

**Barnett v Schwartz**

2005 NY Slip Op 30151(U)

April 15, 2005

Supreme Court, Nassau County

Docket Number: 5391-02/

Judge: Joseph S. Burton

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**SHORT FORM ORDER**

**SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NASSAU**

**PRESENT:**

**Hon. Burton S. Joseph,  
Justice.**

TED BARNETT and CAROL BARNETT,

Plaintiffs,

- against -

Trial/IAS      Part 13  
Index No.      15391/2002  
Motion No.     006  
Motion Date    3/25/2005

JEFFREY L. SCHWARTZ, and LAW OFFICES OF  
SHAW, LICITRA, PARENTE, ESERNIO &  
SCHWARTZ, P.C.,

Defendants.

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Motion by the attorney for the plaintiff for an Order pursuant to CPLR 5001 fixing pre-verdict interest is denied.

In this contentious legal malpractice action resulting in a \$44,000.00 jury verdict in favor of the plaintiff, against the defendants, the attorney for the movant is requesting pre-verdict interest.

The underlying action was tried on the theory of damages for negligence resulting from the legal malpractice of the defendant, and not upon any theory of damages for breach of

contract or implied warranties.

David D. Siegel in Supplementary Practice Commentary (McKinney's Cons. Laws of N.Y., Book 78, CPLR [1965 Supp.], p. 53) states the following: "The Legislature refused again in 1965 to allow pre-verdict interest for personal injury in negligence cases. It is apparently satisfied that the damages verdict itself takes into consideration the delay in collection and thus makes the plaintiff whole."

The measure and elements of damages in malpractice actions based on negligence, are based on the same rules and principles which govern the measure and elements of damages in personal injury actions generally. The principle that the damages recoverable are only those which are the natural and probable consequences of the wrongful act or breach of contract complained of is the governing rule in actions for malpractice.

A lawyer is liable only for such damages that are the proximate result of his negligence. See, *New York Jurisprudence* (Vol 45 section 227 at pg. 412).

On a verdict of damages for malpractice, interest is computed from the date of the verdict and not before. See, CPLR 5001; *Glassman v. Brunswick Home, Inc.*, 51 Misc2d 392. No authority has been cited which changes the applicable rule of damages in malpractice actions. See also, 7B-17 Warren's Negligence in New York Courts at 17.02; "Date of verdict or date of entry of judgment thereon as beginning of interest period on judgment." 1 ALR2d 479.

Dated: Mineola, New York  
April 15, 2005

ENTERED

APR 20 2005

*Benton J. Joseph*  
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J.S.C.

NASSAU COUNTY  
COUNTY CLERK'S OFFICE