

Lawyer, clients sanctioned for ‘fraud on the court’

Plaintiff awarded \$252K on ‘Hail Mary’ claim

By: Pat Murphy | January 13, 2022



Plaintiff’s lawyer faced long odds

A Chelmsford lawyer and his clients can be sanctioned for committing fraud on the court based on misrepresentations overstating the amount of damages owed by a contractor who was subjected to a default judgment in a previous lawsuit over the construction of the clients’ home, a Superior Court judge has decided.

Philip M. Eliopoulos represented Lawrence and Patricia DiBenedetto in a 2004 lawsuit filed against Navin Patel and his construction company, Prime Group. A Superior Court judge entered a default judgment against Patel after neither he nor his attorney showed up for the December 2008 trial in the home construction dispute.

The court conducted a hearing on damages and assessed the DiBenedettos’ damages at \$105,000. While the court ordered a trebling of damages pursuant to G.L.c. 93A, the court clerk mistakenly quadrupled damages and, with interest and attorneys’ fees, entered final judgment against Patel in the amount of \$513,380.

In 2015, Patel — represented by new counsel — brought a fraud action seeking relief from the judgment entered in the construction case.

In 2019, Judge Helene Kazanjian found that Eliopoulos and his clients had committed a fraud on the court by overstating damages and making material misrepresentations of fact at the damages hearing in the construction defect case.

In her recent ruling on Patel's motion for sanctions, Kazanjian found Eliopoulos and his clients jointly and severally liable to Patel for \$252,000 in attorneys' fees and costs.

In her sanctions ruling, the judge rejected Eliopoulos' arguments that he had relied on information provided by his clients and, in any event, under G.L.c. 231, §6F, only "parties" and not their attorneys can be held liable for fraud on the court.

Instead, Kazanjian found that the conduct by the lawyer in the earlier case fully justified the court exercising its "inherent power" to impose a sanction for attorney misconduct. The judge said that at the damages hearing in the earlier case Eliopoulos should have been prepared to present "detailed damages evidence that was neither fraudulent nor misleading."

"A lawyer is not given leeway to misrepresent facts and submit fraudulent and misleading evidence to the court merely because his adversary defaulted," Kazanjian wrote.

The 12-page decision is *Patel v. DiBenedetto*, Lawyers Weekly No. 12-001-22. The full text of the ruling can be found [here](#).

'Five years digging for evidence'

Attorney Eliopoulos emailed a statement in response to a request for comment, writing that he respectfully disagreed with the judge's findings and intended to appeal.

"While the court stated that 'accepting my clients representations as to the scope of damages and not analyzing them independently' makes an award of attorneys' fees appropriate, my belief is that this standard creates an undue burden on attorneys (who may not have a construction background) when provided written estimates and invoices from licensed contractors by a client in a construction litigation case," Eliopoulos wrote.

Patel's attorney, Scott S. Sinrich of Worcester, said in an email that he knew he was facing long odds when he took on his client's case.

"Perhaps once in a century a 10-year-old judgment is overturned," Sinrich wrote. "When my client first came to me, I didn't think we had a chance to do anything for him because so many years had passed."

According to Sinrich, a key piece of his client's case was an affidavit he obtained from the DiBenedettos' damages expert in the underlying construction case. In the affidavit, the expert confirmed that he had not been given key project documents that should have been provided so that he could make a reasonable estimate of the homeowners' damages.



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— Judge Helene Kazanjian



“Without the award of significant sanctions, it would be very difficult for an attorney to pursue such a ‘Hail Mary’ claim, even one that smells of wrongdoing,” he said.

Peabody civil litigator Marc D. Kornitsky said the case is important because it raises the question of the limits of a court’s inherent power to sanction an attorney for misconduct under the Supreme Judicial Court’s 2015 decision in *Wong v. Luu*.

In that case, the SJC held in overturning a sanction against an attorney that “a judge may exercise the court’s inherent power to sanction an attorney with an assessment of attorney’s fees only if the attorney has engaged in misconduct that threatens the fair administration of justice and the sanction is necessary to preserve the judge’s authority to administer justice.”

Kornitsky said he could see the SJC taking up an appeal in *Patel v. DiBenedetto* to further clarify the scope of a court’s sanctioning powers.

“In *Wong*, the court found that the appropriate avenue was a Rule 11 report to the Board of Bar Overseers for disciplinary proceedings, not the assessment of attorneys’ fees,” Kornitsky said. “[*Patel*] may be the first test of that inherent power recognized in *Wong v. Luu*.”

But Boston professional liability attorney Edward S. Cheng said *Patel* fits comfortably within the framework the SJC established in *Wong*.

“I don’t see any problem with the Superior Court determining that that conduct by the attorney — proffering the testimony on the 93A issue and not correcting the record where he knows the testimony was incorrect — is misconduct or, at the very least, conduct that threatens the fair administration of justice,” Cheng said.

Cheng added that courts walk a fine line when issuing sanctions against attorneys in such circumstances.

“We need to be careful not to inadvertently chill vigorous advocacy,” he said.

Boston business litigator Nicholas J. Rosenberg said in recent years he has noticed that Superior Court judges have been increasingly demanding of plaintiffs’ counsel in establishing each element of their clients’ claims when an adversary defaults. But that should not mean that counsel needs to be prepared to argue a defaulting party’s case for them, he said.

“We as lawyers always have a duty of candor,” Rosenberg said. “You can’t misrepresent the damages if you know they are duplicative or if you know there is a fact that would counter or render not true your own representation.”

Relief from judgment

According to court records, in 2004 the DiBenedettos — represented by Eliopoulos — sued Patel and his construction company for breach of contract and unfair trade practices in violation of G.L.c. 93A. The claims arose from alleged deficiencies in Patel’s construction of the DiBenedettos’ home in Tyngsborough and included disputes over the installation of a driveway and retaining wall.

In 2008, Superior Court Judge Joseph M. Walker III issued a default judgment against Patel and awarded the DiBenedettos the full amount of their alleged damages: \$105,205. Based on a clerk’s error in calculating the enhanced damages for a violation of 93A, the court entered a final judgment in the amount of \$513,380.

Patel subsequently settled the home construction case by paying the DiBenedettos \$200,000.

Patel retained Sinrich as his new counsel and in 2012 sued the three attorneys that had represented him at various times in the construction case. Patel eventually received \$200,000 in a settlement of his legal malpractice claims against two of his three former attorneys.

After hearing evidence, Kazanjian in 2019 vacated the judgment in the construction case. The judge found that the DiBenedettos, with the assistance of Eliopoulos, had committed fraud on the court.

Specifically, Kazanjian found that at the hearing on damages: (1) Lawrence DiBenedetto had falsely testified that Patel failed to respond to his 93A demand letter; and (2) the exhibit introduced by the DiBenedettos documenting their damages included duplicative, false and misleading information.

In addition to vacating the judgment, Kazanjian set aside the \$200,000 settlement between the DiBenedettos and Patel. Accordingly, in 2020 Judge Diane C. Freniere conducted a new hearing on damages in the construction case and entering judgment in favor of the DiBenedettos that, with interest, came to \$10,500 — substantially less than the \$513,380 judgment entered against Patel in 2008.

Patel then moved for sanctions against the DiBenedettos, Eliopoulos and his law firm, Eliopoulos & Eliopoulos.

Sanctions with teeth

In addressing the question of sanctions, the judge first rejected the DiBenedettos' argument that an award under G.L.c. 231, §6F, was inappropriate because technically they were the "prevailing party" in the construction case.

"Here, the record supports a finding that substantially all the claims for damages the DiBenedettos brought in the 2004 Superior Court action were frivolous and not advanced in good faith," Kazanjian wrote. "Indeed, following the 2020 Damages Assessment Hearing, Judge Freniere rejected most of their claims for damages."

Turning to the question of sanctions against Eliopoulos, Kazanjian cited two lower court decisions that supported the proposition that an attorney may be sanctioned pursuant to G.L.c. 231, §6F. Rather than deciding that question, the judge rested her authority to sanction Eliopoulos on the SJC's decision in *Wong*, pointing to the "duplicative and misleading" information in the damages exhibit the attorney presented in the construction case.

"Either [Eliopoulos] willfully submitted inflated damages figures, or he just accepted his clients' representations as to the scope of damages and did not analyze them in the context of the parties' respective rights and obligations before submitting them to the court," Kazanjian wrote.

"Attorney Eliopoulos had an obligation to submit damages figures that were fairly supported by the facts and applicable law, which he did not do," the judge added. "As a result, Judge Walker was grossly misled. For that, sanctions are appropriate."

Accordingly, Kazanjian found Eliopoulos jointly and severally liable with his clients for \$243,770 for Patel's attorneys' fees and \$7,956 for the plaintiff's costs.

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Massachusetts Lawyers Weekly

Civil practice – Sanctions – Fraud on the court

Patel v. DiBenedetto

THE ISSUE: Could a Chelmsford lawyer and his clients be sanctioned for committing fraud on the court based on misrepresentations overstating the amount of damages owed by a contractor who was subjected to a default judgment in a previous lawsuit over the construction of the clients' home?

DECISION: Yes (Middlesex Superior Court)

LAWYERS: Scott S. Sinrich of Phillips, Silver, Talman, Aframe & Sinrich, Worcester (plaintiff)
Philip M. Eliopoulos of Eliopoulos & Eliopoulos, Chelmsford (defense)
David H. Rich and Grace E. Collier, of Todd & Weld, Boston (counsel of record for attorney Eliopoulos and his firm)

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