IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-1155
Summary Calendar

FINANCIAL INVESTMENT ASSOCIATES, INC.,

Plaintiff-Appellant,

versus

DON R. WINDLE, P.C., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Texas
3:92 CV 0108 D

(June 28, 1993)

Before JOLLY, BARKSDALE, and E. GARZA, Circuit Judges.

PER CURIAM:*

Financial Investment Associates, Inc. (FIA), the plaintiff in this legal malpractice action, appeals the granting of summary judgment in favor of the defendants Don R. Windle, P.C., Don R. Windle, and David D. Garcia (collectively Windle). Because the district court was correct in holding that under Texas law, attorneys cannot be held liable for negligent misrepresentation and

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

legal malpractice to parties with whom the attorneys were not in privity, we affirm.

I

Plaintiff-appellant FIA entered a written agreement with Flow Memorial Hospital (Flow) whereby FIA agreed to purchase certain medical equipment and then lease the equipment to Flow. The disbursement of the funds to purchase the equipment was conditioned upon the provision by Flow of an opinion letter from Flow's Texas counsel stating that the equipment lease was valid and enforceable under Texas law. This opinion letter was provided by defendant David D. Garcia, an associate of defendant Don R. Windle, P.C., a law firm that served as legal counsel to Flow, and was sent directly from Garcia to FIA. The letter stated that the equipment lease was valid and enforceable under Texas law, and stated that the opinion it provided could be relied upon by FIA and its successors and assigns.

FIA argues that it relied upon this letter in going forward with its obligations under the lease and in executing a promissory note, security agreement, and assignment of the lease as collateral to the Bank of Lincolnwood. When Flow's successor later filed for bankruptcy protection, the bankruptcy court held that the lease was not valid and enforceable. FIA thus became liable to the Bank of Lincolnwood under its warranties of validity and enforceability of the lease. FIA then filed this diversity action against the defendants, alleging that they are liable to FIA for negligent

misrepresentation and legal malpractice. The district court granted summary judgment in favor of the defendants on both claims, on the grounds that no attorney-client relationship existed between FIA and Windle. FIA now appeals this decision.

II

Summary judgment is proper and will be upheld on appeal if our review establishes that the pleadings and other evidence on file, considered in the light most favorable to the non-movant, show that no genuine issue exists as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Christopher v. Mobil Oil Corp., 950 F.2d 1209, 1213-14 (5th Cir.), cert. denied, ___ U.S. ___, 113 S.Ct. 68 (1992); Bache v. American Telephone & Telegraph, 840 F.2d 283, 287 (5th Cir.), cert. denied, 488 U.S. 888 (1988). A "genuine" issue exists when the evidence is such that a reasonable jury could return a verdict for the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

III

FIA first argues that the district court erred in dismissing its legal malpractice claim against Windle. The district court found that under Texas law, third parties outside the attorney-client relationship have no cause of action against an attorney for damages sustained as a result of the attorney's failure to perform a duty owed to his client, even when the attorney renders an opinion on which he knew third parties would rely. See, e.g.,

Marshall v. Quinn-L Equities, Inc., 704 F.Supp. 1384, 1394-95 (N.D. Tex. 1988); First Municipal Leasing Corp. v. Blankenship, Potts, Aikman, Hagin & Stewart, 648 S.W.2d 410, 413 (Tex. App. 1983).

FIA claims that these and other prior Texas cases, which consistently have held that attorneys owe no duty to third parties in the absence of privity, are distinguishable from the instant case because no Texas cases have directly addressed the issue in the context of an opinion letter mailed from the attorney to the third party. We agree with the district court that this distinction does not mandate a different application of Texas' well-settled law regarding attorneys' duties to third parties. It is uncontested that the defendants did not render any legal services directly to FIA and that the opinion letter was prepared in the course of its representation of Flow at Flow's request; indeed, the letter itself stated that Garcia "acted as counsel for Flow Memorial Hospital." Although FIA cites several cases from other jurisdictions supporting their position, it is clear that under the controlling Texas law, FIA has no cause of action for legal malpractice against the defendants because it was not in privity with them.

FIA also argues that the district court erred in dismissing its claim of negligent misrepresentation against the defendants. Again, the district court was correct in holding that under Texas law, a plaintiff cannot recover for negligent misrepresentation against a law firm which renders legal services to a person other

than the plaintiff. See Marshall, 704 F.Supp. at 1395 (citing First Municipal, 648 S.W.2d at 413). Because no attorney-client relationship existed between FIA and Windle, the defendants were entitled to summary judgment on FIA's negligent misrepresentation claim.

In sum, under controlling Texas law, FIA has no cause of action against the defendants for either negligent misrepresentation or legal malpractice because no attorney-client relationship existed between the parties. The judgment of the district court granting the defendants' motion for summary judgment is therefore

A F F I R M E D.