

IN THE COURT OF COMMON PLEAS of PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT of PENNSYLVANIA

CIVIL TRIAL DIVISION

MOHAMMED IZADI :
Plaintiff : NOVEMBER TERM, 1996
v. :
IRV TONKINSON and ASSOCIATES, Inc. :
and : No. 1694 (LEAD CASE)
JOHN J. KOSTOVICK :
Defendants :

MOHAMMED IZADI : NOVEMBER TERM, 1996
v. :
BARRY R. HALPERN, M.D. :
and : No. 1699
BARRY R. HALPERN, M.D. ASSOCIATES : (CONSOLIDATED WITH
Defendants : and INTO 96-10-01694)

OPINION

JANUARY 31, 2000

GOODHEART, J.

PRELIMINARY NOTE

Before turning to the facts of these consolidated cases, a brief procedural observation is in order. Counsel could make my life – and that of my law clerk – considerably less stressful by adhering to the following rule : when two (or more) cases are consolidated, all future filings should be made **only** under the number of the designated “lead” case, as if all parties had initially been joined and all claims had initially been filed in that case, without regard to the original docket numbers of the other consolidated cases.

Following such a procedure helps to ensure that all papers relevant to a pending appeal are included in the certified record transmitted to the appellate court, and makes it easier for the appellate court to determine whether an appeal is -- or is not -- timely. Failure to do so – as was the case here – merely delays the preparation and transmission of the record, and the filing of the opinion.

INTRODUCTION

The Plaintiff's Notice of Appeal states that the Plaintiff has appealed from my Order of September 1, 1998, docketed on September 2, 1998, by which I declined to reconsider a prior Order, entered (and docketed) on August 18, 1998, granting Summary Judgment in favor of Defendants Tonkinson and Kostovick only (the "**Tonkinson Defendants**").

Technically, the Plaintiff has appealed from the wrong order. The filing of a Petition for Reconsideration does not toll the time for appeal, which runs from the date upon which the underlying final Order is entered, unless within that time the Court explicitly vacates the prior Order. An Order denying reconsideration is not appealable, and ordinarily, an appeal filed more than thirty days after the entry of a final Order – even if within thirty days of an Order denying reconsideration of that final Order – will be quashed.

Fortunately for the Plaintiff, the August 18, 1998 Order did not become "final" within the meaning of Appellate Rule 341¹ until September 22, 1999, when the Plaintiff's last remaining claims -- against the Halpern Defendants -- were marked "settled" on the docket. Since the Notice of Appeal was filed within thirty days after that occurred, the appeal is still timely as to the August 18, 1998 Order, and I will therefore ignore the Plaintiff's erroneous identification of the Order being appealed².

Though I also dismissed two of the Plaintiff's four claims against the Halpern Defendants by separate order dated September 1, 1998 (docketed on September 2, 1998), the Plaintiff's Notice of Appeal does not indicate that he also wishes to appeal the latter Order. As a practical matter, I rather suspect that the Plaintiff was required to forgo such an appeal as part of the settlement of his remaining claims against the Halpern Defendants, which was reached on September 22, 1999 before my colleague, the Honorable Allan L. Tereshko, and for that reason, I will not further address those claims.

BACKGROUND

The substance of this case is quite simple. In June of 1995, the Plaintiff entered into an agreement to purchase from the Halpern Defendants a medical practice and the real estate from which it operated, for a gross purchase price of \$250,000.00. The Plaintiff then applied to PNC Bank for financing; PNC engaged Defendant Tonkinson to appraise the real estate, and Tonkinson

¹ Generally, for the purposes of Appellate Rule 341, a "final order" is one that disposes of all claims or all parties; my September 2, 1999 Order did neither.

² The fact that the August 18, 1998 Order did not become final for thirteen months after its entry demonstrates a quirk in the operation of Rule 341; had the Plaintiff appealed any sooner than he did, his appeal would surely have been quashed as premature.

assigned the task to its employee, Defendant Kostovick. The appraisal report valued the real property at \$250,000.00, PNC approved the loan, and the transaction closed in November of 1995.

After the transaction closed, the Plaintiff found that he was unable to operate the practice profitably; he then became associated with another medical practice -- bringing with him the patient list he had purchased from Dr. Halpern -- and ultimately sold the real property for \$140,000.00.

The Plaintiff then brought these consolidated actions, alleging that the true value of the real property in June of 1995 was \$165,000.00, that the appraisal prepared by the Tonkinson Defendants knowingly overstated its value, and that the Tonkinson Defendants were thus liable to him for malpractice, or in the alternative, for breach of contract. The August 18, 1998 Order dismissed all claims against the Tonkinson Defendants; it is this dismissal from which the Plaintiff has appealed.

DISCUSSION

All of the Plaintiff's claims against the Tonkinson Defendants were dismissed for essentially a single reason : the Plaintiff had no contract with those Defendants. The Tonkinson Defendants were retained by PNC Bank, and were paid by PNC Bank to perform an appraisal for the benefit of PNC Bank. Since Dr. Izadi was not a party to that contract, he cannot recover for an alleged breach unless he can show that he is an "intended third-party beneficiary" of the contract between PNC and the Tonkinson Defendants.

In order to recover as an "intended third-party beneficiary" of a contract, both parties to the contract must so intend, and must indicate that intention in the contract itself. Spires v. Hanover Insurance Company, 364 Pa. 52; 70 A.2d 828 (1950); Scarpitti v. Weborg, 530 Pa. 366; 609 A.2d 147 (1992). The contract between PNC Bank and Tonkinson expresses no such intention, and for that reason, the Plaintiff is not entitled to assert a claim for its breach.

Similarly, because the Plaintiff had no contract with the Tonkinson Defendants, those Defendants owed no duty of professional care to the Plaintiff, and the Plaintiff is thus not entitled to recover for alleged malpractice on its negligence claims against those Defendants. Landell v. Lybrand, 264 Pa. 406; 107 A. 783 (1919); Hartford Accident And Indemnity Company v. Parente, Randolph, Orlando, Carey And Associates, et al, 642 F. Supp. 38 (M.D. Pa., 1985); Linde Enterprises v. Hazleton City Authority, 412 Pa. Super. 67; 602 A.2d 897 (1992).

CONCLUSION

The Plaintiff has shown no reason why my decision to dismiss his claims against Defendants Tonkinson and Kostovick should be reversed, and indeed, no such reason exists. Thus, my August 18, 1998 Order granting summary judgment in favor of those Defendants must be affirmed.

BY THE COURT :

GOODHEART, J.