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Plaintiffs' Breach of Fiduciary Duty Claim Against Law Firm Dismissed as Duplicative of Legal Malpractice Claim, Punitive Damages Not Recoverable

April 2, 2020
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Signal Fin. Holdings, Ltd. Liab. Co. v. Looking Glass Fin., Ltd. Liab. Co., 2019 U.S. Dist. LEXIS 206857 (N.D. Ill., Judge Joan H. Lefkow, 12/2/19)

Brief Summary

A federal district court in Illinois granted defendants' motion to dismiss in part—and denied it in part—holding that plaintiffs' breach of fiduciary duty claim was duplicative of their legal malpractice claim and should be dismissed. The court also dismissed plaintiffs' claims for punitive damages based on Illinois' statutory prohibition of punitive damages in claims against attorneys and firms arising out of conduct which occurred during the course of the legal representation (735 ILCS 5/2-1115).

Complete Summary

Plaintiffs operate a pre-settlement legal funding business, advancing loans to people with potential claims in exchange for a portion of any potential recovery. They brought their case against numerous defendants, including a law firm and its lawyers, in the U.S. District Court for the Northern District of Illinois, Eastern Division. Plaintiffs alleged that a former executive misappropriated their trade secrets while separating from the business and used them to compete against them. Plaintiffs then sued the executive, several corporate entities he formed, another former executive, and a law firm ("the Firm") and four of its attorneys who allegedly assisted the executive.

With regard to the Firm, plaintiffs alleged claims for legal malpractice, breach of contract, breach of fiduciary duty, and fraud and fraudulent concealment; they also sought punitive damages. Plaintiffs alleged the Firm helped the former executive compete against them in various ways while still representing and receiving fees from them. Plaintiffs and the Firm signed an engagement letter that provided in relevant part that "our firm will not be representing any of your owners, members, directors, officers, or employees unless specifically engaged to do so. Accordingly, absent a separate engagement to represent such other persons or entities, our representation of you does not create an attorney-client relationship between the firm and any other persons or entities." Although the Firm periodically obtained conflict waivers from Plaintiffs for representing

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Plaintiff employees, they never received one for the former executive. The engagement letter also provided that the Firm "will not be required to disclose to [Plaintiffs] . . . any information our firm[] possess[es] with respect to which our firm owes a duty of confidentiality to another current or former client."

The Firm filed a Rule 12(b)(6) motion to dismiss the claims and a motion to strike plaintiffs' claims for punitive damages. The court granted the Firm's motion in part, and dismissed the following claims:

1. the breach of fiduciary duty (because it was duplicative of the malpractice claim),
2. the breach of contract claim (in part), and
3. the fraudulent concealment claim because the Firm owed no duty to disclosed the unconflicted representation of another client.

The court denied the Firm's motion to dismiss the legal malpractice claim, although the court held that plaintiffs were not allowed to claim as damages the fees for prosecuting this action or fees it never paid to the Firm. Additionally, the court denied the Firm's motion to dismiss the breach of contract claim, but held that the claim was limited exclusively as an alternative to the malpractice count.

Further, the court also denied the Firm's motion to dismiss the fraudulent misrepresentation claim. While the court permitted the fraudulent misrepresentation count to survive the motion, it limited recoverable damages related to this claim to fees plaintiffs paid to the Firm *after* the alleged misrepresentation.

Finally, the court dismissed, with prejudice, all claims for punitive damages based on Illinois' statutory prohibition of punitive damages in claims against attorneys and firms arising out of the rendition of—or failure to render—professional legal services, 735 ILCS 5/2-1115, and Illinois courts' interpretation of said provision. Referencing *Brush v. Gilsdorf*, 135 Ill.App.3d 356 (2002), the court first noted that the availability of punitive damages depends on whether plaintiffs' breach of fiduciary duty claim fell within the "rubric of malpractice" and the court was required to look to the "nature of the behavior alleged" in plaintiffs' complaint to "determine whether the activities fall within the term legal malpractice." Citing *Calhoun v. Rane*, 234 Ill.App.3d 90 (1992), the court further noted that Section 2-1115 "also applies to intentional fraud arising from the provision of legal services." According to the court, because plaintiffs alleged they were injured "by reason of the attorneys' professional conduct during the course of legal representation," the gravamen of the claim was legal malpractice, regardless of which theory or claim has been pled. Ultimately, plaintiffs' claims for punitive damages were dismissed.

Significance of Decision

This case follows a long line of decisions in Illinois where courts have held that while claims for legal malpractice and breach of fiduciary duty may be conceptually distinct, when such claims are supported by the same operative facts and result in the same injury to the plaintiff, the breach of fiduciary duty claim is duplicative of the malpractice claim and should be dismissed. The court also recognized that Illinois law prohibits the recovery of punitive damages in claims against attorneys and firms arising from conduct that occurred during the course of legal representation, 735 ILCS 5/2-1115.