



Alerts

Collateral Estoppel Defense to Malpractice Claim Rejected and Derivative Claims Addressed

April 13, 2015

Lawyers for the Profession® Alert

Stevens v. McGuireWoods LLP, 2014 IL App (1st) 133952-U

Brief Summary

The Appellate Court of Illinois First District held that the trial court erred in granting summary judgment in favor of the defendant (MW) on the basis of collateral estoppel. The trial court incorrectly concluded that plaintiffs' one-count complaint for breach of fiduciary duty against their former counsel (MW) for failure to bring certain claims against plaintiffs' prior law firm (SA) in the underlying lawsuit was barred under the doctrine of *collateral estoppel*. The conclusion was reached because the trial judge in the underlying case had ruled that plaintiffs had no standing to pursue any individual claims against the law firm. The appellate court noted that although the trial court in the underlying case ruled that plaintiffs could not make individual claims against the law firm (SA), it did not rule that plaintiffs did not have standing to bring a derivative lawsuit against the law firm (SA) on behalf of their corporation. The court held that to the extent that plaintiffs had standing to pursue derivative claims against the law firm (SA), and those derivative claims had merit, the plaintiffs' claim against their former counsel (MW) for failure to pursue those claims in a timely manner was not barred by *collateral estoppel*.

Complete Summary

Plaintiffs, former minority shareholder members of a company, retained the defendant law firm (MW) to pursue both individual and derivative claims against the company's managers, majority shareholder and owner for various counts, including misappropriation of the company's trademarks and other intellectual property. In that same litigation, plaintiffs later sued another firm (SA) for both individual and derivative claims. The trial court in the underlying litigation granted SA's motion to dismiss in the underlying case based on statute of limitations, failure to allege the necessary elements for several causes of action, and lack of standing to bring certain claims in an individual capacity.

Plaintiffs then filed an action against their former counsel (MW) for breach of fiduciary duty for failing to assert claims against the other firm (SA) in a timely manner in the underlying litigation. Plaintiffs further alleged that as a direct and proximate cause of MW's alleged negligence, the value of the underlying suit was materially compromised and they were forced to settle for significantly less than what the case was worth.

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Former counsel (MW) moved to dismiss on the ground that the failure to add plaintiff's prior law firm (SA) in a timely manner to the underlying litigation did not cause any harm to the plaintiffs, since the court dismissed plaintiffs' eventual claims against the firm on the basis that they lacked standing to sue. The trial court denied the motion to dismiss filed by MW, and the parties proceeded with limited discovery.

Former counsel (MW) then brought a summary judgment motion based on *collateral estoppel*, arguing that the trial judge in the underlying case had already ruled that plaintiffs lacked standing to bring individual claims against plaintiffs' other firm (SA). The trial court granted the motion, and plaintiffs appealed.

The appellate court reversed, finding that the trial court in the underlying case never dismissed the plaintiffs' derivative claims against plaintiff prior firm (SA) on the basis of lack of standing. Moreover, in the underlying litigation, the plaintiffs' derivative claims were dismissed but *without prejudice*. The appellate court thus found that plaintiffs could proceed with their claim for breach of fiduciary duty against their former counsel.

Significance of Opinion

Although this is a Rule 23 Order which generally cannot be cited as precedential under Illinois law, the case is significant because the appellate court rejected the defense raised by plaintiffs' former counsel (MW) based on *collateral estoppel*, which in turn was based on the court's rulings in the underlying case concerning derivative claims. On January 28, 2015, the Illinois Supreme Court granted the firm's petition for leave to appeal, and the court should address derivative legal malpractice claims filed against counsel for a corporation.

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

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