit's decision in *Lentino v. Fringe Employee Plans, Inc.*, 611 F.2d 474, 480 (3d Cir.1979). In *Lentino*, the Third Circuit affirmed a district court's involuntary dismissal of a legal malpractice action after concluding that expert testimony was necessary for legal malpractice claims in Pennsylvania. See e.g., *Gans v. Mundy*, 762 F.2d 338 (3d Cir.1985). *Storm*, at n.3.

In *Storm*, the appellate court held against the appellant's position that the sale of real estate is an elementary and non-technical transaction which required no expert testimony, stating that the . . . "*at issue is not the simplicity of the transaction but the duty and degree of care of the attorney*." (emphasis added). *Storm*, at 377-378, 65.

In the case *sub judice*, the determination of whether Picard Losier was negligent in having their associate, Alex Pierre, represent Plaintiff at trial of his breach of contract action against the insurers is one that requires the aid of competent expert testimony to establish the standard of care of an attorney in litigating insurance contract cases where the insurer declined coverage upon the allege fraud of the insured.

An expert was also necessary to prove that Plaintiff would have prevailed in the underlying breach of contract action despite, insurer's valid defense of fraud on the part of Plaintiff in making his insurance claim.

In order to prove the third element of legal malpractice in a civil matter, that the negligence was the proximate cause of damage to the plaintiff, the plaintiff must prove by preponderance of the evidence that he or she would have recovered a judgment in the underlying action often referred to as proving a case within a case. Kituskie v. Corbman, 552 Pa. 275, 281, 714 A.2d 1027, 1029 (1998).

In the underlying case Plaintiff is alleged to have made fraudulent misrepresentations of material fact regarding his losses and damages when he submitted his personal property loss claim. If proven this would void the insurance policy and relieve defendant insurers of their obligations. An examination of both pre-trial proceedings and trial records discloses evidence that Plaintiff attempted to defraud the defendant insurers. On or about June 15, 1995, ABC's claim's adjuster, Joseph DeStefano and Plaintiff prepared and submitted to the insurers a inventory of contents and a repair estimate of his home. (Memorandum of Law In Support Of Motion For Summary Judgment, Exhibit B). At the Deposition of DeStefano he admitted that he had prepared only the first three pages of Campbell's inventory of contents and that Campbell had prepared the last two pages of the contents inventory. (Deposition of Joseph DeStefano, pg. 25-27, 69-70). DeStefano stated that on the date of inspection, he did not see any of the items listed on the last two pages of the inventory of contents, which were prepared by Plaintiff (Deposition of Joseph DeStefano, pg. 25-27, 69-70). DeStefano also testified that some of the inventory of contents that Plaintiff filled out did not appear to be damaged at all. (Memorandum of Law in Support of Motion for Summary Judgment, 12/7/05 pg. 1).

In addition to his refusal to confirm the existence of the property listed on the last two pages of his inventory of contents, DeStefano failed to appear at trail and testify on Plaintiff's behalf. As a result, the insurers moved to strike Plaintiff's inventory of contents and repair estimates from evidence, which would be submitted to the jury. (Memorandum of Law in Support of Motion for Summary Judgment, Exhibit F, pg. 173-175).

Therefore, under the terms and conditions of the insurance contract, the defendant insurers had a valid defense to Plaintiff's action. The insurance contract provided as follows:

> **Concealment, Fraud**. This entire policy shall be void if, whether before or after a loss, the insured has willingly concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto. (Memorandum of Law in Support of Motion for Summary Judgment, Exhibit A, Standard Fire Policy Endorsement, pg.1).

Since the record in the underlying showed that Plaintiff misrepresented material facts to the insurers regarding his losses, thus voiding the insurance contract and relieving the insurers of their obligations thereunder. An expert would be required to opine within a reasonable degree of certainty, that despite this unfavorable evidence of fraud against Plaintiff, he would have obtained a favorable verdict had Pierre moved the contract into evidence.

Thus, for all the foregoing reasons Plaintiff would not have been able to establish the elements of legal malpractice.

CONCLUSION

In light of the foregoing analysis, this Court believes that the Motion for Summary Judgment was properly granted, and respectfully requests that it be affirmed by the Court above.

BY THE COURT:

2-23-2007

Date **ALLAN L. TERESHKO, J.**

cc:
Derrick Campbell
Picard Losier & Associates