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New Jersey Appellate Court Holds No Attorney-Client Relationship Between Law Firm and Managing Members of LLC in Legal Malpractice Case

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Hedenberg v. Ciardi, Nos. A-3774-17T3, A-4069-17T3, 2019 N.J. Super. Unpub. LEXIS 2381 (Super. Ct. App. Div. Nov. 22, 2019)

Brief Summary

In consolidated appeals, a New Jersey appellate court affirmed the trial court's grant of summary judgment in favor of defendants in a legal malpractice action, finding the law firm had only represented the company (a limited liability company), not the individual members of the company who filed the lawsuit.

Complete Summary

The defendant lawyer, Albert A. Ciardi, III, and his law firm Ciardi, Ciard & Astin represented a real estate development company, Grove Street Realty Urban Renewal LLC ("Grove Street"), in connection with the negotiation of a \$32.3 million loan. Grove Street obtained the loan to develop luxury, age-restricted apartments. The plaintiffs, Thomas Hedenberg and Ray Tresch, the managing members of Grove Street, owned an eighty-six percent interest of the LLC. They sued Grove Street's lawyers claiming that the law firm represented them individually and failed to advise them that they could be personally liable for the loan.

Grove Street retained the firm in 2010 to attempt to renegotiate the loan's term with Grove Street's lender, a Merrill Lynch subsidiary. The project itself was completed in 2009. The loan agreement included a "Limited Joinder" provision holding Grove Street's principals personally liable for the loan balance if Grove Street ever filed bankruptcy. The renegotiation efforts were unsuccessful and the lender stuck to the original due date. Grove Street followed Cardi's advice and filed for Chapter 11 bankruptcy because it could not pay the loan's balance when due. The lender eventually obtained a judgment against the principals.

Plaintiffs personally signed the "Limited Joiner" as part of the loan package. The attorney from the firm who worked on the loan closing (not Ciardi) testified he explained to "plaintiffs that this was a 'bad boy' clause; if one of the loan provisions were violated, 'the nonrecourse nature of the loan would change.'" Plaintiffs testified they did not have any personal legal issues they wanted

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addressed when they met with Cardi to discuss the retention. According to Hedenberg, he viewed Grove Street and its members as "one and the same." The retainer agreement was between the Cardi defendants and Grove Street, signed by Hedenberg.

The trial court found the retention agreement only provided for legal representation to Grove Street. The court stated: "nothing defendant did would lead two seasoned businessmen to believe that they were being represented in their individual capacit[ies] by [the Ciardi defendants]." Although the Ciardi defendants could have told plaintiffs to obtain their own independent counsel, "defendants were under no affirmative duty to inform plaintiffs that they did not represent them because plaintiffs were not their clients[.]" In denying the plaintiffs' motion to reconsider, the court held that an affirmative act by the lawyer is required to create an attorney-client relationship. "Plaintiffs' unexpressed, subjective belief about representation was not a basis to establish duty."

The appellate court agreed, finding no express or implied attorney-client relationship. For the same reasons as the trial court, the appellate court found that the retention agreement only provided representation to Grove Street. Plaintiffs did not request representation as individuals. When the initial check from Grove Street was voided and Hedenberg paid by personal check, the notation said it was for Grove Street's representation. He treated this as a capital contribution to Grove Street.

The court found support in its ruling in RCP 1.13(d), which provides that an attorney who is "[d]ealing with an organization's . . . members, . . . shall explain the identity of the client when the lawyer believes that such explanation is necessary to avoid misunderstanding on their part."

Significance of Decision

This opinion supports the longstanding and well-established principle that attorneys for business entities generally do not also represent the entity's constituents. The exceptions to this general rule are limited. Most jurisdictions require an express agreement confirming the representation of the individuals or other evidence of the lawyer providing advice or legal services to entity constituents in their individual capacity. Generally, the subjective belief of a member or shareholder that he or she was being represented by the corporate attorney is not enough to support a malpractice claim brought by that individual.