



Alerts

Law Firm Could Compel Arbitration of Claims Despite Being Nonparties to Arbitration Agreement

July 3, 2012

Lawyers for the Profession® Alert

Lash & Goldberg LLP v. Clarke, ___ So. 3d ___, 2012 WL 1698335 (Fla. App. 4 Dist. May 16, 2012)

Brief Summary

The District Court of Appeal of Florida, Fourth District, held that defendants, a law firm and its attorneys, could compel arbitration of a nurse's alleged claims against them despite the fact that they were non signatories to the arbitration agreement signed by the nurse and her employer.

Complete Summary

Plaintiff, a nurse, filed a multi-count complaint alleging fraud and deceit, negligent misrepresentation, defamation and intentional infliction of emotional distress against all defendants. The last count, legal malpractice, was directed at a law firm and its attorneys. Central to all of the counts was the allegation that the nurse was falsely accused of causing a patient's death, that all of the defendants knew that another nurse was responsible, and that they concealed this fact from plaintiff.

Plaintiff nurse's complaint contained allegations that defendants acted together. In the fraud count, plaintiff nurse claimed that all of the defendants intentionally "engaged in a pattern of fraud and deceit" to conceal information about the patient's death, and "conspired" to prevent her and her counsel from discovering that she was not responsible for the death. Plaintiff nurse alleged that these actions "constituted a concerted effort to defraud" her.

The legal malpractice count against only the law firm and its attorneys alleged that their representation of the other defendants, including the nurse whom plaintiff nurse believed to be responsible for the death, created conflicts of interest with their representation of plaintiff nurse and that they never disclosed those conflicts to her. She claimed the attorneys knew she was blameless in the incident, but withheld the truth from her.

All defendants moved to compel arbitration based on an arbitration agreement that plaintiff nurse had signed as part of her employee package. The trial court granted the motion as to the other defendants, but denied arbitration as to the law firm and its attorneys.

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The appellate court reversed. The court found that although the law firm and its attorneys were not signatories or parties to the arbitration agreement, they could insist on arbitration because the complaint alleges that the defendants engaged in concerted conduct that harmed plaintiff nurse. The court noted that generally, a non signatory to an arbitration agreement cannot compel a signatory to submit to arbitration. However, one exception to the rule is that a non signatory can compel arbitration when the signatory to the contract containing the arbitration clause alleges substantially interdependent and concerted misconduct by both the non signatory and one or more of the signatories. This exception is based on the doctrine of equitable estoppel.

The court noted that although plaintiff nurse tried to spin the legal malpractice count as involving only her independent attorney-client relationship with the attorney defendants, her complaint generally tied those defendants to the others who were parties to the arbitration agreement. All of the counts in the complaint stemmed from the death of the patient and defendants' alleged efforts to conceal the truth and blame plaintiff nurse for the tragedy. Plaintiff nurse alleged that, like the other defendants, the attorney defendants knew she was not responsible for the death, yet intentionally prevented her from discovering that fact. The court thus concluded that plaintiff nurse alleged concerted misconduct by non-signatories (the attorney defendants) and signatories (the other defendants). The court therefore reversed and ordered arbitration.

Significance of Opinion

This decision is noteworthy because although the law firm and its attorneys were not signatories to the arbitration agreement, plaintiff nurse alleged substantially interdependent and concerted misconduct by both the non signatories and one or more of the signatories, and arbitration was thus warranted.

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

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