



Alerts

Settlement Agreement Precluded Client From Establishing Justifiable Reliance

August 15, 2012

Lawyers for the Profession® Alert

Schrager v. Bailey, 2012 IL App (1st) 111943, 2012 WL 2106217

Brief Summary

The Illinois Appellate Court, First District, held that a non-reliance clause in a settlement agreement precluded plaintiff client from proving justifiable reliance as an element of his fraudulent misrepresentation claim against defendants, his former lawyers.

Complete Summary

In 2002, the client filed a legal malpractice suit against his former lawyers and another attorney. The client alleged that his former lawyers committed legal malpractice when they took a voluntary dismissal of a federal lawsuit they had filed on the client's behalf. The suit was refiled in the Circuit Court of Cook County, but was then dismissed with prejudice based on the single-refiling rule.

In June 2006, the client agreed to dismiss the malpractice suit and settle his claim against his former lawyers based upon their representations that they had relied on advice from the other attorney in deciding to dismiss the federal suit. As part of the settlement negotiations, the client requested affidavits from his former lawyers to support their representation. The settlement agreement that the client signed contained a non-reliance clause. It also contained an acknowledgment by the parties that they received independent legal advice as to the "effect and import" of its provisions. By June 30, 2006, the agreement had been signed by all parties. The trial court found that the agreement had been made in good faith and dismissed the client's alleged claims against his former lawyers. The client's alleged claims against the other attorney remained pending for another four years.

In 2011, the client filed his second amended complaint against his former lawyers in a subsequent case. Count I alleged that the client's former lawyers had committed fraud by misrepresenting the basis for the decision to dismiss the federal suit. In Count II, the client alleged that his former lawyers aided and abetted the other attorney in an act of fraud by supporting the other attorney's defense in the malpractice case.

The appellate court concluded that the integration/non-reliance clause in the settlement agreement precluded the client from proving justifiable reliance, which was fatal to his cause of action for fraud.

Attorneys

Terrence P. McAvoy

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Significance of Opinion

This decision is significant because it provides a risk management point with respect to the drafting of releases and settlement agreements. Generally, one should always provide an integration/non-reliance provision for a client's protection.

For further information, please contact [Terrence P. McAvoy](#).

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