



## Alerts

### Illinois Law Firm Recovers No Attorney's Fees After Trial Court Concluded The Firm Breached Its Fiduciary Duties

August 4, 2020

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*Scot Vandenberg v. RQM, LLC, 2020 IL App (1st) 190544*

#### Brief Summary

An Illinois appellate court affirmed the adjudication of a firm's attorney's liens down to zero, where the discharged firm failed to provide any evidence of the amount of hours it had spent on the case, and also where the firm had engaged in multiple breaches of its fiduciary duties to its clients. As a matter of law, the firm was not barred from receiving attorney's fees, but the breaches of fiduciary duty were reasonable factors for the trial court to consider in determining the appropriate amount of fees to award.

#### Complete Summary

Scot Vandenberg (Vandenberg) was paralyzed after he fell off the upper deck of a yacht manufactured by Brunswick Corporation and Brunswick Boat Group (collectively, Brunswick), which was owned and operated by RQM, LLC (RQM). The McNabola Law Group (previously known as Cogan & McNabola, P.C., referred to as the Firm) represented Vandenberg and his wife (collectively, the Vandenbergs) in a negligence and strict liability action against Brunswick and RQM. The Vandenbergs signed a contingency fee agreement with the Firm, and agreed to pay the Firm's actual expenses. The fee agreement also provided for compensation to the Firm in the event the Firm withdrew prior to the resolution of the Vandenbergs' claims. In that case, the Vandenbergs agreed to pay the Firm at a rate of \$450 per hour for the time spent on the claims, or 33.33% of the amount being offered in settlement at the time of the request to withdraw, whichever was greater.

Nearly five years later—and after a settlement was reached with RQM—the parties went to trial against Brunswick. After a three-week trial, the case was submitted to the jury for deliberation. While the jury deliberated, Brunswick's counsel called Mr. McNabola (McNabola) and offered a \$25 million dollar settlement. McNabola relayed the offer to the Vandenbergs, who told McNabola to accept it. However, before McNabola told Brunswick's counsel of the acceptance, the judge's clerk called McNabola about a jury note. The judge's clerk read McNabola the jury's note, which asked: "Can we find fault with RQM,

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without finding fault with Brunswick?" McNabola told the judge's clerk not to do anything else because he wanted to try to settle the case.

McNabola then called Brunswick's counsel and accepted the settlement offer. Soon after, the judge's clerk instructed both parties to return to court where they were informed of the contents of the jury note and the time it was delivered. The parties then entered the settlement agreement on the record, and the case was dismissed.

The jury was allowed to deliberate to verdict, and they reached one in favor of Brunswick. Subsequently, due to McNabola's conduct with respect to the jury note, Brunswick filed a motion to vacate the settlement on the grounds that it had been procured by fraud and mistake. After a hearing on the motion, the settlement agreement was vacated, and the court entered judgment in favor of Brunswick.

The Vandenberges then discharged the Firm and retained new counsel. A motion to vacate the judgment in favor of Brunswick and enforce the settlement agreement was filed by their new counsel. A judge found that the settlement had been entered into the record after all parties had been made aware of the jury note and the time the note had been recorded and, therefore, reinstated the \$25 million settlement agreement.

After the settlement was reinstated, the Vandenberges filed a motion to adjudicate the Firm's attorney's liens for fees and expenses. They claimed the Firm had breached its fiduciary duties to the Vandenberges in a number of ways, and thus not entitled to any fees from the reinstated settlement. In response, the Firm filed a petition for fees and expenses, contending it was entitled to the full contingency fee from the \$25 million settlement, plus interest, minus the Vandenberges' subsequent counsel's *quantum meruit* fee. The Firm also argued it was entitled to the deferred contingency fee from the RQM settlement and reimbursement of its reasonable expenses, which totaled over \$169,000.

In ruling on the motion, the trial court found the Firm had breached its fiduciary duties to the Vandenberges in 11 distinct ways. With respect to the Firm's attorney's lien, the Firm had not given actual notice to Brunswick of its lien and, as such, it was not an enforceable lien. Additionally, the Firm had failed to provide any evidence of the total number of hours it had spent working on the Vandenberges' claims, thereby failing to properly plead and prove a *quantum meruit* award based on hourly rates. The trial court adjudicated the Firm's attorney's lien to zero, and denied its petition for fees related to the RQM settlement and reasonable expenses.

On appeal, the Firm asserted it was not barred from receiving legal fees and, as a matter of law, the trial court erred in denying its fees and expenses based on the 11 breaches of fiduciary duty. The Firm contended its proper fee with respect to the \$25 million settlement was the full contingency fee, minus the hourly fees earned by subsequent counsel. It also asserted it was entitled to the full contingency fee from the RQM settlement and its reasonable expenses.

The appellate court agreed the Firm was not barred from receiving legal fees, but nevertheless affirmed the trial court's determination to award no fees at all with respect to the \$25 million settlement. Further, the appellate court acknowledged that—absent a contract or applicable statute—the general rule is that a discharged attorney is entitled to receive reasonable compensation for the services rendered before discharge, pursuant to the theory of *quantum meruit*. However, the attorney bears the burden of establishing the value of his or her services.

In determining the appropriate *quantum meruit* award for a discharged attorney, the appellate court observed that in some cases the calculation could be based on a contingency amount, less the amount earned by successor counsel. However, the court declined to rule that this is the required method of calculation. Instead, the court opined that a trial court has the discretion to consider a multitude of factors in determining the appropriate *quantum meruit* fee, including the conduct of the attorneys in the case.

Although the appellate court reasoned that an attorney's breach of fiduciary duty does not require a complete forfeiture of attorney's fees, it found the trial court did not abuse its discretion in finding that a forfeiture was warranted here. When an attorney breaches a fiduciary duty to a client, the appropriate remedy is within the equitable discretion of the court. Notably, the appellate court made clear its holding did not mean an attorney discharged for cause could *never* recover *quantum meruit* fees.



Moreover, the court affirmed the trial court's ruling on a separate, independent basis: the Firm's engagement agreement. The agreement expressly allowed for the payment of attorney's fees after discharge, which were to be calculated either by hourly rates or by a percentage of any settlement offer pending at the time the Firm's withdrawal was requested. In this case, however, there was no settlement offer at the time the Firm was discharged, and the Firm failed to provide any evidence of how many hours it had spent working on the case. Accordingly, even based on the Firm's own engagement agreement, the appellate court affirmed the adjudication of attorney's fees with respect to the \$25 million settlement to zero.

With respect to the RQM settlement and the Firm's expenses, however, the appellate court reversed the trial court's denials. The court found that both of these amounts were due to the Firm from the Vandenberg, pursuant to the engagement agreement. The trial court gave no reasoning as to why it denied both requests, and because the Vandenberg's successor counsel did not object to the reasonableness of the expenses sought by the Firm, that issue was waived.

## Significance of Opinion

In Illinois, where a discharged attorney has breached fiduciary duties to a client and has failed to provide *any* evidence of the hours spent on the case to establish a *quantum meruit* recovery, the attorney may be denied attorney's fees entirely. The amount of recovery is left to the sound discretion of the trial court after the court considers a number of factors, including the time and labor required, the attorney's skill and standing, the nature of the cause, the novelty and difficulty of the subject matter, the attorney's degree of responsibility in managing the case, the usual and customary charge for that type of work in the community, and the benefits resulting to the client.