



Alerts

Federal Court in New York Court Finds No Implied Attorney-Client Relationship

October 29, 2015

Lawyers for the Profession® Alert

Makhoul v. Watt, Tieder, Hoffar & Fitzgerald, LLP, 2015 WL 5158477 (E.D.N.Y. September 2, 2015)

Brief Summary

Plaintiffs, George Makhoul ("Makhoul"), individually and in his capacity as successor-in-interest to M.E.S., Inc. ("MES", collectively "plaintiffs"), filed a legal malpractice action against defendants. The complaint alleges that defendants jointly represented both their own client, Safeco Insurance Company of America ("Safeco"), and plaintiffs in negotiations with the U.S. Army Corps of Engineers ("COE") following MES's default terminations on three federally funded projects bonded by Safeco. Plaintiffs asserted claims for legal malpractice, breach of fiduciary duty, tortious interference with contract, and unjust enrichment, which were all premised upon an attorney-client relationship between plaintiffs and defendants. The court concluded there was no attorney-client relationship, and defendants' motion for summary judgment was granted.

Complete Summary

Makhoul, president and sole officer and shareholder of MES, executed two indemnity agreements in favor of Safeco for three federally funded projects bonded by Safeco. The indemnity agreements contractually obligated plaintiffs to indemnify Safeco for any losses it incurred in fulfilling plaintiff's obligations under the three projects. Based on the COE's determination that MES had defaulted in its contractual obligations on each of three projects, the COE issued formal cure notices to MES, as well as Safeco and demanded that Safeco complete the projects pursuant to Safeco's obligations under certain performance and payment bonds as surety in the case. After receiving the default notices, Safeco hired defendants as outside counsel to advise and represent Safeco in responding to the bond demand letters.

Plaintiff filed an action against defendants alleging that defendants were representing Safeco and his company, MES, during the negotiations with the COE, but failed to advise his company of its legal rights when the government defaulted on contracts for three projects. Plaintiff asserted claims for legal malpractice, breach of fiduciary duty, tortious interference with contract and unjust enrichment. Plaintiffs alleged they met with Safeco and defendants on March 26, 2008, to discuss the defaults and strategy to move forward. During this meeting, defendants allegedly advised Makhoul that it could

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"simultaneously represent Safeco and plaintiffs in connection with the takeover and completion of the [projects] and any related negotiations with the COE."

With respect to the legal malpractice claim, the court considered the following factors to determine whether an attorney-client relationship existed between plaintiffs and defendants:

1) whether a fee arrangement was entered into or a fee paid; 2) whether a written contract or retainer agreement existed indicating that the attorneys accepted representation; 3) whether there was an informal relationship whereby the attorneys performed legal services gratuitously; 4) whether the attorneys actually represented the individual in one aspect of the matter (e.g., at a deposition); 5) whether the attorneys excluded the individual from some aspect of the litigation in order to protect another (or a) client's interest; and 6) whether the purported client believed that the attorneys were representing him and whether this belief was reasonable.

In weighing these factors, the court found that plaintiffs failed to demonstrate the existence any attorney-client relationship between plaintiffs and defendants. There were no documents, such as a written retainer agreement, a letter of engagement, cancelled checks or any other documents, reflecting payments to defendants from plaintiffs, which would support any fee arrangement. Further, plaintiffs provided no evidence to show that defendants actually represented plaintiffs in one aspect in the matter. Plaintiffs argued they met with defendants on several occasions to discuss many issues regarding the defaults, project completion strategies, and how to respond to the demands. The court rejected this argument, however, finding that:

[m]ere participation in meetings with [defendants] and Safeco, and sharing project documents with [defendants] — as plaintiffs were required to do under the indemnity agreement — [was] ambiguous at best and, if anything, [was] more consistent with the contractual indemnitor-indemnitee relationship that existed between Safeco and plaintiffs than a purported, unmemorialized attorney-client relationship between plaintiffs and [defendants], who were clearly retained by Safeco.

The court concluded that plaintiffs failed to establish an attorney-client relationship.

The court also rejected plaintiffs' claims for breach of fiduciary duty, tortious interference with a contract and unjust enrichment, which were all premised upon the alleged existence of an attorney-client relationship between plaintiffs and defendants. Defendants' motion for summary judgment was therefore granted.

Significance of Opinion

This decision is significant because the court provides a thorough discussion of the relevant factors that courts should consider in determining whether there was an implied attorney-client relationship.

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