HINSHAW

Alerts

Former Shareholders' Claims Fail for Lack of Standing and Absence of Damages

October 21, 2015
Lawyers for the Profession® Alert

Stevens v. McGuireWoods LLP, 2015 IL 118652

Brief Summary

Former shareholders of a corporation filed a legal malpractice claim in their individual capacities alleging that the defendant law firm failed to timely file individual and derivative claims on their behalf against the corporation's counsel. The Illinois Supreme Court held that plaintiffs lacked standing to bring the derivative claims because they relinquished their ownership interest in the corporation prior to filing the malpractice action. In order to have standing, plaintiffs must be shareholders at the time of the subject transaction and maintain that status throughout the entire pendency of the case. Plaintiffs could not personally collect on a derivative claim, and they thus suffered no damages as a result of the alleged failure to timely assert it.

Complete Summary

Plaintiffs are former minority shareholders of a corporation. In 2005, they filed individual and derivative claims against the corporation's managers and majority shareholder, alleging misappropriation of trademarks and other intellectual property. In 2008, the trial court dismissed a number of the claims without prejudice. Plaintiffs then retained new counsel who filed amended pleadings, adding claims against the corporation's counsel, which were dismissed as untimely. The trial court also held that plaintiffs lacked standing to bring individual claims against the company's corporate counsel. Corporate counsel's duties ran solely to the corporation and not to the individual shareholders.

Shortly thereafter, plaintiffs settled the case with the majority shareholder and relinquished all of their ownership interest in the corporation. Plaintiffs then sued their original counsel, solely in their individual capacities, alleging breach of fiduciary duty arising from the failure to timely assert the underlying claims against the corporation's counsel. Plaintiffs alleged that they were forced to settle the underlying case for significantly less money than the case originally was worth. They sought in excess of $10 million and disgorgement of legal fees paid.

Attorneys

Terrence P. McAvoy

Service Areas

Counselors for the Profession

Lawyers for the Profession®

Plaintiffs and the defendant law firm filed cross motions for summary judgment. The trial court ruled in the law firm's favor. The court found that because the trial court in the underlying case had determined that plaintiffs lacked standing to bring individual claims against the company's corporate counsel, plaintiffs were collaterally estopped from asserting that they would have prevailed on such claims had they been timely asserted. The appellate court agreed, but reversed and remanded relative to the merits of plaintiffs' underlying derivative claims. The appellate court explained that the trial court in the underlying matter never ruled on the plaintiffs' derivative claims; rather, those claims were dismissed solely on the basis that they were untimely. Accordingly, the appellate court remanded for the trial court's determination as to whether plaintiffs would have been successful in a derivative action against the corporation's counsel but for the attorney's alleged failure to timely file it.

The Illinois Supreme Court granted the defendant law firm's petition for leave to appeal and affirmed in part and reversed in part. Specifically, the Illinois Supreme Court agreed with the trial and appellate courts that the plaintiffs were bound by the trial court's determination in the underlying case that the plaintiffs lacked standing to bring individual claims against the company's corporate counsel. The defendant law firm's failure to timely assert claims for which plaintiffs had no standing could not have caused plaintiffs any injury.

As to the defendant's alleged failure to timely file the underlying derivative claims, the Illinois Supreme Court noted that the plaintiffs, who had divested themselves of their interest in the corporation, were suing the defendant attorneys solely in their individual capacities. In order to prevail, plaintiffs would have to prove not only that they would have succeeded had such claims been timely asserted, but also that plaintiffs would have recovered monetary damages for those claims in their individual capacities. Plaintiffs could not do so because the derivative claims belonged to the corporation. Pursuant to common law principles and the express terms of the Limited Liability Company Act, any proceeds recovered from a successful derivative suit remit solely and directly to the corporation, not the nominal plaintiffs who benefit only indirectly like all other shareholders through any resulting increase in the corporation's share price. Thus, the plaintiffs could not collect for themselves a judgment that would have been awarded entirely to the corporation had they prevailed in the underlying matter.

The Illinois Supreme Court noted that when plaintiffs divested themselves of their ownership interest in the corporation, they also divested themselves of their right to assert claims on the corporation's behalf, including those related to the failure to sue corporate counsel, and they thus had no standing. In Illinois, to have standing to bring a derivative claim, the plaintiff must have been a shareholder at the time of the transaction of which he or she complains and must maintain shareholder status throughout the entire pendency of the action. Absent same, he or she has no real interest in the outcome of the controversy and no injury to a legally cognizable interest.

Significance of Opinion

The Illinois Supreme Court reaffirmed the well-established principle that a legal malpractice plaintiff must establish "actual damages." Because plaintiffs could not establish that they, individually, lost anything as a result of the alleged failure to timely assert the individual and derivative claims, the cause of action against the attorneys necessarily failed. By relinquishing their interest in the corporation, they also relinquished their right to assert derivative claims, which are to benefit only the corporation.

For more information, please contact Terrence P. McAvoy.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.