SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2912-18T1

CHARLES BRESSMAN,

Plaintiff-Appellant,

v.

ANSELL GRIMM & AARON and DAVID ZOLOTOROFE, ESQ.,

Defendants-Respondents.

Submitted March 9, 2020 – Decided April 29, 2020

Before Judges Sabatino and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-0962-18.

Peter A. Ouda, attorney for appellant.

Ansell Grimm & Aaron PC, attorneys for respondents (Joshua S. Bauchner, of counsel and on the brief; Rahool Patel, on the brief).

PER CURIAM

In this legal malpractice action, plaintiff Charles Bressman appeals from the Law Division's January 25, 2019 order that granted defendants David Zolotorofe, Esq.'s (Zolotorofe), and Ansell Grimm & Aaron, PC's (Ansell), motion for summary judgment and which dismissed the complaint with prejudice. Plaintiff sued Zolotorofe, his former counsel, and Ansell claiming that defendants failed to memorialize clearly and accurately all material terms of a real estate contract. Specifically, plaintiff contended that defendants failed to specify clearly the boundary line of the subject property prompting needless and unnecessary litigation. Plaintiff further contended that he lost time, money, and business opportunities to develop the property because of the boundary line dispute.

After considering the parties' arguments against the relevant legal principles, we affirm that part of the court's January 25, 2019 order to the extent plaintiff's damages are based on plaintiff's inability to develop the property as any damages sustained by plaintiff could not have been a proximate cause of defendants' alleged negligence as development under the contract was conditioned upon land use approval which indisputably was denied by the local zoning authority. We reverse, however, to the extent plaintiff incurred costs, including unnecessary legal fees, associated with

defendants' failure to delineate accurately the boundary lines of the property in the contract of sale. On that discrete element of plaintiff's claim, we conclude genuine and material factual disputes existed in the motion record sufficient to deny defendants' motion.

I.

The underlying litigation stems from a long-standing dispute concerning a parcel of land formerly owned by the State. The matter returns to us following remands to the Chancery Division that we directed in 2013, Bressman v. J&J Specialized, LLC, No. A-5550-11 (App. Div. December 6, 2013), and again in 2015, Bressman v. J&J Specialized, LLC, No. A-2119-14 (App. Div. December 4, 2015). We refer the reader to those opinions for further detail regarding the parties' dispute but provide a brief summary of the pertinent procedural history and relevant factual background to provide context for our opinion.

Plaintiff is the managing member of a company that owns commercial retail property near the intersection of Route 46 and Riverview Drive in Totowa. J&J Specialized, LLC (J&J), owns a nearby commercial property. Sandwiched between plaintiff's and J&J's property lies a roughly 54,500 square-foot parcel of undeveloped land formerly owned by the State

Department of Transportation ("DOT"). Both plaintiff and J&J expressed an interest in acquiring portions of this land to expand their respective businesses.

In December 2009, the DOT placed the parcel for sale at a public auction at a minimum bid price of $110,000. Prior to the auction, plaintiff and J&J orally agreed that J&J's principal would solely bid on the parcel at the auction on the parties' joint behalf. They further agreed that upon acquiring the parcel, J&J would retain a portion and sell plaintiff the larger, remaining section. According to plaintiff, the purpose of the oral agreement was to avoid a "bidding war" during the auction. At the conclusion of the auction, J&J successfully obtained the parcel for the minimum bid price of $110,000. Consistent with the parties' agreement, plaintiff attended the auction but did not bid.

As anticipated by their oral agreement, the parties next attempted to negotiate the sale to plaintiff of a portion of the parcel. During the ensuing negotiations, however, the parties could not agree on the appropriate boundary line that would subdivide the land. Despite being unable to agree on precisely how to draw the line dividing the parcel, the parties executed a written land sale contract ("Agreement of Sale") on March 30, 2010.

The Agreement of Sale executed by the parties, which refers to J&J as "Seller" and plaintiff as "Buyer," included a clause stating that the parties intended to have plaintiff obtain approvals from the Borough of Totowa to subdivide the property into two parcels. Specifically, the agreement stated:

> It is the intention of the parties that upon Seller acquiring title to the Parcel, Buyer will undertake and make an application to the appropriate zoning board in the Borough of Totowa to obtain the Approvals . . . for (i) the subdivision of the Parcel into two (2) separate lots containing approximately 18,000 square feet (the "Seller Lot") and approximately 38,904 square feet (the "Buyer Lot"), as depicted on Exhibit "A" annexed hereto, and (ii) for site plan approval for the Buyer Lot, and (iii) for use approvals for the Seller Lot . . . .

The parties further agreed in Section 1.4.2 of the Agreement of Sale:

> It is the intention of the parties that the Buyer Lot be sufficient in size to obtain Site Plan Approval for a retail building containing not less than 5,000 square feet of ground floor retail space, together with sufficient parking spaces, ingress, egress, and other appurtenances required . . . to grant the Subdivision Approval and Site Plan Approval. The exact dimension, size, scope design and layout of the Buyer Lot shall be reasonably determined by the parties and the project engineer in order to obtain the Subdivision Approval and Site Plan Approval to accommodate Buyer's proposed 5,000 square foot retail building. It is understood and agreed that Exhibit "A" attached hereto is a depiction of the approximate location of the subdivision line of the Parcel and the general layout of the Buyer Lot. Exhibit "A" will be replaced with the revised plan for the Approvals once finalized.

The issue that triggered the ensuing litigation related in large part to the fact that Exhibit A to the Agreement of Sale, which was to depict the approximate boundary line of the property, was never attached to the executed written agreement. The parties thereafter designated Bruce Rigg to be the project engineer in an April 12, 2010 Addendum to Agreement of Sale and charged him with assisting in determining the layout of the anticipated subdivisions in order to "obtain the Subdivision Approval, Site Plan Approval[,] and the Use Approval." The parties, however, never jointly met with Rigg and their negotiations through counsel over the final placement of the boundary line failed. More specifically, we noted in our 2013 opinion that J&J contended plaintiff unilaterally set the boundary line with the engineer, and plaintiff argued that J&J failed to meet with both him and Riggs to establish the boundary line.

In January 2011, plaintiff filed a complaint in the Chancery Division seeking specific performance of the parties' written agreement. On May 31, 2012, the trial court issued a letter opinion and a related final judgment that enforced the Agreement of Sale between plaintiff and J&J "as written" and compelled specific performance of its terms. To that end, the court found that

the Agreement of Sale contained all the necessary terms of an enforceable contract.

Following that decision, the parties filed a joint application with the Borough of Totowa Planning Board ("Planning Board") seeking subdivision approval of the property. The Planning Board denied the parties' request noting multiple factors including: 1) the parties were taking a currently conforming lot and making it nonconforming; 2) the proposed lot would have prohibited highway access; and 3) the variances required would substantially impair the intent and purpose of the applicable zone plan and zoning ordinance.

J&J nevertheless appealed the trial court's decision resulting in our 2013 opinion remanding the matter to the trial court. We instructed the trial court to make specific findings as to several critical issues including: 1) whether either party breached the contract and, if so, the nature of the breach; 2) which of the parties' competing maps showing an approximate subdivision line was intended to be Exhibit A to the written agreement; 3) if the true or intended Exhibit A could be ascertained, whether the agreement was consequently too indefinite to be enforced; 4) whether plaintiff materially breached the written agreement with respect to its release from escrow; 5) whether the alleged oral

agreement to avoid a "bidding war" at an auction of State land was illegal and against public policy, and if so, what remedy flowed from such impropriety; and 6) whether plaintiff is a non-defaulting party entitled to counsel fees.

On remand, the trial court issued a letter opinion and accompanying order granting plaintiff specific performance of the written agreement. The court determined that there was a mutual breach stemming from a mutual mistake and reformed the contract to allow three commissioners appointed by the court under N.J.S.A. 2A:28-1 to determine the placement of the boundary line. Those boundary commissioners concluded in a written report that plaintiff's proposed map, as prepared by the parties' designated project engineer, should be adopted as the boundary line. The court directed the conveyance to be in accordance with the boundary line ratified by the appointed boundary commissioners, subject to municipal approval for subdividing the parcel in that fashion.

J&J appealed for a second time contending that that the trial court fundamentally erred in ordering the specific performance of a property sales agreement that was missing a critically agreed-upon term: a mutually designated boundary line for subdividing the property, i.e., the never-specified Exhibit A. J&J further argued that the legal reasoning of the trial court

overlooked critical deficiencies in the contract documents and the record, and that the court's finding of "mutual breach" could not support the remedy of specific performance. We agreed with J&J and remanded the matter to the trial court for it to consider three options for final disposition: 1) resolution of plaintiff's unjust enrichment claim; 2) a sealed-bid auction; and 3) "some other alternative remedy to address the rather idiosyncratic situation presented."

After the second remand, the trial court directed plaintiff and J&J to submit sealed bids for the parcel. Plaintiff submitted a bid for $312,000 and J&J submitted a bid for $613,000. After the bid was awarded to J&J, it appealed for a third time. Plaintiff filed a cross-appeal arguing that the trial court ignored our express direction in not limiting the options for relief available to plaintiff, failing to further consider plaintiff's unjust enrichment claim, and for impermissibly extending the bid deadline. During the pendency of the third appeal, however, plaintiff and J&J agreed to a settlement that provided plaintiff the sum of $444,908.21, with J&J retaining the parcel.

Plaintiff then instituted this action in the Law Division against defendants for legal malpractice. According to the complaint, defendants negotiated the contract with J&J that led to the underlying litigation which "should have delineated all material terms of the parcel that was to be

conveyed to [plaintiff]." Plaintiff further alleged that defendants' failure to specify the boundary line of the property "prompted needless, unnecessary, costly and contentious litigation" and "generated two appeals . . . which ultimately concluded that the boundary dispute was a material defect in the contract." As a result of defendants' conduct, plaintiff contended that he "lost time, money, and business opportunities to develop the properties in a financially advantageous way, because of a boundary dispute which could have, and should have been avoided." Plaintiff concluded that Zolotorofe "should know and understand what contract terms are material to the contract" and "failed to disclose and explain . . . the risk of proceeding in this transaction where material terms were uncertain or unclear," which was the proximate cause of plaintiff's damages.

Defendants filed a motion to dismiss in lieu of answer, pursuant to Rule 4:6-2(e). That motion was opposed by plaintiff and was argued on December 7, 2018. Because the court considered matters outside the pleadings, the court converted the motion to a summary judgment application, permitted supplementation of the record, and held re-argument on January 25, 2019. In its oral decision, the court granted defendants' motion for summary judgment.

First, the court noted that although "there was some issue whether or not there was Exhibit A physically attached to [the] agreement," "there was not really a dispute once everybody looked at it, where the boundary line was supposed to be placed," and "the contract was specific enough to identify what the parcel was that was subject to the transaction."

Second, the court explained that the condition precedent requiring subdivision approval never materialized. The court emphasized that whether the transaction could actually go forward "does affect the ultimate outcome in a . . . claim for legal malpractice."

Third, the court disagreed with defendant's argument that pursuant to Puder v. Buechel, 183 N.J. 428 (2005), plaintiff's legal malpractice claim failed as a matter of law because he settled the underlying matter. The court reasoned that Puder was distinguishable because plaintiff here did not "specifically state[] on the record that the settlement was fair and reasonable." The court also stated that unlike the circumstances in Spaulding v. Hussain, 229 N.J. Super 430 (1988), this case did not involve a "litigation catastrophe that . . . required that the case be settled."

II.

We review an order granting summary judgment applying the same standard as the motion judge. State v. Perini Corp., 221 N.J. 412, 425 (2015); RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018). That is, we "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged dispute in favor of the non-moving party," which in this case is plaintiff. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). As part of the analysis, we must determine if the record demonstrates "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment . . . as a matter of law," Burnett v. Gloucester Cty. Bd. Of Chosen Freeholders, 409 N.J. Super. 219, 228 (App. Div. 2009). It is "[o]nly 'when the evidence "is so one-sided that one party must prevail as a matter of law"' should a court enter summary judgment." Petro-Lubricant Testing Labs., Inc. v. Adelman, 233 N.J. 236, 256 (2018) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)).

III.

Plaintiff raises three primary points on appeal. First, he contends that based on our 2013 and 2015 decisions, "there is an issue of fact as to

[defendants'] contribution to the delay and fees that were incurred" as "the inferences of those two opinions are that there was a discrepancy in material terms of the contract."

Second, plaintiff argues that his failure to secure Planning Board approval "may offset the damage claim being asserted," but he "need not prove that he would have been successful before the Planning Board in order to recover damages." In this regard, defendant notes that he "should be able to demonstrate that he expended needless attorney's fees and was unable to obtain specific performance and accepted an inferior settlement."

Third, he reemphasizes that his settlement of the underlying litigation did not "vitiate [his] legal malpractice claims" and defendants' reliance on Puder is "not applicable as it has been deemed an exception to the overarching rules that settlements do not bar legal malpractice claims."

We agree with plaintiff that the summary judgment record created genuine and material factual questions as to his damages which precluded dismissal. We further agree that plaintiff's failure to secure Planning Board approval only precluded a legal malpractice action to the extent that his alleged damages resulted from his inability to develop the proposed subdivided property, not those stemming from litigation of the boundary line dispute.

To establish a prima facie case of legal malpractice, a plaintiff must prove "(1) the existence of an attorney-client relationship creating a duty of care by the defendant attorney, (2) the breach of that duty by the defendant, and (3) proximate causation of the damages claimed by the plaintiff." Granata v. Broderick, 446 N.J. Super. 449, 469 (App. Div. 2016) (quoting McGrogan v. Till, 167 N.J. 414, 425 (2001)). To prove proximate causation, a plaintiff must establish that a defendant-attorney's breach of duty was a substantial factor in bringing about plaintiff's damages. Conklin v. Hannoch Weisman, 145 N.J. 395, 422 (1996).

An attorney who breaches his or her duty of care to a client is liable only for the losses proximately caused by such breach. 2175 Lemoine Ave. Corp. v. Finco, Inc., 272 N.J. Super. at 487-88; Lamb v. Barbour, 188 N.J. Super. 6, 12 (App. Div. 1982). "To establish the requisite causal connection between a defendant's negligence and plaintiff's harm, plaintiff must present evidence to support a finding that defendant's negligent conduct was a 'substantial factor' in bringing about plaintiff's injury, even though there may be other concurrent causes of the harm." Froom v. Perel, 377 N.J. Super. 298, 313 (App. Div. 2005) (quoting Conklin, 145 N.J. at 416-20). The burden of proving the causal relationship rests with the client and cannot be satisfied by "mere conjecture,

surmise or suspicion." Sommers v. McKinney, 287 N.J. Super. 1, 10 (App. Div. 1996).

As courts have previously explained:

> [I]n cases involving transactional legal malpractice, there must be evidence to establish that the negligence was a substantial factor in bringing about the loss of a gain or benefit from the transaction. Where . . . a plaintiff alleges that he suffered a loss in a particular transaction because an attorney failed to take steps to protect his interest, the plaintiff must present evidence that, even in the absence of negligence by the attorney, the other parties to the transaction would have recognized plaintiff's interest and plaintiff would have derived a benefit from it.
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> [Froom, 377 N.J. Super. at 315 (citing 2175 Lemoine Ave., 272 N.J. Super. 427; Lamb, 188 N.J. Super. 6).]

Here, the trial judge concluded that based on the lack of a genuine dispute as to where the boundary line was supposed to be placed, it was appropriate to grant defendants' motion for summary judgment. The record, however, is unclear or disputed concerning Exhibit A, which allegedly depicted the parties' approximate agreed-upon location of the subdivision line and the general layout of the disputed parcel, but was apparently not attached

to the Agreement of Sale.[1] As was noted in our previous opinion, "the specification of 'Exhibit A' was a material term of the property sale agreement." Despite the court's conclusion that "there was not really a dispute once everybody looked at it where the boundary line was supposed to be placed" and "the contract was specific enough to identify what the parcel was that was subject to the transaction," in fact, according to plaintiff, he incurred needless and unnecessary litigation and associated costs as a direct result of that lack of clarity. Although the amount of plaintiff's alleged damages is not clear, at minimum, genuine and material factual questions exist in the current record with respect to that component of plaintiff's claim.

We agree with the court, however, that summary judgment was appropriate to the extent plaintiff claimed defendants' alleged malpractice proximately caused him to sustain damages related to his inability to develop the property, as development under the contract was conditioned upon land use approval, which plaintiff indisputably did not secure. In this regard, we note

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[1] Defendants asserted at oral argument that plaintiff "does not deny and testified at deposition, and at trial, that he received the Exhibit A" and that plaintiff "says it was there," "[i]t was attached," and that "[h]e got it." We have not located clear support for these assertions in the appellate record nor have defendants briefed the effect of those purported admissions on the issues under review.

that there were multiple reasons for the Planning Board's denial unrelated to the lot's physical dimensions including a lack of suitable highway access to the proposed lot, and that the variances required for subdivision would substantially impair the intent and purpose of the zone plan and zoning ordinance. Further, we note that plaintiff failed to oppose the summary judgment motion with supportive contested facts to dispute the fact that securing approval was a condition precedent to the performance of the Agreement of Sale.

Damages resulting from the extensive litigation of the boundary dispute, however, were not similarly dependent on the Planning Board decision. As noted, there are genuine and material factual questions with respect to whether the appeals and trial court proceedings related, in whole or in part, to the lack of clarity associated with the boundary line dispute and what person(s) were responsible for that lack of clarity. Consequently, when viewed in the light most favorable to plaintiff, a rational factfinder could reasonably conclude that plaintiff suffered damages as a result of defendants failing to explicitly memorialize the boundary line, which was a material term of the contract.

IV.

Finally, we address defendants' argument that under estoppel principles, "the settlement in the underlying litigation was eminently fair and reasonable[,] . . . [plaintiff] accepted it knowingly and voluntarily," and "[t]herefore the trial court correctly held that [plaintiff's] legal malpractice claim was barred by Puder and its progeny." We disagree on the current record that estoppel principles preclude plaintiff's malpractice case.

The estoppel principles relied upon by defendants have been principally addressed in three opinions of our Supreme Court. First, in Ziegelheim v. Apollo, 128 N.J. 250 (1992), a divorced wife sued her former attorney for malpractice for allegedly providing her inadequate legal advice that led her to accept a settlement for less than she allegedly should have received. Id. at 257. After the defendant attorney negotiated a divorce settlement, the plaintiff stated on the record that she "understood the agreement, that [she] thought it was fair, and that [she] entered into it voluntarily." Ibid. In the malpractice suit, the plaintiff provided an expert report to the court, which indicated she could have received "upwards of fifty percent of the marital estate" and that the defendant attorney should not have counseled her to take a lower amount. Id. at 262.

The Ziegelheim Court held that plaintiff's acquiescence to the settlement on the record did not bar her legal malpractice suit under the doctrine of issue preclusion. Id. at 265. It explained that the "fact that a party received a settlement that was 'fair and equitable' does not mean necessarily that the party's attorney was competent or that the party would not have received a more favorable settlement had the party's incompetent attorney been competent." Ibid. The Court further held that the defendant's alleged failure to discover some of the plaintiff's former husband's hidden marital assets may have "led to the improvident acceptance of the settlement . . . ." Id. at 266.

Significantly, the Ziegelheim Court cautioned that it was not "open[ing] the door to malpractice suits by any and every dissatisfied party to a settlement." Id. at 267. To prevent unmeritorious claims of malpractice, the Court encouraged litigants to place settlements on the record and required that "plaintiffs must allege particular facts in support of their claims of attorney incompetence and may not litigate complaints containing mere generalized assertions of malpractice." Ibid. In addition, the Court added that "the law demands that attorneys handle their cases with knowledge, skill, and diligence, but it does not demand that they be perfect or infallible, and it does not demand that they always secure optimum outcomes for their clients." Ibid.

With that balancing of interests in mind, the Court reversed the summary judgment dismissal.

Our Supreme Court again examined these principles in Puder. In that case, the Court held that a matrimonial client who had entered into a divorce settlement was judicially estopped from suing her former attorney for legal malpractice because she attested, when her counsel and the court placed the divorce settlement on the record, that the settlement was "'acceptable' and 'fair.'" Id. at 437.

Most recently, in Guido v. Duane Morris LLP, 202 N.J. 79 (2010), the Court clarified the appropriate analysis for such cases in a fact pattern outside of the context of a divorce settlement. There, the plaintiff, a corporate officer, sued his former law firm for malpractice, alleging the firm did not adequately disclose to him the stock disadvantages that would accompany a settlement. Id. at 83. In analyzing the facts, the Supreme Court in Guido reemphasized the "bedrock principles" that apply in a legal malpractice case. Id. at 92. First, the Court reaffirmed that Ziegelheim still controls how a settlement impacts a later legal malpractice claim, reiterating that "the fact that a party received a settlement that was 'fair and equitable' does not mean necessarily that the party's attorney was competent or that the party would not have received a

more favorable settlement had the party's incompetent attorney been competent." Id. at 93 (citing Ziegelheim, 128 N.J. at 265).

In this respect, the Court limited the scope of Puder:

> When viewed in its proper context – that Puder represents not a new rule, but an equity-based exception to Ziegelheim's general rule – the rule of decision applicable here is clear: unless the malpractice plaintiff is to be equitably estopped from prosecuting his or her malpractice claim, the existence of a prior settlement is not a bar to the prosecution of a legal malpractice claim arising from such settlement.
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> [Id. at 94.]

The Court distinguished the case from Puder because the plaintiff in Guido did not testify that he was "satisfied" with the settlement or opine whether it was "fair and adequate." Id. at 95. Rather, the colloquy regarded whether the plaintiff "understood" the agreement or was subject to any impediments that would prevent him from understanding it. Ibid. Given the presence of a genuine dispute of material fact, the Court remanded the Guido matter to the trial court to resolve the contested factual issue. Ibid.

Applying these principles, the circumstances here are distinguishable from Puder. Here, as acknowledged by the court, plaintiff never testified that he was "satisfied" with the settlement or opine whether it was "fair and adequate." Rather, before the trial court, plaintiff certified that "the decision

to settle was suggested and urged by my attorney . . . when the [third] appeal was being argued." The summary judgment and appellate record is simply devoid of facts that sufficiently explain the circumstances surrounding the settlement, or its terms and we cannot conclude, on such a barren record, whether plaintiff should be equitably estopped from prosecuting his malpractice action.

Indeed, despite defendants' assertions that plaintiff "settled the underlying litigation voluntarily, willingly[,] and with full knowledge of its consequences," we know very little about that settlement other than it was entered prior to the parties proceeding with their appellate arguments. More specifically, we are unaware of its terms and it does not appear the parties memorialized that settlement in a written agreement or placed the terms on the record.

Further, the fact that plaintiff received a settlement that was worth more than his bid for the property is not dispositive, as "the fact that a party received a settlement that was 'fair and equitable' does not mean necessarily that [defendants were] competent or that [plaintiff] would not have received a more favorable settlement had [defendants] been competent." See Guido, 202 N.J. at 93 (citing Ziegelheim. 128 N.J. at 265). Thus, to the extent that the court

relied on plaintiff's settlement as precluding his legal malpractice action, such reliance was likely in error as the record does not support summary judgment on that basis.[2]

V.

In sum, we conclude genuine and material factual disputes existed in the motion record sufficient to deny defendants' motion with respect to those damages, including legal fees, associated with defendants' alleged failure to delineate clearly and accurately the boundary lines of the property in the

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[2] Finally, we find the court's reliance on Spaulding unpersuasive on this record. In that case, the plaintiff was forced to settle his claim for a "grossly inadequate sum" because his physician failed to appear to testify on his behalf. 229 N.J. Super. at 432-35. The physician's failure to appear "after he had promised to come, after the proofs had been taken out of order on his account, after trial had been continued for half a day on his account, and after his whereabouts could not be ascertained, threatened a litigation catastrophe to plaintiff and his attorney." Id. at 444. The Spaulding court accordingly rejected the treating physician's comparative negligent arguments because plaintiff and his attorney, having been left with the decision to continue with the trial without a key witness to establish damages or accept a lesser settlement were "obviously entitled to deal with the impending catastrophe in any reasonable manner," ibid., including resolving the matter and later suing the doctor for the damages proximately caused by his negligence. Recognizing first that the Spaulding decision arose in a completely different factual and legal context than that before the court, we nevertheless know precious little about the circumstances surrounding the settlement negotiations in this case from the summary judgment record or the court's Rule 1:7-4 findings and, thus, the "litigation catastrophe" language from the Spaulding decision relied upon by the trial court and defendants on appeal does not provide support on the current record for the court's summary judgment decision.

contract of sale. Nothing in this opinion should be construed as expressing a view on the merits of plaintiff's malpractice claim and specifically whether plaintiff can establish on remand all of the elements of a malpractice action against defendants. We have limited our discussion to those matters properly briefed by the parties and simply conclude that summary judgment was inappropriate on the record before us as to the discrete portions of plaintiff's claims we have identified.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.