2014 IL App (1st) 131927-U

SIXTH DIVISION
April 25, 2014

No. 1-13-1927

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

HUBERTUS INVESTMENT GROUP, an Illinois corporation,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellant,	)	
v.	)	
SMIEGELSKI & WATOR, P.C.	)	No. 10 L 11142
Defendant-Appellee	)	
(Chicago Title Insurance Company, Dariusz Wator, and Dragan Radojcic,	)	Honorable Margaret A. Brennan,
Defendants).	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the award of damages on a professional negligence claim against defendant law firm where plaintiff client failed to produce evidence that it would not have paid for 12 vacant lots had the law firm advised the client that the seller had failed to produce water certificates at the closing, which would preclude

recordation of deeds for the vacant lots.

¶ 2 Following a bench trial in the circuit court of Cook County, plaintiff Hubertus Investment Group (Hubertus) was awarded $2,000 on a professional negligence claim against defendant Smiegelski & Wator, P.C. (S&W) arising out of a real estate transaction. Hubertus appeals, arguing the trial judge erred as a matter of law in calculating damages. The judgments entered by the circuit court in favor of defendants Chicago Title Insurance Company (CTIC) and Dariusz Wator (Wator), as well as a default judgment entered against defendant Dragan Radojcic (Radojcic), are not at issue in this appeal. For the following reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 3 BACKGROUND

¶ 4 Hubertus initially filed a complaint against CTIC, S&W, and Wator in the circuit court of Cook County on September 30, 2010. The operative pleading in this case, however, is the fourth amended complaint, adding Radojcic as a defendant. Hubertus sought leave to file its fourth amended complaint on July 16, 2012. Although an order granting leave to file the fourth amended complaint does not appear in the record, the Hubertus motion to default Radojcic indicates the circuit court granted leave to file the fourth amended complaint on August 13, 2012.

¶ 5 The fourth amended complaint included the following allegations common to all of the counts. Hubertus is an Illinois corporation. Olympic Title Company, Inc. (Olympic) is a dissolved Illinois corporation which, on or about June 1, 2009, was an agent of Ticor Title Insurance Company (Ticor) for the purposes of issuing title insurance policies. Ticor merged into CTIC on July 1, 2010. S&W was a law firm practicing in Illinois. Wator was an attorney and partner in S&W; Arthur Wrobel (Wrobel) was an attorney and associate of the firm.

¶ 6 On May 7, 2009, Hubertus entered into a contract with Radojcic for the purchase of twelve vacant properties in Chicago, Illinois. A copy of the contract for the purchase of the properties was attached as an exhibit to the fourth amended complaint. The contract provided for the total payment of $190,000 by Hubertus to Radojcic in return for the properties.

¶ 7 Hubertus retained S&W to act as counsel regarding this transaction. Hubertus alleged it relied on its "past dealings" with Wator in selecting counsel for the transaction. Wator was the principal attorney for Hubertus regarding the purchase, while Karl Halperin (Halperin) was an agent for Olympic and Ticor, as well as an attorney for Radojcic.

¶ 8 The parties scheduled the closing of the transaction for June 1, 2009, at Olympic's offices. Wator directed Wrobel to attend the closing in his stead. Hubertus alleged it completed all of its obligations to Radojcic, Wator, S&W and Olympic at the closing. Hubertus also alleged Wator, Wrobel and Olympic all failed to require the production of water certificates to consummate the transaction and record the warranty deeds for the transfer of the properties to Hubertus. Accordingly, while Hubertus had believed it was the owner of the properties after the closing, Hubertus alleged it was not the owner of any of the properties. Hubertus further alleged the legal title to at least two of the properties—4159 Gladys and 4407 West Fulton in Chicago—had been transferred to a third party, due to the failures of Wator, Wrobel, S&W, CTIC and Olympic to redeem sold taxes.

¶ 9 The fourth amended complaint filed by Hubertus then asserted eight causes of action. Count I alleged a breach of contract by S&W for failing to ensure all documents necessary for closing the transaction were secured. Count II alleged S&W breached a fiduciary duty owed to Hubertus by failing to secure the water certificates. Count III alleged professional negligence on the part of S&W for failing to secure the water certificates and ensure the deeds were recordable

and recorded. Count IV alleged professional negligence on the part of Wator individually. Count V alleged breach of contract by CTIC, based on Olympic's failure to collect the water certificates and record the deeds to the properties. Count VI alleged a breach of title commitment against CTIC. Count VII alleged negligent misrepresentation by CTIC, based on Olympic's alleged representation the closing could proceed without the water certificates. Count VIII alleged breach of contract against Radojcic for failing to convey recordable warranty deeds to the properties.

¶ 10 On January 23, 2013, CTIC produced, executed and recorded quitclaim deeds encompassing 11 of the 12 properties; the remaining property located at 4407 West Fulton had been sold for taxes. Also on January 23, 2013, Hubertus filed a motion for a default judgment against Radojcic on count VIII of the fourth amended complaint for failure to file an appearance and answer, although Rodojcic had previously been present in court for a prior proceeding after Hubertus orally moved for a default judgment. On March 1, 2013, the circuit court found Radojcic in default and set the matter for a hearing on the prove-up of damages. On March 8, 2013, following the prove-up on the motion for default, the circuit court entered judgment against Radojcic in the amount of $224,101.67.

¶ 11 Meanwhile, on February 22, 2013, S&W and Wator filed an answer and affirmative defenses to the fourth amended complaint, including: (1) Hubertus's failure to mitigate damages; (2) Hubertus's comparative fault; and (3) the comparative fault of unnamed successor counsel. On March 1, 2013, S&W and Wator filed a motion for a summary determination of major issues, pursuant to section 2-1005(d) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1005(d) (West 2012)). S&W and Wator asserted CTIC caused quitclaim deeds in favor of Hubertus to be recorded for 11 of the 12 properties on January 23, 2013. Copies of the deeds

were attached to the motion as a group exhibit. S&W and Wator also asserted the remaining property, located at 4407 West Fulton, was appraised with a value of $2,000 on June 19, 2012. S&W and Wator attached the appraisal as an exhibit to the motion. S&W and Wator argued: (1) even assuming Hubertus could prove legal malpractice, Hubertus was entitled to no more than $2,000 in damages; (2) they were entitled to summary judgment on counts I and II of the fourth amended complaint because these counts were duplicative of count III; and (3) Hubertus was not entitled to recover attorney fees.

¶ 12 On March 1, 2013, CTIC filed its answer and affirmative defenses to the fourth amended complaint, asserting Hubertus failed to assert a claim upon which relief could be granted, failed to allege it was in privity with Olympic or CTIC, and failed to properly plead the elements of an oral or written contract between Hubertus and Olympic or CTIC. On March 1, 2013, CTIC filed a motion for a summary determination of major issues, pursuant to section 2-1005(d) of the Code. Similar to the motion filed by S&W and Wator, CTIC argued that even if Hubertus could establish a breach of contract by CTIC, Hubertus was entitled to no more than $2,000 in damages, representing the appraised value of the lot at 4407 West Fulton, based on CTIC's recordation of the quitclaim deeds in Hubertus's favor as to the other properties. CTIC also renewed its argument that Hubertus failed to properly allege the existence of an oral or written contract between Hubertus and Olympic or CTIC.

¶ 13 On March 29, 2013, Hubertus filed a combined response to the motions for summary determinations, arguing in part the properties quitclaimed to Hubertus had declined in value to $17,900, attaching the June 19, 2012, appraisal of these properties as an exhibit to the response. S&W and Wator filed their reply in support of a summary determination on April 12, 2013. CTIC filed its separate reply the same day.

¶ 14 On May 1, 2013, the circuit court entered an order granting S&W and Wator summary judgment on counts I and II of the fourth amended complaint on the ground they were duplicative of count III. The circuit court's order also summarily determined Hubertus was not entitled to recover attorney fees in this matter. In a separate order entered on May 1, 2013, the circuit court entered summary judgment in favor of CTIC on counts V, VI, and VII of the fourth amended complaint. The circuit court declined to rule as a matter of law that Hubertus would be limited to recovery of the $2,000 appraised value of the lot at 4407 West Fulton as damages.[1]

¶ 15 On May 13, 2013, the case proceeded to trial on counts III and IV of the fourth amended complaint, which alleged professional negligence by S&W and Wator. Following opening statements by counsel, Hubertus called Wrobel as a witness. Wrobel testified he had represented buyers and sellers in more than 100 real estate closings since 2009. Wrobel generally testified that if he was representing a purchaser of real estate in Chicago, one of the documents or items he would want to see at the closing was a water certificate representing that there were no outstanding water bills on the property, even if the property was a vacant lot. According to Wrobel, the water certificate is required to record the deed to the property. Wrobel further testified it was the seller's duty to ensure the water certificate is presented to the title company at the closing. In the alternative, if the seller did not bring a water certificate to the closing, the title company may take a title indemnity, or "holdback" of funds to ensure the water certificate was ultimately produced. In cases where the seller's counsel has a relationship based on prior transactions with the title company, the seller's attorney might be allowed to produce the water

[1] Although Hubertus claimed damages representing the $190,000 purchase price for the properties sold on June 1, 2009, the record on appeal is silent on the question of the underlying basis for the purchase price.

certificate after the closing without a holdback.

¶ 16 Wrobel further testified he had not worked on the transaction for Hubertus prior to the June 1, 2009, closing. Wrobel did not recall why Wator directed him to represent Hubertus at the closing in this matter. According to Wrobel, Hubert Kozub (Kozub) was present at the closing as a representative of Hubertus,[2] but the seller was not present; Wrobel could not recall whether the seller's counsel was present.

¶ 17 Wrobel did not recall observing the water certificates at the June 1, 2009, closing. In addition, Wrobel did not recall whether anyone at the closing raised an issue regarding the water certificates.

¶ 18 Wrobel was also questioned about the title commitment for this closing. According to Wrobel, based on the absence of water certificates at the closing, it was important to review the title commitment prior to closing to ensure the purchaser was receiving clean title to the property. Examining the title commitment for the transaction during his testimony, Wrobel acknowledged exceptions to title insurance coverage for approval of the property by the water commissioner and the requirement to obtain transfer stamps from the city of Chicago should have been waived. Wrobel also acknowledged these exceptions were not waived.

¶ 19 Wrobel additionally testified he would not have closed on the transaction in question knowing there were no water certificates, absent specific direction from a representative of Hubertus. Although Wrobel could not recall speaking to Kozub regarding the absence of water certificates at the closing, Wrobel testified that had he realized there were no certificates, he would have explained to Kozub the risk that the deeds would not be recorded and would have

[2] During argument of a discovery motion immediately prior to trial, counsel for Hubertus referred to Kozub as the president of Hubertus.

recommended not proceeding with the closing. Wrobel testified that in general, he would not have proceeded with the closing unless directed to proceed by Kozub.

¶ 20 Hubertus also called Wator as a witness. Wator testified he handled approximately between 1,200 and 1,300 real estate closings in the period of 2003-06, before S&W was established. Kozub was a client Wator met through Kozub's wife, who was a real estate agent. Prior to closing, Wator personally handled the transaction at issue. Wator, however, did not attend the closing due to a scheduling conflict, although Wator could not recall the nature of the conflict.

¶ 21 Wator also testified he reviewed S&W's file for the transaction on June 1, 2009, after the closing. Wator further testified he was not shocked that exceptions relating to the water certificates were not waived, because different title companies address the issue of water certificates and transfer stamps differently. According to Wator, on the date of the closing or the following day, Wrobel mentioned the lack of water certificates to him, as well as delays during the closing caused by tax proration issues requiring a recalculation of various title indemnity sums. Wator recalled he and Wrobel telephoned the seller's attorney on the day he learned of the lack of water certificates and were informed the certificates would be provided. According to Wator, the file then went into a "holding pattern" due to the lack of recorded deeds.

¶ 22 Wator received a telephone call from Kozub or his wife approximately 60 days after the closing, inquiring about the status of the recorded deeds. Wator replied the deeds were not recorded. Wator then directed one of his secretaries to inquire about the status of the deeds with Olympic. Upon being informed by Olympic that the water certificates had not been procured, Wator demanded Olympic procure them and secure recorded deeds. Although Wator engaged in telephone conversations and email correspondence with Olympic and the seller's attorney

regarding the issue, no water certificates had been procured by October 2009, at which point Kozub discharged Wator.

¶ 23 Wator further testified he discussed the transaction at issue with Kozub prior to the June 1, 2009, closing. According to Wator, Kozub informed him it was imperative to close as fast as possible on these properties and the transaction was intended to establish good faith between Hubertus and Radojcic for future transactions. Wator additionally testified he closed another transaction between Hubertus and Radojcic on July 19, 2009, in which Hubertus paid $240,000 to obtain 16 vacant lots on the far south side of Chicago. Water certificates were lacking in that transaction as well. Over Hubertus's counsel's objection, Wator testified that during that closing, he explained the issue raised by the lack of water certificates and the alternatives available to Kozub, who chose to proceed with that transaction. The water certificates were subsequently obtained in that transaction. Wator further represented Hubertus regarding a proposed transaction with Radojcic regarding five vacant lots which never closed.

¶ 24 Wator additionally testified Kozub had informed him the funds for the purchases of the properties on the south and west sides of Chicago were coming from an investor in Poland. According to Wator, Kozub also informed him that the vacant properties in these areas of Chicago were going to be "hot ticket items in terms of appreciation" based on Chicago's bid for the 2016 Olympics. Hubertus's counsel objected to this testimony. The trial court initially sustained the objection, but then allowed counsel to elicit the testimony to tie it up regarding the issue of damages.

¶ 25 John A. Kukankos testified as an expert witness for Hubertus. Kukankos had been practicing law in Illinois since 1974 and had represented parties in real estate transactions since the early 1980s. At the time of the trial, Kukankos had participated in approximately 1,000

residential real estate closings. Kukankos described the necessity for water certificates when closing a real estate transaction in Chicago. Kukankos explained the city of Chicago requires transfer stamps as a prerequisite to recording the deed for a property. A transfer stamp cannot be obtained without producing a water certificate for the property. According to Kukankos, the seller's attorney customarily obtains the water certificate, and the buyer's attorney would want the water certificate presented at the closing. Kukankos opined the buyer's counsel would have the duty to ensure the water certificate had been obtained, or possibly seek a title indemnity and explain the risk of proceeding without a water certificate to the buyer. Kukankos opined a buyer's attorney would be negligent for failing to explain those risks to the buyer.

¶ 26 On cross-examination, Kukankos was asked whether a transaction can be closed without the water certificate. Kukankos replied "it depends on what you mean by close," explaining the money can be exchanged and the title commitment can be waived with the hope the deed gets recorded. Kukankos also acknowledged that if the client was fully informed as to the risk of proceeding without water certificates, he would execute the client's instructions as long as the instructions were legal.

¶ 27 Anthony Panzica testified as an expert witness for the defendants. Panzica has been licensed to practice law in Illinois since 1980 and generally practiced in the field of real estate transactions. Panzica had performed approximately 20,000 real estate closings during his career and was familiar with the standards employed by attorneys relating to the purchase and sale of vacant properties in Chicago. Panzica's testimony was substantially similar to Kukankos's testimony regarding the necessity of the water certificate and the alternatives available when a water certificate is not produced during a closing. Panzica explained that smaller title companies were more likely to excuse a seller's attorney from producing the water certificate at the closing

if the seller's attorney had a good relationship with the company. According to Panzica, CTIC typically would at least require a holdback when a certificate was not produced, but Panzica did not know what procedure Olympic followed.

¶ 28 Panzica also testified it would be very unusual for a seller's attorney to represent that he or she would obtain the water certificates and then fail to do so. Panzica further testified the title company would be "more on the hook" for a lack of water certificates than the buyer's attorney. Panzica did not think Olympic could waive the exceptions in the title commitment absent the water certificates, but would be relying on an agreement with the seller's attorney to obtain them. Panzica additionally testified he generally had never declined to follow a client's lawful directive.

¶ 29 Sladjana Abab was called out of order as a witness for Hubertus. Abab testified she had worked as a closing manager for Olympic, beginning in 2007. Abab worked on approximately 10 to 15 closings monthly. Abab was the closing officer for the transaction at issue. Abab testified she was present at the closing, but could not recall who else was present.

¶ 30 According to Abab, the parties to a transaction may close without water certificates if the seller's attorney represents he or she will obtain them. If there was a water bill, Olympic would hold title indemnity for the bill, but there would have been no bill for the vacant lots at issue in this case. Abab did not recall specifics regarding the attempts to procure water certificates after the closing of this transaction.

¶ 31 The quitclaim deeds for 11 of the 12 properties and the June 2012 appraisals for all of the properties were also admitted into evidence. During closing argument, counsel for Hubertus argued in part that receipt of quitclaim deeds for 11 of the 12 properties did not put Hubertus in the position it would have enjoyed, but for the defendants' negligence. Counsel for Hubertus argued the risk of any decrease in the value of the properties after the closing should fall on the

defendants. Counsel for Hubertus thus maintained Hubertus was entitled to recover the $190,000 purchase price for the properties, instead of the $17,900 representing the appraised value of the properties in June 2012. Defendants' counsel argued the case law Hubertus relied upon to argue that the damages included any decrease in the market value of the properties addressed claims against a title insurance company, not a law firm or an attorney. Defendants' counsel added that attorneys are not guarantors of the future value of properties by virtue of having represented a buyer at closing.

¶ 32 Following closing arguments, the trial judge found Hubertus proved a breach of professional duties, insofar as the "buyer's attorney should be able to ensure that *** his or her client has the ability to have a recordable deed at the close of the sale" and Wrobel did not waive the exceptions to the title commitment. The trial judge, however, ruled that Hubertus failed to establish damages beyond $2,000, representing the June 2012 appraised value of the property at 4407 West Fulton, for which Hubertus had not received a deed. The trial judge observed that Hubertus essentially sought to unwind the transaction, in which instance Hubertus should have sought recission in a chancery action, whereas this was "a breach of contract case." On May 14, 2013, the circuit court entered an order reflecting a judgment in favor of Hubertus and against S&W on count III of the fourth amended complaint in the amount of $2,000 plus costs, as well as a judgment in favor of Wator on count IV of the fourth amended complaint. On June 12, 2013, Hubertus filed a timely notice of appeal to this court.

¶ 33 ANALYSIS

¶ 34 On appeal, Hubertus raises the sole issue of whether the trial judge erred as a matter of law in calculating damages. Hubertus argues it is entitled to the fair market value of the 12 properties as of the June 1, 2009, closing date, rather than the $2,000 fair market value of the

single property not conveyed to Hubertus by quitclaim deed on January 23, 2013.

¶ 35 "Where an award of damages is made after a bench trial, the standard of review is whether the trial court's judgment is against the manifest weight of the evidence." *1472 N. Milwaukee, Ltd. v. Feinerman*, 2013 IL App (1st) 121191, ¶ 13. A judgment is against the manifest weight of the evidence only if the opposite conclusion is clear or where the trial court's findings appear to be unreasonable, arbitrary, or not based on evidence. *Id.* "[I]n overturning a damage award, a reviewing court must find that the trial judge either ignored the evidence or that its measure of damages was erroneous as a matter of law." *Id.* (citing *MBC, Inc. v. Space Center Minnesota, Inc.*, 177 Ill. App. 3d 226, 234 (1988)). When considering the proper measure of damages, we give deference to the trial court's factual findings, but we review its legal conclusions *de novo*. *O'Connor Construction Co., Inc. v. Belmont Harbor Home Development, LLC*, 391 Ill. App. 3d 533, 538 (2009). Of course, this court has the right to affirm a trial court's decision even when we do not agree with its analysis. *Goldberg v. Astor Plaza Condominium Association*, 2012 IL App (1st) 110620, ¶ 74 (citing *In re Alfred H.H.*, 233 Ill. 2d 345, 347 (2009)). "[T]his court reviews the judgment, not the reasoning, of the trial court, and we may affirm on any grounds in the record, regardless of whether the trial court relied on those grounds or whether the trial court's reasoning was correct." *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. Indeed, this rule applies even when the trial court's ruling is against the manifest weight of the evidence. See, *e.g.*, *Martin v. See*, 232 Ill. App. 3d 968, 982-3 (1992).

¶ 36 Hubertus correctly observes that to sustain a claim for legal malpractice, the plaintiff client must plead and prove that the defendant attorneys owed the client a duty of due care arising from the attorney-client relationship, that the defendants breached that duty, and that as a proximate result, the client suffered injury. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill.

2d 218, 225-26 (2006) (citing *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306 (2005)). "The existence of actual damages is therefore essential to a viable cause of action for legal malpractice." *Id*. (citing *Northern Illinois Emergency Physicians*, 216 Ill. 2d at 306-07). "The fact that the attorney may have breached his duty of care is not, in itself, sufficient to sustain the client's cause of action." *Northern Illinois Emergency Physicians*, 216 Ill. 2d at 306. "Even if negligence on the part of the attorney is established, no action will lie against the attorney unless that negligence proximately caused damage to the client." *Id*. at 306-07 (citing *Metrick v. Chatz*, 266 Ill. App. 3d 649, 654 (1994)). "Such damages must be affirmatively established by the aggrieved client." *Id*. at 307. "Making that demonstration requires more than supposition or conjecture." *Id*. "Damages are considered to be speculative, however, only if their existence itself is uncertain, not if the amount is uncertain or yet to be fully determined." *Id*.

¶ 37 In this case, Hubertus is only partially correct in asserting in its brief the first three elements of negligence are not in question, merely because the trial judge did not expressly discuss causation, which is related to the calculation of damages. As Hubertus acknowledges in its brief, " '[a] successful legal malpractice claim places the plaintiff in the same position that she would have occupied *but for* the attorney's negligence.' " (Emphasis added.) *Gaylor v. Campion, Curran, Rausch, Gummerson and Dunlop, P.C.*, 2012 IL App (2d) 110718, ¶ 61 (quoting *Nettleton v. Stogsdill*, 387 Ill. App. 3d 743, 749 (2008)).

¶ 38 The *Gaylor* decision is instructive regarding the calculation of damages in different types of legal malpractice cases:

> "In a traditional legal malpractice case in which the plaintiff alleges that the defendant's malpractice caused the plaintiff to lose a cause of action, 'an award of damages equal to

> the amount she did not receive as a result of the defendant's malpractice is necessary to place the plaintiff in the same position that she would have occupied had the defendant not been negligent.' *Nettleton*, 387 Ill. App. 3d at 752. By contrast, where a legal malpractice plaintiff alleges that the defendant attorney's advice fell below the standard of reasonable legal services, 'any damages which proximately flow from the client's acceptance of that advice are recoverable in a negligence action against the attorney.' *Metrick*[], 266 Ill. App. 3d [at] 655." *Gaylor*, 2012 IL App (2d) 110718, ¶ 61.

The *Gaylor* court observed that "[p]roof of proximate cause requires proof of both 'cause in fact' and 'legal cause.' " *Gaylor*, 2012 IL App (2d) 110718, ¶ 62. Thus, a plaintiff in a legal malpractice case may fail to establish "cause in fact" where plaintiff fails to prove he or she would not have gone through with closing a business transaction had defendants given them adequate legal advice. See *Gaylor*, 2012 IL App (2d) 110718, ¶ 62; see also *Metrick*, 266 Ill. App. 3d at 654-55 (Where an attorney is sued for failing to advise a client of foreseeable risks attendant to a given course of legal action, to establish proximate cause, the client must plead and prove that had the undisclosed risk been known, the client would not have accepted the risk and consented to the recommended course of action).

¶ 39 In this case, Hubertus relies on the trial judge's statement that the negligence was the failure to ensure Hubertus had recordable deeds at the time of the sale. Yet the opinion testimony from Kukanos, the expert proffered by Hubertus, establishes the negligence at issue in this case was the defendants' alleged failure to inform Hubertus of the risks of closing the transaction without the water certificates. This testimony from Kukankos is consistent with *Gaylor* and *Metrick*. Even assuming for the sake of argument that defendants breached a duty to ensure Hubertus obtained recordable deeds after the sale, the record establishes Hubertus

received recorded deeds for 11 of the 12 properties, along with the current market value of the remaining property. The damages awarded based on this theory under *Gaylor* were reasonable as to the lot not conveyed.

¶ 40 Hubertus also asserts on appeal that "[b]ut for [S&W's] negligence, the deal never would have closed the way it did." Hubertus, however, fails to identify the evidence presented at trial supporting this assertion. The trial transcript is largely devoid of evidence regarding the advice, if any, Wrobel provided to Kuzob at the closing. Wrobel testified as a general matter, he would not have closed on the transaction at issue knowing there were no water certificates, absent specific direction from Hubertus after explaining to Hubertus the risk that the deeds would not be recorded. Although Wrobel could not recall discussing the issue with Kuzob at the closing, Wator testified Wrobel informed him of the lack of water certificates shortly after the closing. Wator also testified regarding his representation of Hubertus at the July 19, 2009, closing in which Hubertus chose to proceed despite the absence of water certificates, after Wator explained the issue to Kuzob and presented the Hubertus's alternatives to Kozub. Kozub, who represented Hubertus at the closing, did not testify at trial.[3] Based on this record, Hubertus failed to produce evidence (let alone prove) it was not advised by Wrobel regarding the lack of water certificates and that it would not have proceeded on the June 1, 2009, closing, had Kozub known of the risk attendant to the lack of water certificates. Hubertus failed to produce evidence that any breach of professional duty proximately caused a loss of the full purchase price. Thus, Hubertus cannot establish it was entitled to the full purchase price of the properties as damages under *Gaylor* or *Metrick*.

[3] Immediately prior to trial, counsel for Hubertus sought to have Kozub testify from Poland via the internet, but the circuit court denied this request.

¶ 41 Hubertus cites several cases in support of its claim that the measure of damages should be based upon the fair market value of all the properties at the time of the closing, none of which are persuasive in this case. First, in its brief, Hubertus cites *Williams v. University of Chicago Hospitals*, 179 Ill. 2d 80 (1997), for the observation that an " 'injury must be the natural and probable result of the negligent act or omission and be of such a character as an ordinarily prudent person ought to have foreseen as likely to occur as a result of the negligence.' " *Id*. at 87 (1997) (quoting *Neering v. Illinois Central R.R. Co.*, 383 Ill. 366, 380 (1943)). Yet this observation undermines the assertion by Hubertus that proximate causation is not at issue in this case and does not address the measure of damages asserted by Hubertus in this case. For the reasons previously stated, proximate causation is an issue in this matter and the citation of *Williams* and *Neering* by Hubertus ultimately gives in its brief is entirely consistent with *Gaylor* and *Metrick*.

¶ 42 Hubertus also relies heavily upon *Citicorp Savings of Illinois v. Stewart Title Guaranty Co.*, 840 F.2d 526, 530 (7th Cir. 1988), in which the United States Court of Appeals for the Seventh Circuit determined, purportedly applying Illinois law, that tender of a quitclaim deed did not cure the title company's breach of a title insurance policy, based in part on the potential diminishment in the value of the property at issue. Although lower federal court decisions are not binding on Illinois courts, they may be considered persuasive authority. *Wilson v. County of Cook*, 2012 IL 112026, ¶ 30; *Illinois State Bar Association Mutual Insurance Co. v. Law Office of Tuzzolino and Terpinas*, 2013 IL App (1st) 122660, ¶ 33. As S&W notes, however, the *Citicorp Savings of Illinois* decision is based on the breach of an insurance contract. *Citicorp Savings of Illinois*, 840 F.2d at 530. In contrast, the issue on appeal in this matter concerns the proper recovery in tort for legal malpractice.

¶ 43 Hubertus contends in the alternative its loss is apparent from the appraised value of properties, $17,900, which it received after years of protracted litigation in the form of quitclaim deeds and $2,000 representing the appraised value of the property at 4407 West Fulton. This sum is considerably less than the $190,000 Hubertus paid for the properties based on the belief the properties would increase in value if Chicago hosted the 2016 Olympics. In this case, however, Hubertus presented no evidence that it could and would have sold the properties prior to CTIC causing the quitclaim deeds to be recorded in favor of Hubertus in January 2013. Moreover, there is no evidence of the appraised value of the properties prior to June 1, 2009. Furthermore, there is no evidence regarding the value of these properties, for example, immediately after the city of Chicago lost its bid to host the 2016 Olympics. Hubertus also challenges the trial judge's finding that Hubertus presented no evidence that the quitclaim deeds at issue were any less marketable than warranty deeds. It is true that "[u]nlike a warranty deed, in which the grantor makes certain guarantees to the grantee, a quitclaim deed conveys only such title as the grantor has and contains no covenants or warranties whatsoever." *Lindy Lu LLC v. Illinois Central R. Co.*, 2013 IL App (3d) 120337, ¶ 23 (citing *Mount v. Dusing*, 414 Ill. 361, 372-73 (1953)). Yet again, Hubertus does not point to evidence in the record establishing it suffered damages as a result of receiving quitclaim deeds instead of warranty deeds in this case. Given the absence of evidence on these questions following a trial of the matter, the existence of damages based on any change in the value of the properties is speculative. *Northern Illinois Emergency Physicians*, 216 Ill. 2d at 307.

¶ 44 Similarly, Hubertus relies upon *Feinerman* to assert "the measure of damages in an action for breach of a land sale contract is the difference between the contract price and the fair market value of the land on the date of the breach." *Feinerman*, 2013 IL App (1st) 121191, ¶ 16. In this

case, Hubertus also sued Radojcic for breach of the real estate contract and, following a prove-up hearing, obtained a judgment against Radojcic in the amount of $224,101.67. The claim against S&W, however, is for professional negligence, not for breach of a land sale contract. Accordingly, the measure of damages, pursuant to *Gaylor* and *Metrick*, is not the purchase price of the properties, but receipt of the properties or their current market value.

¶ 45 Lastly, Hubertus asserts "the measure of damages for conversion of personal property is the market value of the property at the time and place of conversion plus legal interest." *Dubey v. Public Storage, Inc.*, 395 Ill.App.3d 342, 361 (2009). This case involves neither conversion nor personal property. Accordingly, we do not find *Dubey* any more persuasive than *Gaylor* and *Metrick*.

¶ 46 In short, the trial court's award of damages in this case is consistent with the standards set forth in *Gaylor* and *Metrick*. Where a legal malpractice plaintiff alleges that the defendant attorney's advice fell below the standard of reasonable legal services, damages which proximately flow from the client's acceptance of that advice are recoverable in a negligence action. *Gaylor*, 2012 IL App (2d) 110718, ¶ 61; *Metrick*, 266 Ill. App. 3d at 655. Hubertus failed to present evidence it would not have closed on the transaction at issue or sold the properties at issue prior to their decline in value. Even assuming for the sake of argument that defendants breached a duty to ensure Hubertus obtained recordable deeds at the sale, the proper measure of damages is limited to receipt of the deeds for the properties and, in the instance of 4407 W. Fulton, the current market value of the property. Thus, we conclude the trial court's award of damages was not unreasonable or arbitrary. The award of damages was based on the evidence. Accordingly, the judgment in this case was not against the manifest weight of the evidence.

¶ 47 CONCLUSION

¶ 48 For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 49 Affirmed.