Filed: June 11, 1999

IN THE SUPREME COURT OF THE STATE OF OREGON

LARRY J. VANDERMAY and TAMARA

VANDERMAY, husband and wife,

and FLYING DUTCHMAN ENTERPRISES, an Oregon

corporation,

Respondents on Review,

v.

PAUL D. CLAYTON,

Petitioner on Review.

(CC 92-2104; CA A91235; SC S44717)

En Banc

On review from the Court of Appeals.*

Argued and submitted November 9, 1998.

Thomas W. Brown, of Cosgrave, Vergeer & Kester, LLP, Portland, argued the cause for petitioner on review. With him on the briefs was Barbara L. Johnston of Brisbee & Stockton.

Jeanyse R. Snow, of Snow & Snow, Astoria, argued the cause and filed the brief for respondents on review.

LEESON, J.

The decision of the Court of Appeals is affirmed. The judgment of the circuit court is reversed, and the case is remanded to the circuit court for further proceedings.

*Appeal from Tillamook County Circuit Court,

Rick W. Roll, Judge.

147 Or App 95, 935 P2d 1221 (1997).

LEESON, J.

In this legal malpractice action, the question is whether the trial court erred in granting defendant's motion for a directed verdict on the ground that, without expert testimony, the jury could not have found that defendant had been negligent. The Court of Appeals held that expert testimony was not necessary and reversed the trial court. Vandermay v. Clayton, 147 Or App 95, 935 P2d 1221 (1997). For the reasons that follow, we affirm.

We review the trial court's grant of a directed verdict for errors of law, considering the evidence in the light most favorable to plaintiff,[(1)] the party against whom the verdict was entered. Mauri v. Smith, 324 Or 476, 479, 929 P2d 307 (1996). In that light, the facts are as follows: Plaintiff worked for a major oil company for many years in a variety of capacities, including as a dealer representative, training instructor, and territory manager. While working for that company in California, plaintiff and Bob Wester decided that they would like to buy an oil company in Oregon. In 1977, they formed the VanWest Oil Company (VanWest) and negotiated the purchase of Macklin Oil Company (Macklin) in Tillamook. After they had made a tentative agreement for the purchase of Macklin, plaintiff and Wester employed defendant, a Eugene lawyer and Wester's brother-in-law, to "[handle] the legalese with the Macklins' attorney and put the deal together." In addition to buying Macklin, which consisted of two bulk oil plants and several service stations, VanWest leased several other service stations and entered into several supply contracts to deliver gasoline and petroleum products in the area.

After the purchase of Macklin, plaintiff and his wife moved to Tillamook. Defendant served as plaintiff's corporate and personal lawyer from 1977 until March 1990, and plaintiff relied on defendant's legal advice. During plaintiff's ownership of VanWest, the corporation acquired additional service stations and entered into more supply agreements. In 1983, Wester sold his shares in VanWest to plaintiff, and defendant represented both parties in that transaction.

In 1986, plaintiff decided to sell VanWest, and he listed it with a real estate company in Lake Oswego. Three years later, VanWest still was on the market, and plaintiff continued to operate and expand its business. By the end of 1989, VanWest had doubled in size from what it was in 1977, and plaintiff had made improvements at several of its properties, including upgrading tanks and lines, adding car washes at service stations, and putting in a new fuel island at one of the service stations. In the spring or summer of 1989, plaintiff was planning to tear down and replace a service station and add a convenience store on West Marine Drive in Astoria (Astoria site). Those plans included applying for a loan of over $400,000 to finance the project and working with City of Astoria planning and zoning staff to acquire the necessary permits.

By the end of the 1980s, environmental rules affecting underground storage tanks were being implemented at both the national and state levels. Plaintiff realized that the bank loan for the Astoria site upgrade would not be approved without an environmental assessment. Consequently, in October 1989, he hired a company to conduct soil tests at the Astoria site. Those tests revealed soil contamination at depths of five, ten, and fifteen feet. Plaintiff believed that the contamination had been caused by small spills from storage tank filling over the years and that it would not cost much to clean it up. Plaintiff did not report the results of the soil tests to the Department of Environmental Quality (DEQ).

In October 1989, David Harris expressed an interest in buying VanWest. He submitted a written offer to plaintiff on December 19. Paragraph 11 of the offer included an indemnification provision requiring plaintiff to hold Harris harmless "against any claims, environmental or otherwise" existing before the sale. The indemnification provision also stated that Harris would accept the 1989 soil test report that showed some contamination at the Astoria site and that, regarding that site, plaintiff's "indemnity under this paragraph will apply to the contamination conditions described therein."

Negotiations for the sale of VanWest continued for several weeks after Harris submitted his written offer, and defendant represented plaintiff in those negotiations. In January 1990, plaintiff learned that his loan application for the Astoria site upgrade had been rejected. Plaintiff also learned that there was contamination at a VanWest bulk plant site, but he had insurance coverage for any environmental contamination there, subject to a $25,000 deductible. Plaintiff was concerned about the continuing liability that he might face at the Astoria site because he knew that, under paragraph 11 of Harris's offer to purchase VanWest, Harris refused to be responsible for any cleanup at that site. Plaintiff estimated that