Red Zone LLC v Cadwalader, Wickersham & Taft LLP
2018 NY Slip Op 31888(U)
August 1, 2018
Supreme Court, New York County
Docket Number: 650318/2011
Judge: O. Peter Sherwood
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SUPREME COURT OF THE STATE OF NEW YORK — New York COUNTY

PRESENT: O. PETER SHERWOOD PART 49

Justice

RED ZONE LLC,

Plaintiff,

-against-

CADWALADER, WICKERSHAM & TAFT LLP,

Defendant.

INDEX NO. 650318/2011

MOTION DATE Jan. 9, 2018

MOTION SEQ. NO. 010

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to preclude.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits	_____
Replying Affidavits	_____

Cross-Motion: ☐ Yes ☐ No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

In Motion Sequence Numbers 010-014, 016 and 018-023, plaintiff seeks to preclude Cadwalader, Wickersham & Taft LLP ("CWT") from presenting expert testimony as to whether it departed from the standard of care required of an attorney and/or that the malpractice did not cause Red Zone LLC's ("Red Zone") alleged inquiry. CWT insists it is entitled to present such evidence through expert testimony. It acknowledges that both Justice Schweitzer and the Appellate Division held that expert testimony was not necessary. The Court of Appeals did not address this issue but "(v)iewing the evidence in the light most favorable to defendant as the non-movant," that court concluded that "material triable questions of fact exist regarding whether defendant failed to exercise the ordinary reasonable skill and knowledge commonly possessed by members of the legal profession" (NYSCEF Doc. No. 508).

At this point in the case there are only two versions of the facts concerning the events of August 16 and 17, 2005 that may have resulted in injury to Red Zone, neither of which involve matters outside the ken of the typical juror. If the jury adopts the facts as alleged by plaintiff, the failure of CWT to memorialize the parties' agreement is *prima facie* proof of professional malpractice. If the jury finds that on August 17, 2005, either the parties recognized there was no meeting of the minds and negotiated the Supplement or that Snyder and UBS agreed to change the handshake agreement of August 16, 2005 and despite Block's warning, agreed simply to clarify that the fee would be limited to $2 million if Red Zone won only three of seven Board seats, a finding of no professional malpractice should follow. Again, none of this requires specialized knowledge.

For these reasons, and consistent with the findings of Justice Schweitzer and the First Department, no expert testimony is needed.

Dated: August 1, 2018

O. P. Sherwood

O. PETER SHERWOOD, *J.S.C.*

Check one: ☐ **FINAL DISPOSITION** ☒ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**

☐ **SUBMIT ORDER/ JUDG.** ☐ **SETTLE ORDER/ JUDG.**