

Motion to Dismiss – Failure to State a Claim for Conversion and Professional Liability

SERVICES

Professional Liability

RELATED ATTORNEYS

Laura D. Devine

January 11, 2024

Attorney Laura Devine prevailed on a motion to dismiss on behalf of an attorney client in the U.S. Dist. D. Vermont. The matter concerned a residential real estate transaction. Attorney Devine represented the buyer attorney in that real estate transaction.

The Plaintiff was a romantic partner of the seller in the real estate transaction. The Plaintiff was not on the deed of the real estate in question and was not on the purchase and sale agreement. Instead, the Plaintiff's name was included as the beneficiary of an account to where the proceeds were directed pursuant to the wire transfer instructions. The Plaintiff alleged that the attorneys for the buyer and seller of the real estate committed conversion and professional negligence because after the closing, and after the deed was recorded, the wire transfer failed and was delayed over a long weekend, and never transferred to her. After the wire transfer failed, the buyer attorney sent an e-mail stating the transfer failed to the seller attorney, which was not responded to until the next business day, which was after a long holiday weekend. During the long holiday weekend, the monies remained within the custody of the buyer attorney, until they were transmitted to the seller attorney, at his direction, on the next business day. Sadly, during this long holiday weekend, the seller unexpectedly passed away.

The District Court was persuaded that the Complaint failed to state a claim for conversion and professional negligence. The District Court stated that accepting pleadings as true and in the light most favorable to the Plaintiff, it was not persuaded that the defendant "exercised dominion over the funds in exclusion and defiance of the owner's right," required to state a claim for conversion. Further, the District Court found that the Plaintiff failed to plead facts to support a duty was owed to her as required to establish a professional negligence claim. Following the dismissal, the Plaintiff appealed the matter to the U.S. Court of Appeals for the Second Circuit, where the court affirmed the matter.