



## Alerts

### Illinois Appellate Court Affirms That Attorney Representing a Closely Held Business Does Not Owe a Duty to its Managing Member

March 1, 2023

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*Requet v. Stengel, Bailey & Robertson*, 2023 IL App (3d) 210203-U (Feb. 15, 2023)

#### Brief Summary

An appellate court in Illinois declined to expand the scope of the third-party beneficiary theory espoused in *Pelham v. Griesheimer*, 92 Ill.2d 13 (1982) and affirmed summary judgment in favor of the law firm and its partners.

#### Complete Summary

According to the complaint, a now-disbarred attorney, Francis J. Coyle, Jr. (Coyle), represented plaintiff and several of plaintiff's businesses for more than 20 years. At the time plaintiff first engaged Coyle, Coyle was a named partner at a law firm located in Rock Island, Illinois. In 2008, the other individual partners separated from Coyle and formed a new firm.

In 2011, plaintiff retained Coyle to represent a company called PVY Development (PVY) in an Iowa real estate transaction. Plaintiff was the managing member of PVY with a 40 percent ownership interest. It was later discovered that Coyle intentionally misappropriated money from the real estate transaction and was eventually disbarred. Plaintiff alleged he personally suffered \$3 million in damages as a result of the failed real estate transaction.

Plaintiff—in his individual capacity—sued Coyle, the new firm, and the partners of the new firm for legal malpractice, negligence, fraud, and breach of fiduciary duty. Based on the theories of implied agency and estoppel, plaintiff alleged that the new firm and its partners were jointly and severally liable with Coyle for damages. Plaintiff moved for summary judgment on these claims, asserting that he was a third-party beneficiary of the legal services Coyle rendered to PVY. The new firm and its partners also moved for summary judgment arguing, among other things, that no attorney-client relationship existed between plaintiff, individually, and Coyle for the transaction at issue. The trial court granted summary judgment in favor of the new firm and its partners due to the lack of attorney-client relationship. By extension, the direct claims against Coyle were also rendered moot.

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On appeal, plaintiff asked the Illinois Third District Appellate Court to "widen the window" of attorney liability to non-clients first recognized by *Pelham v. Griesheimer*, 92 Ill.2d 13 (1982). In *Pelham*, the Illinois Supreme Court held that "to establish a duty owed by the defendant attorney to the non-client, the non-client must allege and prove that the intent of the client to benefit the non-client third party was the primary or direct purpose of the transaction or relationship." *Pelham*, 92 Ill.2d at 20-21. Here, plaintiff argued that the appellate court should allow his claim because plaintiff had a decades-long relationship with Coyle and Coyle's actions were intentional. The appellate court rejected plaintiff's argument, finding that the Illinois Supreme Court did not suggest that either of these factors—the length of the relationship and seriousness of the wrong—had any bearing on its decision and affirmed summary judgment in favor of the new firm and its partners.

## Significance of Decision

This case illustrates that a person acting in their organizational capacity is distinct from a person acting in their individual capacity, and an attorney representing the former does not owe duties to the latter. Nevertheless, an attorney should be mindful of their obligation to make reasonable efforts to correct misconceptions about their role in the matter. See, e.g., ABA Model Rules of Professional Conduct 1.13 and 4.3.