

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 3rd *day of* October, 2014.

Jorge Adalberto Escobar Valladares, Appellant,

against Record No. 132039
Circuit Court No. CL2013-0005563

Lilly Law Group, P.C., et al., Appellees.

Upon an appeal from a
judgment rendered by the Circuit
Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is error in the judgment of the Circuit Court of Fairfax County ("trial court").

Jorge Adalberto Escobar Valladares ("Valladares") filed a complaint in the trial court against Attorney Neil Spencer Welles ("Welles") and his law firm, the Lilly Law Group, P.C. (collectively "Defendants"), alleging legal malpractice. The Defendants filed a demurrer, which the trial court sustained with leave to amend.

Valladares filed an amended complaint. The amended complaint for legal malpractice alleged that Valladares retained Welles to represent him, that Welles recommended he file for Chapter 7 bankruptcy relief, that he received incompetent and incorrect legal advice from Welles regarding the bankruptcy filing, and that as a result of Welles' negligence, Valladares lost certain assets, incurred damage to his credit, and sustained other financial damages.

The Defendants filed a second demurrer. They asserted that Valladares failed to allege facts sufficient to support the breach of duty element or the proximate cause element of a legal malpractice claim, and that his allegations that he would have been better off but for Defendants' conduct were impermissibly speculative.

The trial court held a hearing on the demurrer, during which the trial judge took judicial notice of the bankruptcy proceedings and the record from Valladares' bankruptcy case. The trial court sustained the demurrer and dismissed the matter with prejudice. On appeal to this Court, Valladares challenges the trial court's decision to sustain the demurrer.

In Assurance Data, Inc. v. Malyvac, 286 Va. 137, 143, 747 S.E.2d 804, 808 (2013), we explained that "[t]he purpose of a demurrer is to determine whether a complaint states a cause of action upon which the requested relief may be granted." Id. (citing Dunn, McCormack & MacPherson v. Connolly, 281 Va. 553, 557, 708 S.E.2d 867, 869 (2011)). "A demurrer tests the legal sufficiency of facts alleged in pleadings, not the strength of proof." Id. Therefore, unlike a motion for summary judgment, a demurrer "does not allow the court to evaluate and decide the merits of a claim." Fun v. Virginia Military Inst., 245 Va. 249, 252, 427 S.E.2d 181, 183 (1993), see also Concerned Taxpayers v. County of Brunswick, 249 Va. 320, 327-28, 455 S.E.2d 712, 716 (1995).

Like the trial court, "we consider as true all the material facts alleged in the . . . complaint, all facts impliedly alleged, and all reasonable inferences that may be drawn from such facts."

Concerned Taxpayers, 249 Va. at 323, 455 S.E.2d at 713. When a complaint "contains sufficient allegations of material facts to inform a defendant of the nature and character of the claim, it is unnecessary for the pleader to descend into statements giving details of proof in order to withstand demurrer." CaterCorp, Inc. v. Catering Concepts, Inc., 246 Va. 22, 24, 431 S.E.2d 277, 279 (1993). "[E]ven though a . . . complaint may be imperfect, when it is drafted so that [the] defendant cannot mistake the true nature of the claim, the trial court should overrule the demurrer." Id.

In Cox v. Geary, 271 Va. 141, 152, 624 S.E.2d 16, 22 (2006), we articulated that "[a] cause of action for legal malpractice requires the existence of an attorney-client relationship which [gives] rise to a duty, breach of that duty by the defendant attorney, and that the damages claimed by the plaintiff client must have been proximately caused by the defendant attorney's breach." Id. (internal citations omitted). An action for the negligence of an attorney in the performance of professional services, while sounding in tort, is an action for breach of contract. Id.

There is no dispute that the amended complaint clearly alleged the existence of an attorney-client relationship, which gave rise to a duty on the part of Defendants to provide Valladares with competent legal advice and representation. This is sufficient to satisfy the pleading requirement for the first element of a legal malpractice action.

In his amended complaint, Valladares alleged that the legal advice he received regarding filing for bankruptcy was "incompetent and wrong." He asserted that he did not want to file for bankruptcy but was told by Defendants that it was his only option,

and that he would still keep most of his liquidity and surrender without repercussions the one property he wanted to sell. In the amended complaint, Valladares alleged that Defendants breached their duty to him by not:

fully advising [Valladares] as to the ramification of filing a bankruptcy with non-exempt assets; specifically, what would happen to any non-exempt assets if he filed a chapter 7 bankruptcy. To the contrary, Defendants breached the agreement by telling [Valladares] that he would in fact keep all of his liquid cash in the approximate amount of \$227,000, except for having to pay approximately \$30,000 to pay off in full his credit card.

Valladares alleged Defendants misunderstood a basic premise of Chapter 7 bankruptcy and were not aware that by advising Valladares to surrender one of his commercial properties, they would be increasing the general unsecured claims in Valladares' estate from approximately \$30,000 to well over \$500,000. Valladares asserted that he was never told that by filing Chapter 7 bankruptcy he would lose his \$227,919 in cash from his "cash surrender" life policy and checking accounts because Defendants did not comprehend this themselves.

The trial court found that these allegations were inconsistent with and contradicted by the bankruptcy notice Valladares signed, "Notice 1," which stated that under chapter 7, a trustee could take all of your non-exempt assets. However, upon examination of this document, it does not identify which assets are exempt, and one of Valladares' allegations is that he was told he would not lose the cash value of his insurance policy. Therefore, we do not find that "Notice 1" is inconsistent with the allegations in the amended

complaint. At the demurrer stage, these allegations are sufficient to satisfy the breach of duty element of legal malpractice, namely, that Defendants had a duty to correctly advise Valladares regarding filing for bankruptcy and that they breached that duty by giving him incomplete and incorrect advice.

Valladares further alleged that he sustained damages as a result of this breach. In paragraph 61 of his amended complaint, he asserted that:

But for Defendants' breach of the agreement and the promises they made, [Valladares] would to this day, given his substantial cash liquid position he had at the time of the bankruptcy, remain in possession of all of the assets he desired to keep as well as his liquidity.

In paragraph 63, Valladares further alleged that as a proximate result of Defendants' negligence, he had to turn over his \$230,000 in cash to the bankruptcy trustee and lost two of his properties to foreclosure. He also contended that he suffered additional damages, including but not limited to "accruing interest on the life insurance value loan; the loss of accrued cash surrender value; the loss of self-paid premiums by the policy; damage to his credit, loss of taxably beneficial practices and attorney's fees."

During the hearing on the demurrer, the trial court pointed out what it thought were the weaknesses in Valladares' case. However, unlike a motion for summary judgment, a demurrer "does not allow the court to evaluate and decide the merits of a claim." Fun v. Virginia Military Inst., 245 Va. at 252, 427 S.E.2d at 183. Instead, at this stage, we must accept as true all the material facts alleged in the complaint, all facts impliedly alleged, and

all reasonable inferences therefrom. Assurance Data, 286 Va. at 143, 747 S.E.2d at 807. Valladares alleged facts sufficient to support each element of a legal malpractice claim.

For these reasons, we hold that the trial court erred by sustaining the demurrer. Accordingly, we reverse the circuit court's judgment and remand this matter for further proceedings in accordance with this order.

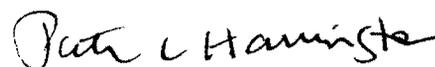
This order shall be certified to the said circuit court.

JUSTICE McCLANAHAN, dissenting.

For the reasons articulated at length by the circuit court during oral argument on the demurrer as to why the amended complaint was legally deficient, I dissent.

A Copy,

Teste:



Clerk