

The Bank of New York et al. v. Ronald Sheff et al., Case No.: CAL 02-21119, 2003 MDBT 9 (Circuit Court for Prince George's County)(September 10, 2003)(per Steven I. Platt)

Plaintiffs Bank of New York, as Trustee, Eaton Vance Municipal Bond Fund, National Municipals Portfolio, High Yield Municipals Portfolio, and Maryland Municipals Portfolio, filed suit against Defendants Ronald Sheff, Kimi Murakimi, and Piper Rudnick, LLP, alleging attorney malpractice. In 1993, Prince George's County issued \$50 million in tax-exempt revenue bonds. The County acted merely as a conduit in the transaction and issued the bonds to raise funds for a private borrower. Piper was bond counsel in the transactions. (Sheff and Murakimi were attorneys who worked at Piper.) Piper drafted most of the documents relevant to the dispute and filed, or caused to be filed, financing statements in Maryland. It did not do so in Washington, D.C. The Plaintiffs alleged that Piper and the two attorneys (the Defendants) failed to timely perfect their security interest in the District of Columbia, which was the basis for the malpractice claim.

Defendants moved for summary judgment, arguing that all of the relevant transaction documents specified that the Borrower, and not the Defendants, was responsible for filing all necessary financing statements. They also contended that the statute of limitations barred the Plaintiffs from recovery.

Held: Summary judgment granted. Defendants owed no duty to Plaintiffs (the Borrowers) with respect to filing of financing statements in the District of Columbia. Moreover, the statute of limitations barred the claim.

Synopsis: Defendants' client was Prince George's County, not the plaintiffs in the litigation. The Plaintiffs' complaint, pleadings, and arguments did not pursue the claim that Plaintiffs were third-party beneficiaries of the agreement between Piper and the County. Maryland subscribes to the rule in attorney malpractice actions that either privity must exist between the parties or the plaintiff must be a third party beneficiary of the attorney client agreement. That, in turn, requires that the non-client allege and prove that the intent of the client to benefit the non-client was a direct purpose of the transaction or relationship. Moreover, in a case where the risk of harm is solely economic, as was the case here, there is a requirement of strict privity or its equivalent. There was no evidence before the Court either of strict privity or its equivalent.

For the reasons stated by the Defendants in its motion and arguments, the Court also granted the motion on the grounds that the limitations period had run: there was no dispute that the Plaintiffs were on notice of their potential claim more than three years before they brought it.

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