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## Court: Legal-malpractice case will go to trial

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The 1st District Appellate Court on Friday reinstated a legal-malpractice suit brought by an elderly woman who admitted she did not read the deed to the property she sold, citing the woman's contention that she relied on her attorney's advice.

Catherine Tuchowski sued Elizabeth M. Rochford in November 2003. Rochford represented Tuchowski in the November 2000 sale of a house she owned in Chicago.

The house stood on two lots, with a third lot mostly vacant except for a shed and a grill. Tuchowski alleges that Rochford included the vacant lot in the \$575,000 sale without her knowledge, costing her \$125,000 she could have gotten for the lot separately.

Although Tuchowski, then 77, was present at the closing and signed all the necessary forms, she said she did not discover until the fall of 2003 that the vacant lot had been included in the sale.

Cook County Circuit Judge Jeffrey Lawrence dismissed Tuchowski's second amended complaint against Rochford as untimely under Section 2-619(a)(5) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(5).

Lawrence ruled that Tuchowski failed to file suit within two years of the date she should have known that Rochford had altered the sales contract to make it include all three lots.

"It is her responsibility to look at the documents," the appeals court quoted Lawrence as saying.

But in a 10-page opinion, written by Justice Jill K. McNulty, the appeals court reversed.

"We hold that Tuchowski adequately alleged facts from which a trier of fact could infer that Tuchowski reasonably relied on her attorney when she signed the documents without reading them," McNulty wrote.

As such, the appeals court could not say as a matter of law that Tuchowski should have known about the sale of the lot more than two years before she filed her complaint.

In her complaint, Tuchowski alleged that Rochford knew that the owners of the property next to the vacant lot had offered \$125,000 for it. She also said that, at the closing, Rochford directed her to sign the documents quickly because Rochford had to go to another closing.

Tuchowski said she did not read the deed or other documents, but relied on Rochford.

In an affidavit, Rochford said Tuchowski asked her to amend the contract for the sale of the property to include the nearly vacant lot, the opinion said. Tuchowski, on the other hand, said she specifically told Rochford to limit the sale to the two lots with the house on them.

The appeals court reviewed the pleadings in the light

most favorable to Tuchowski. Typically, McNulty wrote, courts hold parties responsible for knowing the contents of documents they have signed. *Breckenridge v. Cambridge Homes Inc.*, 246 Ill.App.3d 810, 819 (1993).

But in some cases involving fiduciary relationships, courts have excused ignorance of the content of signed documents, she wrote, citing *Prueter v. Bork*, 105 Ill.App.3d 1003, 1006 (1982).

McNulty cited the example of *Melvin State Bank v. Crowe*, 97 Ill.App.2d 82 (1968). In *Crowe*, a defendant invested money in a business Crowe ran and later signed a guarantee for a loan he took from the bank. The bank then sued Crowe and the defendant, seeking to recover the loan.

The defendant countersued to recover her investment. She testified that she did not read the papers she signed concerning the investment and the guarantee and instead relied on the bank's representations.

The trial court found in favor of the bank, but the *Crowe* court reversed, finding a trial should be held focusing on the bank's fiduciary duties to the defendant.

In this case, Rochford had fiduciary duties as Tuchowski's attorney, the appeals court said.

Rochford said Tuchowski signed the deed only three lines below a line that showed three separate index numbers for the property to be sold. As such, Rochford argued that Tuchowski must have seen the line and deduced that the deed gave the buyers title to all three lots.

"We agree that the deed can support an inference that Tuchowski should have known, when she signed the deed, that the deed referred to all three lots," McNulty wrote. "However, we find that some rational triers of fact might not reach that same inference from the evidence as a whole. Taking into account the size of the typeface, Tuchowski's age and sophistication, and the time constraints Rochford placed on her, a trier of fact may believe that Tuchowski either did not see the line at issue, or she did not understand the special significance of the sequence of digits, slashes, dashes and spaces on that line."

Justices James Fitzgerald Smith and Denise O'Malley concurred in the opinion.

Tuchowski was represented by Berwyn attorney Stanley H. Jakala. Rochford was represented by Donald J. Brown Jr., Karen Kies DeGrand and Laurie A. Rompala, all of Donohue, Brown, Mathewson & Smyth LLC.

Brown and Rochford could not be reached for comment Friday morning.

Jakala said he was pleased with the ruling and would seek expedited discovery when the case is returned to the trial court because his client is now over 80 years old.

*Catherine Tuchowski v. Elizabeth M. Rochford*, No. 1-05-0491.