

ENGINEERING DYNAMICS, INC.

v.

RUDMAN AND WINCHELL, LLC, et al.

Argued November 17, 2020

Decided December 8, 2020

Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

#### MEMORANDUM OF DECISION

Engineering Dynamics filed a legal malpractice claim against Rudman and Winchell based on a missed deadline on an 80C appeal. As part of its malpractice case, Engineering Dynamics attempted to present evidence from an attorney, acting as an expert witness, to explain why Engineering Dynamics would have succeeded at the 80C appeal. Rudman and Winchell filed a motion *in limine* to exclude the expert witness's testimony and the Superior Court (Penobscot County, *Anderson, J.*) granted the motion, preventing the legal expert from testifying.

On appeal Engineering Dynamics asserts that the court abused its discretion in granting Rudman and Winchell's motion *in limine* to exclude an expert witness's testimony regarding whether the underlying Rule 80C appeal would have likely succeeded.

In a legal malpractice case against an attorney for failure to perfect a Rule 80C appeal to the Superior Court, the client must prove that the court would have granted the review and rendered judgment more favorable to the

client. *Steeves v. Bernstein, Shur, Sawyer & Nelson, P.C.*, 1998 ME 210, ¶ 15, 718 A.2d 186.

Whether Rudman and Winchell's late filing of the 80C appeal caused Engineering Dynamics harm depends solely on whether the 80C appeal would have been successful. Whether the 80C appeal would have been successful is a legal determination totally dependent on whether the record before the State Tax Board compelled a conclusion contrary to the Board's decision. *Yusem v. Town of Raymond*, 2001 ME 61, ¶¶ 7, 9, 769 A.2d 865.

The trial court's analysis of proximate cause in this case is no different than the analysis of the case had the 80C appeal been timely. As a result, the court did not abuse its discretion in granting Rudman and Winchell's motion *in limine* to exclude the testimony of Engineering Dynamic's expert witness. We affirm the trial court's judgment in favor of Rudman and Winchell following the bench trial.

The entry is:

Judgment affirmed.

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Jed Davis, Esq. (orally), Augusta, for appellant Engineering Dynamics, Inc.

John S. Whitman, Esq. (orally), and Heidi J. Eddy, Esq., Richardson, Whitman, Large & Badger, Portland, for appellees Rudman & Winchell, LLC, et al.