



Alerts

Out-of-State Attorney Severely Criticized for Taking Unfair Advantage of Client

May 1, 2013

Lawyers for the Profession® Alert

Forbes v St. Martin, et al., --- So. 3d ----, 2013 WL 791847 (Miss. App.)

Brief Summary

Plaintiff client was injured in Mississippi. Assisted by a Mississippi attorney, a Louisiana attorney represented the client in Mississippi and settled his case for \$13.6 million, resulting in \$4.6 million in attorneys' fees. The client subsequently sued the attorneys for various torts that challenged the rights of the attorneys to recover fees. The court of appeals reversed a grant of summary judgment to the attorneys, finding that their behavior created issues of fact.

Complete Summary

The client was injured in Mississippi. The Louisiana lawyer, who was not licensed in Mississippi, was asked to visit the client and his wife at the hospital. The client was in a coma. The client's wife signed a contingency fee contract that provided, in pertinent part, that the case could not be settled without the Louisiana lawyer's approval and that the Louisiana lawyer could only be fired under certain circumstances. The Louisiana lawyer also gave the client's wife cash for living expenses. The Louisiana lawyer associated a Mississippi attorney and agreed to split any fees on a 50/50 basis. The Mississippi attorney drafted a complaint listing the Louisiana lawyer as "of counsel."

When the Louisiana lawyer again visited the client in the hospital, the client was no longer in a coma. There was disputed evidence as to whether the client ratified the contract at that time.

The client was eventually discharged from the hospital. He and his wife met with the Louisiana lawyer and, upon the Louisiana lawyer's recommendation, rejected a \$5 million settlement offer. Additionally, the Louisiana lawyer had the client and his wife sign a second contingency fee contract that changed the attorney fee compensation and prohibited the Louisiana lawyer's termination. The case eventually settled for \$13.6 million, resulting in attorneys' fees of \$4.6 million.

The client later sued the attorneys, challenging their conduct and the Louisiana lawyer's right to recover attorneys' fees and expenses. The first contention sought to void the contracts because the Louisiana lawyer had improperly induced the client and his wife with approximately \$100,000 in cash advances. Some of the money went for medical expenses, but some was used for a

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vacation in the Bahamas, a Caribbean cruise, a car, cell phones and other personal expenses.

The court found that the cash advances violated the Mississippi Rules of Professional Conduct (MRPC) and observed that the improper advancement of money to a client creates a conflict of interest and the risk of “bidding wars for cases.” The Louisiana lawyer argued that because his actions were permitted in Louisiana, the contract should not be voided. The court disagreed, finding that the Mississippi lawyer's knowledge that the payments violated the MRPC was sufficient to void the contract. The court also found that if a Mississippi attorney had advanced so much money to a client, the Mississippi attorney would have been subject to discipline and likely would have lost his license. Consequently, such improper conduct could not be permitted of a Louisiana lawyer who represented a Mississippi citizen in Mississippi.

The client's second argument was that the Louisiana lawyer had engaged in the unauthorized practice of law in Mississippi, thereby voiding the contract. Because this was an issue of first impression in Mississippi, the court examined cases from other jurisdictions and Mississippi case law involving other professionals and noted that there was no connection between the client's accident and the state of Louisiana. “[The client] was a Mississippi resident who was injured in Mississippi and the litigation could only be filed in Mississippi and decided based on Mississippi law. . . . Yet [the Louisiana lawyer] offered to represent [the client and his wife] in a legal matter that [the Louisiana lawyer] knew, or should have known, he could not perform based on his law license.” This made the grant of summary judgment inappropriate.

Next, the court examined whether the Louisiana lawyer was entitled to summary judgment of the legal malpractice and breach of fiduciary duty claims. To do so, it reviewed the circumstances under which the contracts were entered. The first agreement was entered while the client “was chemically sedated and placed in a ‘drug-induced coma.’” (emphasis in original). The client did not sign the agreement or even know of its existence. The Louisiana lawyer and the Mississippi lawyer then filed a complaint without the client's knowledge or consent and without a contract with the client that gave them the authority to commence litigation.

The Louisiana lawyer contended that the client ratified the contract during their next visit. However, the court found that there were issues of fact as to whether the contract had been ratified and as to whether the client was competent at the time. Summary judgment was thus reversed as to the claimed ratification of the contract.

The court also found the second contingency fee contract void. The Louisiana lawyer and the client and his wife had dramatically differing accounts of the circumstances under which it was entered. The version of events put forward by the client and his wife suggested that the Louisiana lawyer took undue advantage of them, making the transaction presumptively fraudulent. Further, the court determined that the Louisiana lawyer “had absolutely no right to limit his clients' ability to settle their lawsuit or ability to terminate [the Louisiana lawyer] as their attorney.”

Ultimately, because there were genuine issues of material fact, the Louisiana lawyer and his firm were not entitled to summary judgment, and the case was reversed and remanded for further proceedings.

Significance of Opinion

This opinion is important for two reasons. First, it illustrates the perils of attempting to practice law in a foreign jurisdiction. Second, it examines the circumstances under which a retainer agreement can be voided for undue influence. It tells a cautionary tale of how greed can cause a lawyer to disregard the rules that protect clients from overreaching lawyers and how courts can enforce those rules with devastating consequences.

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

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