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Legal-mal plaintiffs can't thwart defense's contribution action



The case stemmed from a couple's purchase of a parcel of oceanfront property in Truro.

Legal-mal plaintiffs can't thwart defense's contribution action

Sought to protect third parties via 'bad faith' release of claims


Eric T. Berkman

(https://masslawyersweekly.com/author/ericberkman/) // March 3, 2024 //

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A Superior Court judge has ruled that clients who sued their former attorneys for alleged bad advice on a real estate transaction could not thwart the firm's subsequent contribution claims against their daughter-real estate agent and successor counsel by giving them releases from liability.

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Roland Letendre and his wife, Lucia, through their limited liability company Timsneck LLC, purchased "Lot 4C," a 3.68-acre parcel of oceanfront property in Truro, with plans to double the size of the 3,500-square-foot home on the property. They also secured a right of first refusal on "Lot 4B," an abutting parcel the sellers also owned.

After the Letendres were denied a building permit, they sued Orleans law firm Laraja & Kanaga and its two members, plaintiffs Christopher Kanaga and Richard Laraja, alleging the attorneys gave incorrect "oral zoning advice" that they could expand the house. They also claimed L&K improperly drafted the right of first refusal on Lot 4B, which resulted in them having to file a declaratory action to enforce it.

L&K filed a contribution action against defendant Emily Letendre, who — serving as her parents' buyers' agent in the transaction — did not include a contingency in the purchase and sale agreement regarding the ability to expand the house. L&K also filed a contribution claim against defendant Benjamin Zehnder of Orleans firm La Tanzi, Spaulding & Landreth, who, after succeeding L&K as the Letendres' attorney in the matter, unsuccessfully pursued a special permit to expand the house, which apparently left the project vulnerable to neighbors' opposition, rather than simply appealing the denial of the building permit.

The Letendres asserted nearly \$1 million in damages and then provided their daughter a release from all claims in exchange for \$1,000, while releasing Zehnder and his firm in exchange for \$7,500.

This decision is certain to be the standard going forward by which this issue is considered in Massachusetts and perhaps elsewhere in the country.



JEFFREY S. ROBBINS

Citing G.L.c. 231B, §4, which bars contribution claims against alleged tortfeasors that a primary plaintiff has, in good faith, released from liability, Emily and the La Tanzi parties moved to dismiss L&K's claims.

But Judge Gregg J. Pasquale denied their motions, finding the contribution claims viable on their merits and calling into question the circumstances surrounding the release agreements.

"In sum, the Court finds that the Release Agreements were not entered into at arms-length, were not entered into in good faith, and were collusive in nature such that the contribution bar under G.L. c. 231B, §4 does not apply," Pasquale wrote.

The 23-page decision is *Laraja & Kanaga, P.C., et al. v. Zehnder, et al.*, [Lawyers Weekly No. 12-009-24](https://masslawyersweekly.com/files/2024/03/12-009-24.pdf) (<https://masslawyersweekly.com/files/2024/03/12-009-24.pdf>).

Future standard?

L&K's attorney, Jeffrey S. Robbins of Boston, described the ruling as "the most detailed, evidence-based decision we've ever seen" on how circumstances surrounding a settlement and release of third parties may impact the contribution bar.

"This decision is certain to be the standard going forward by which this issue is considered in Massachusetts and perhaps elsewhere in the country," he said.

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As for the merits of the Letendres' malpractice claim, Robbins said the evidence clearly shows that his clients never gave the "oral zoning opinion" as alleged, and that even had they done so, it would have been correct.

Neither Emily Letendre's attorneys, Michael P. Giunta and Thomas K. McCraw Jr., nor the La Tanzi parties' attorney, Timothy O. Egan, responded to requests for comment.

But Boston lawyer Robert D. Cohan, who represents plaintiffs in legal malpractice claims, said the decision provides a "useful roadmap" of the elements necessary to establish good faith in the execution of a release under G.L.c. 231B, §4.

"The parties to this release were woefully off course," Cohan said.

Charles P. Kazarian of Boston, who also handles legal malpractice cases, said it is fairly unusual for a malpractice defendant and its insurer to pursue contribution from another law firm.

"But we sometimes see a potential contribution claim sitting there, which the carriers seem not to pursue," he said. "This case was an exception, for the obvious reasons set forth in the judge's very well-reasoned decision that carefully laid out all the issues and the facts. ... It's just abundantly clear that the judge strongly felt that everybody should be invited to the dance."

Claims for contribution

On May 18, 2017, Lucia Letendre signed a P&S agreement to purchase Lot 4C from owners John and Nancy Thornley for \$2.4 million. When the parties closed that June, the Letendres' LLC, Timsneck, took title to the property.

Emily served as her parents' real estate agent in the acquisition and earned a commission.

The Letendre parties also made an offer on Lot 4B, but the Thornleys were not ready to sell at that point. So as part of the purchase, Lucia secured a limited right of first refusal should the Thornleys consider an offer from anyone else in the future.

After the purchase, Roland, apparently without assistance of counsel, applied for a building permit to expand the house. The building commissioner issued a denial in February 2018, concluding that the street where the property was located was a "paper street," as opposed to a "built street," and thus afforded insufficient street frontage, a decision that L&K claims contradicted the Planning Board's road inventory and the plan that created the lot.

At that point, the Letendre parties engaged Zehnder and his firm to take further action. With 30 days to appeal the decision, Zehnder opted to apply for a special permit, despite Kanaga's alleged warnings that appealing to the Zoning Board of Appeals would be a better course of action.

Meanwhile, with the special permit proceeding pending, the Letendre parties filed a declaratory action to enforce the right of first refusal for Lot B, which the Thornleys claimed was unenforceable because they signed the P&S as trustees of their realty trust and not in their individual capacities, though they owned Lot 4B individually.

Laraja & Kanaga, P.C., et al. v. Zehnder, et al.<https://masslawyersweekly.com/files/2024/03/12-009-24.pdf>

THE ISSUE: Could clients who sued their former law firm for allegedly mishandling a real estate transaction thwart the firm's subsequent contribution claims against their daughter-real estate agent and their subsequent counsel by providing them releases from liability?

DECISION: No (Barnstable Superior Court)

LAWYERS: Jeffrey S. Robbins of Saul Ewing, Boston (plaintiffs)

Timothy O. Egan of Peabody & Arnold, Boston; Michael P. Giunta and Thomas K. McCraw Jr., of Freeman Mathis & Gary, Boston (defense)

The action, handled by the La Tanzi firm, resulted in the Letendres purchasing Lot 4B for \$600,000.

On May 28, 2020, the Letendre parties brought a legal malpractice action against the L&K parties alleging L&K gave them an "incorrect oral zoning opinion" about their ability to expand the house and that it mis-drafted the right of first refusal.

According to the Letendres, they would not have purchased the property had they known they could not build or expand on it as envisioned.

In total, the Letendres asserted \$943,000 in damages from their alleged "overpayment" for the two parcels and from fees they expended in the right of first refusal suit.

After the L&K parties filed contribution claims against Emily and the La Tanzi parties as joint tortfeasors, the Letendres provided them releases of liability.

The contribution defendants then moved to dismiss L&K's claims pursuant to the statutory bar.

Bad faith releases

Pasquale denied the motions to dismiss, finding the releases not to be executed in good faith and at arm's length, as required by the statute.

With respect to Emily's release, he noted that it was entered into just days after L&K filed the contribution action and that all signatories were family members except Emily's employer at the time, William Raveis, who the Letendre parties never sued.

"Despite agreeing to pay \$1,000 to settle the Contribution Claims, Emily never actually paid any amount to the Letendre Parties; rather, that was paid by Raveis who had in place an errors and omissions insurance policy providing \$2,000,000 in coverage for each wrongful act by an employee including Emily," Pasquale observed.

As for the La Tanzi release, the judge noted that there was "no evidence either that Roland, Lucia or Timsneck evaluated the merits of their potential claims or that they took any steps to maximize that recovery."

Additionally, Pasquale pointed out, evidence showed a longstanding significant business relationship between the Letendre and La Tanzi parties, and the language of their release agreement indicated that the reason for the settlement was to preserve the business relationship.

The judge further observed that Emily was a beneficiary of the family trust that owns Timsneck, which, in turn, owns the property in question, giving her a direct interest in the outcome of the legal malpractice action.

Turning to statutory analysis, Pasquale pointed to several factors that suggest a settlement/release agreement is not in good faith.

Such factors include the existence of a familial relationship between the parties; the timing of the settlement; if it was entered for the purpose of destroying the contribution claim; if the settlement amount is low in comparison to the amount of damages claimed; if the releasing plaintiff did not

seek to maximize the settlement amount; and whether they sued the third-party defendant.

"The evidence established that the Release Agreements were coordinated ... intra-family and intra-business arrangements orchestrated by the Letendre Parties for the purpose of eliminating L&K's Contribution Claims," Pasquale concluded. "The Letendre Parties, Emily, and the La Tanzi Parties, worked in concert to achieve this common goal."

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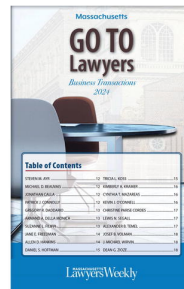
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