

STATE OF MICHIGAN
COURT OF APPEALS

INVESTMENT VENTURES, INC.,

Plaintiff-Appellant,

v

HERTZ, SCHRAM & SARETSKY,

Defendant-Appellee.

UNPUBLISHED

July 10, 2007

No. 274933

Oakland Circuit Court

LC No. 05-527322-NM

Before: Whitbeck, C.J., and Wilder and Borrello, JJ.

BORRELLO, J. (*dissenting*).

My colleagues in the majority have accurately and thoroughly set forth the applicable case law and factual setting in this matter¹, yet I respectfully dissent on this close question because it is my contention that plaintiff has established legally sufficient facts to allow the trier of fact to determine the issues of whether Hertz, Schram & Saretsky's malpractice was the cause-in-fact and the proximate cause of plaintiff's economic injuries.

The basis for my dissent centers around the contentions put forth by the majority which, for me, appear to be contradictory. My brothers in the majority hold that the plaintiff's proofs are speculative on the issue of whether Hertz, Schram & Saretsky's malpractice was the cause-in-fact for plaintiff's economic injuries, and then state that the reason such evidence is nothing more than a mere possibility is predicated on a finding that even if Hertz, Schram & Saretsky had not erred in dating the land contract mortgage; Equity Funding *could* still have brought its action to quiet title, thereby, I presume, negating the issue of proximate cause. Hence, the majority's conclusions are themselves predicated on a mere possibility--that Equity Funding could still have filed an action even if Hertz, Schram & Saretsky had not been negligent in dating the document—a finding that at its core rests on a speculative holding by this Court. Thus, for the straightforward reason that I find, contrary to the majority, that reasonable persons could differ about the application of the legal concepts of causation set forth in the pleadings before us,

¹ Because the majority has accurately and succinctly set forth the applicable facts and cited and quoted all pertinent case law, it would be redundant to repeat the facts and the law cited. Thus, while I rely on the observations of my brother jurists for the facts and the law in this matter, it is our interpretations of those two entities on which we differ.

prudence should lead us to defer to the trier of fact on these issues², rather than allow the courts to determine causation. Accordingly, I respectfully dissent and would remand the matter to the trial court for further proceedings.

/s/ Stephen L. Borrello

² See, *Winkler v Carey*, 474 Mich 1118; 712 NW2d 451 (2006) relying on Judge O'Connell's dissent in the unpublished opinion issued by this Court.