



Alerts

Minnesota Appellate Court Finds Litigation-Funding Agreement Void and Unenforceable

July 17, 2019

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Maslowski v. Prospect Funding Partners LLC, 2019 BL 25346, Minn. Ct. App., No. A18-1906 (July 8, 2019)

Brief Summary

A Minnesota appellate court upheld a trial court's conclusion that a litigation-funding agreement was invalid because it was champertous under Minnesota law, even though there was a New York choice-of-law provision in the agreement, where the agreement would have been valid.

Complete Summary

In 2012, Pamela Maslowski ("Maslowski") was injured in a car accident and retained a law firm, Schwebel Goetz & Sieben, P.A ("Schwebel"), to represent her in a personal injury lawsuit. Two years later, Maslowski entered into a litigation-funding agreement (the "Agreement") with Prospect Funding Partners LLC ("Prospect"). Maslowski sold Prospect an interest in her personal injury claim for \$6,000. In return, in the event that Maslowski recovered damages, Prospect was entitled to receive \$6,000, a \$1,425 processing fee, and 60% annual interest based on a set schedule. Prospect's total "repurchase" was not to exceed \$25,245.

Prospect does business in both New York and Minnesota, and the Agreement contained a choice-of-law provision stating that New York law would be applied in any disputes regarding the Agreement. Prospect's manager used a Minnesota address when signing the Agreement, and any payments or notices were required to be sent to that same address. Schwebel signed a mandatory "Attorney Acknowledgement" and "Letter of Direction" as to how Prospect should be paid.

In July 2015, Maslowski settled her personal injury case. She then filed an action in Minnesota state court seeking a declaration that the Agreement was invalid on grounds of champerty and unconscionability. In Minnesota, champerty is broadly defined as "an agreement between a stranger to a lawsuit and a litigant by which the stranger pursues the litigant's claims as consideration for receiving part of any judgment proceeds." By contrast, New York champerty law more narrowly requires the stranger to have an intent to

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sue. Under New York law, the Agreement would have been valid because Prospect did not enter into the Agreement with the intent to sue on its own behalf.

Prospect brought a breach of contract claim in New York and moved to dismiss Maslowski's declaratory action based on the New York choice-of-law provision in the Agreement. The Minnesota court denied Prospect's motion to dismiss. The New York court also concluded that Minnesota was the proper forum to resolve the dispute and dismissed Prospect's breach of contract claim.

The Minnesota trial court declined to enforce the choice-of-law provision in the Agreement; rather, the court applied Minnesota law. The court ultimately found the Agreement unenforceable and void because it violated Minnesota's prohibition against champerty and maintenance. Prospect appealed, but the Minnesota appellate court affirmed.

The appellate court noted that although Minnesota generally enforces choice-of-law provisions, Prospect admitted that it specifically drafted the provision to avoid Minnesota's law against champerty. The court also acknowledged Minnesota's "strong local interest" in applying its prohibition against champerty, and the court thus upheld the trial court's decision not to enforce the New York choice-of-law provision. After engaging in a general conflict-of-law analysis, the court applied Minnesota law.

Applying Minnesota law, the court found the Agreement was champertous and void. The Agreement allowed Prospect to receive part of Maslowski's judgment proceeds, and Prospect charged her an exorbitant interest rate. In addition, the Agreement required Maslowski to relinquish control over some aspects of her litigation. For example, Maslowski was obligated to notify Prospect if she retained a new lawyer, and her lawyer was required to sign the "Acknowledgment" and "Letter of Direction."

The court agreed with the trial court's assessment that champertous agreements "have untoward economic effects on the legal system that can provide both improper incentives and disincentives to pursue and settle litigation." As a matter of public policy, Minnesota prohibits champerty in order to "prevent an outsider's intrusion into a lawsuit solely for speculative gain."

Significance of Opinion

Litigation-funding agreements can be held unenforceable and void on grounds of champerty, depending on the state law that is applied. A choice-of-law provision in such agreements may not be enough to overcome the forum state's application of its own law in such circumstances.

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