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Professional negligence claim dismissed against lawyer despite conflict of interest and breach of the standard of care

By James R.G. Cook

James R.G. Cook
Partner
416.865.6628
jcook@grllp.com

"There is no such thing as negligence in the abstract," notes Regional Senior Justice Calum MacLeod in *Maisonneuve v. Langlois*, 2021 ONSC 3587 (CanLII). Plaintiffs pursuing professional negligence claims would do well to remember those words.

The plaintiffs, a husband and wife, sued their former lawyer, who had been disbarred by the time of the hearing. Their claim had nothing to do with allegations of missing trust funds or dishonesty which led to the lawyer being disbarred. Rather, it was a claim for professional negligence and breach of retainer.

The male plaintiff was a shareholder, director and Chief Financial Officer of a business known as Maplesoft Group. By 2011, he and his wife had loaned approximately $3.7 million to Maplesoft by way of shareholder loans. The defendant lawyer had no involvement with those loans.

In mid-2011, the lawyer was asked to prepare documents in order to secure the outstanding loans from the plaintiffs. The lawyer prepared a General Security Agreement (GSA) over the assets of Maplesoft and registered the security under the Ontario *Personal Property Security Act* (PPSA). The plaintiffs were not directed to obtain legal advice, and the lawyer did not obtain written consent to the joint retainer or otherwise comply with the rules concerning conflicts of interest as required by Rule 3.4 of the Law Society of Ontario's *Rules of Professional Conduct*.

Over the course of 2011 to 2014, further transactions between the plaintiffs and Maplesoft occurred. Some amounts were paid to the plaintiffs on account of the original loans. By the end of 2014, the plaintiffs had been repaid by over $1 million.

In the fall of 2013, Maplesoft asked the plaintiffs to surrender their shares. Two other lawyers were consulted by the plaintiffs at the time, and they advised the plaintiffs that their security under the GSA may be deficient as they should have obtained a promissory note from Maplesoft confirming the debt.

Notwithstanding this potential issue, the plaintiffs continued to negotiate with Maplesoft and by December 2014, they had reached an agreement for surrender of their shares in exchange for

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