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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

SQUIRE PATTON BOGGS (US) LLP
Plaintiff

REPUBLIC SERVICES, INC, ET AL
Defendant

Case No: CV-16-870257

Judge: CASSANDRA COLLIER-WILLIAMS

JOURNAL ENTRY

96 DISP.OTHER - PARTIAL

DEFENDANT/COUNTERCLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED 04/20/2018, IS GRANTED AND DENIED IN PART. OPINION AND ORDER GRANTING PARTIAL SUMMARY JUDGMENT IS SIGNED AND ORDERED RECORDED. ORDER ATTACHED. OSJ. PARTIAL.

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

<u>OSJ</u>		
Judge Signature		Date

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 CLERK OF COURTS
 CUYAHOGA COUNTY

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

SQUIRE PATTON BOGGS (US) LLP)

Plaintiff,)

vs.)

REPUBLIC SERVICES, INC., et al.)

Defendants/Counterclaimants,)

vs.)

SQUIRE PATTON BOGGS (US) LLP)

Counterdefendant,)

and)

ROBIN WEAVER)

Counterdefendant.)

Case No. CV-16-870257

JUDGE CASSANDRA COLLIER-WILLIAMS

OPINION AND ORDER

JUDGE C. COLLIER-WILLIAMS:

This cause came for consideration upon Defendant/Counterclaimants' Republic Services, Inc., Republic Services of Ohio Hauling LLC and Republic Services of Ohio I LLC (hereinafter "Republic") Motion for Partial Summary Judgment filed on April 10, 2018. Said motion requests judgment, as a matter of law, on the element of breach of duty on Republic's counterclaim for legal malpractice against Counterdefendants Squire Patton Boggs (US) LLP and Robin Weaver (hereinafter "Squire"). For reasons set forth more fully below, this Court hereby GRANTS Republic's Motion for Partial Summary Judgment.

Factual and Procedural Background

Pursuant to the attendant briefs and record, in September, 2007, Ronald Luri sued his former employer, Republic, alleging wrongful termination. The case proceeded to a trial in which Luri obtained a \$46,600,000.00 verdict against Republic, which included a large award of punitive damages. Republic then hired Squire as counsel to appeal that judgment. The verdict was overturned on appeal and remanded for a retrial in which Squire served as co-counsel.

Republic contends that during their opening statement of the retrial on June 3, 2016, Robin Weaver of Squire made a single misstatement, constituting malpractice, which caused them to settle for an amount above any verdict or settlement that would have occurred but for that misstatement. Specifically, Mr. Weaver told the jury, "Mr. Bowen did complete this document. He completed this document because he was requested to complete it to tell the full story by his prior counsel. Not by me, not by Mr. Oh, by his prior counsel." This constituted a false statement because it is undisputed that Mr. Bowen completed the document in question on his own initiative.

Republic further contends that Squire "breached this duty by failing to use reasonable care, skill and diligence in representing Republic in the litigation. Weaver's statements about Luri.doc were false, and he knew they were false. Weaver's blatantly false statements in his opening statement regarding a material issue in the trial, together with his utter lack of preparation, failed to conform to the applicable standard of care." Counterclaim ¶ 29.

It is undisputed that an attorney-client relationship existed between Squire and Republic. It is also undisputed that genuine issues of material fact remain on the elements of causation and damages. For purposes of Republic's motion for Partial Summary Judgment, the only question

for the Court is whether Weaver's misstatement was a breach of the standard of care as a matter of law.

Applicable Law and Analysis

Summary Judgment is a procedural device engineered to expeditiously and economically dispose of legal claims with no factual foundation. *Celotex Corp. v. Catrett*, 477 U.S. 317. Underpinning this device is the belief that litigation should promptly be terminated where no issues remain to be tried. *Norris v. Ohio Standard Oil Co.*, 70 Ohio St.2d 1. Rule 56(C) of the Ohio Rules of Civil Procedure governs summary judgment motions and provides in pertinent part:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

In construing Civil Rule 56(C), the Supreme Court of Ohio has stated summary judgment may be granted when “(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St. 2d 317.

“The burden of showing no genuine issue as to any material fact exists falls upon the moving party in requesting summary judgment.” *Harless v. Willis Day Warehousing Co.*, 54 Ohio St. 2d 64. The party seeking summary judgment “bears the initial burden of informing the trial Court of the basis of the motion, and identifying those portions of the record which

demonstrate the absence of a genuine issue of material fact on the essential element(s) of the non-moving party's claims." *Dresher v. Burt*, 75 Ohio St. 3d 280. If the moving party satisfies this initial burden, a non-moving party must set forth specific facts showing there exists a genuine issue of material fact for trial. *Id.* If the non-moving party fails to prove the existence of an element essential to that party's case, there can be no genuine issue as to any material fact and all other facts are rendered immaterial. *Celotex, supra.*

In order to establish a claim of legal malpractice based on negligent representation, a plaintiff must demonstrate "(1) that the attorney owed a duty or obligation to the plaintiff, (2) that there was a breach of that duty or obligation and that the attorney failed to conform to the standard required by law, and (3) that there is a causal connection between the conduct complained of and the resulting damage or loss." *Vahila v. Hall*, 77 Ohio St. 3d 421.

The duty of an attorney to his client is to exercise the knowledge, skill, and ability ordinarily possessed and exercised by members of the legal profession similarly situated, and to be ordinarily and reasonably diligent, careful, and prudent in discharging the duties he has assumed. *Dillon v. Siniff*, 2012-Ohio-910. Ohio Courts require expert evidence in a legal malpractice case to establish the attorney's breach of the duty of care. *Montgomery v. Gooding, Huffman, Kelly & Becker*, 163 F. Supp. 2d 831, citing *Bloom v. Dieckmann*, 11 Ohio App. 3d 202. An exception to this rule exists where the breach is "so obvious that it may be determined by the Court as a matter of law, or is within the ordinary knowledge and experience of laymen." *Id.* Expert testimony is not required, for example, where an attorney failed to prepare the case, seek production of documents, conduct discovery, and notify his client that summary judgment was entered until after expiration of the appeal time. *Id.* As a general rule however, expert testimony is required to establish the attorney's standard of care in a particular case. *Id.*

In this matter both parties hired experts who submitted reports regarding the alleged legal malpractice in this case. Squire engaged Eric Kennedy while Republic engaged John Marshall. Squire's own expert Eric Kennedy, on page 15 of his report dated January 31, 2018, opined that Mr. Weaver's "misstatement, under the circumstances, amounted to a departure from his duty to exercise the care and skill ordinarily exercised by members of the legal profession under similar circumstances."

In Mr. Marshall's report, dated 4/5/18, he opined regarding the misstatement that "[The statement itself about Bowen being requested to complete Luri.doc by his prior counsel is a falsehood. It's not true. Mr. Weaver knew that, had to have known that. And he also knew, of course, that the focus of the plaintiff's case, the critical document, the critical piece of evidence, much of what they made in both their voir dire and their opening was focused on that in the first trial. He would have known that, he did know that...That's both a breach of the duty of the standard of care and unethical."

Squire cites Ohio caselaw to assert that breach of the standard of care is an issue of fact that must be decided by a jury and therefore may not be decided on a motion for summary judgment. Also Squire argues the propositions that an expert opinion is not conclusive, even if uncontradicted by another expert and expert testimony is permitted to supplement the decision-making process of the fact finder not to supplant it.

The cases relied upon by Squire in their arguments contra are not applicable to the instant case. Specifically, *McBride v. Quebe*, 2006-Ohio-5128, dealt with the denial of a Motion for a New Trial after a defense verdict in a motor vehicle accident trial. *State v. Walker*, 2017-Ohio-9255, was a criminal Court of appeals decision regarding a trial Court being permitted to reject

the conclusions of an expert witness that a criminal Defendant was competent to waive his Miranda rights.

Dicus v. Laipply, 1992 Ohio App. LEXIS 6305, found that summary judgment was not to try issues of fact, but rather to determine whether triable issues of fact existed on the facts of that particular legal malpractice matter. Squire also looks to other portions of both expert reports to argue genuine issues of material fact exist as to breach and causation. This Court considers *Dicus* as well as all other authoritative legal malpractice summary judgment caselaw in finding no triable issue of fact exists with regard to this very narrow statement after viewing both expert reports.

Squire also argued that the record evidence of Robin Weaver's deposition testimony where he opined that his unintentional misstatement during the opening statement did not constitute a breach, raises a genuine issue of material fact. However, the Court agrees with Republic's conclusions regarding the authority cited by Squire in both *Roselle v. Nims*, 2003-Ohio-630 and *Dillon v. Siniff*, 2012-Ohio-910. Those matters stand for the proposition that a legal malpractice defendant may submit a Rule 56 affidavit referencing his or her breach of the standard of care in support of his own motion for summary judgment. This Court has considered and analyzed the affidavit and deposition testimony of Counterdefendant Weaver. This Court finds nothing in the record which would preclude the granting of summary judgment on the limited issue of breach of the standard of care.

Pursuant to the relevant caselaw regarding breach of the standard of care in a legal malpractice claim, and taking all facts in the light most favorable to the non-moving party, this Court finds that no genuine issues of material fact exist and that Republic is entitled to judgment as a matter of law regarding the issue of whether Squire breached its duty to Republic with the

sole misstatement in question during the opening statement of the underlying trial. This Court further finds that Squire cannot rebut the evidence presented by Republic's expert, either with its own expert who agrees that the misstatement did fall below the standard of care, or with the counterdefendant's self-serving affidavit that states he did not commit legal malpractice. Consequently, Republic's Motion for Summary Judgment on this issue is hereby granted.

Conclusion

Plaintiff's Motion for Partial Summary Judgment is hereby GRANTED solely on the element of breach of duty on Republic's counterclaim for legal malpractice. This ruling shall be narrowly tailored and construed to reflect the breach only as to Mr. Weaver's misstatement in his opening statement that Mr. Bowen was directed to complete the document in question at the direction of his prior counsel. No inference shall be taken regarding any alleged causal connection or damages due to the sole breach of duty via the misstatement. Republic must still prove that but for this singular incident of breach of a duty that they suffered damages.

Therefore, partial judgment as a matter of law is hereby entered in favor of Defendant/Counterclaimants' Republic Services, Inc., Republic Services of Ohio Hauling LLC and Republic Services of Ohio I LLC and against Plaintiff/Counterdefendant Squire Patton Boggs (US) LLP and Counterdefendant Robin Weaver on the element of breach of the duty or obligation and that the attorney failed to conform to the standard required by law on Republic's counterclaim for legal malpractice. Partial.

IT IS SO ORDERED.


JUDGE CASSANDRA COLLIER-WILLIAMS