



Alerts

Texas Court Holds That Law Firm is Immune From Liability to Claims by Non-Client

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Highland Capital Management, LP v. Looper Reed & McGraw, P.C., 2016 WL 164528 (Tex. App. Jan. 14, 2016)

Brief Summary

The Texas Court of Appeals held that the doctrine of attorney immunity barred an employer's claims against a law firm, which had represented an employee in a dispute with the employer.

Complete Summary

A Court of Appeals of Texas, Dallas has held that a law firm was immune from liability to an employer for allegedly assisting the law firm's client in misusing confidential information that the client had allegedly misappropriated from the employer.

Plaintiff sued its former employee, Patrick Daugherty (Daugherty), for misappropriating confidential information. The defendant law firm represented Daugherty. While this suit was pending, plaintiff sued the law firm for allegedly using the confidential information in an attempt to extort, slander and disparage plaintiff, failing to return materials Daugherty had stolen, facilitating Daugherty's wrongful disclosure of plaintiff's confidential information, and aiding and abetting Daugherty's breach of fiduciary duty by instructing him to disclose privileged information to third parties.

Defendant moved to dismiss, arguing that plaintiff's alleged claims were barred by the doctrine of attorney immunity. The trial court granted the motion as to the claims for theft, breach of the duty of confidentiality, conversion, tortious interference with contract and civil conspiracy to commit theft, extortion, slander and disparagement. The trial court later granted defendant's motion for summary judgment on the claim for aiding and abetting Daugherty's breach of fiduciary duty. The trial court ruled that this claim was also barred by the attorney immunity doctrine. The appellate court affirmed.

In *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477 (Tex. 2015), the Texas Supreme Court considered the scope of attorneys' immunity from liability to non-clients. In *Byrd*, the husband in divorce proceedings alleged that after the divorce decree was rendered, opposing counsel intentionally falsified a bill of sale for an aircraft to assist the wife in shifting tax liability from the wife to the husband. The Supreme Court held that the law firm was immune from liability to the husband,

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holding that even if the law firm engaged in fraud, it was acting within the scope of its representation, and was thus immune from liability to the opposing party. The Supreme Court noted that the attorney immunity doctrine does not apply to fraudulent actions outside the scope of the attorneys' discharge of their duties to clients. The court provided examples such as an attorney who participated in a fraudulent business scheme with his client or assaulted opposing counsel during a trial.

Here, the court held that the law firm was immune from liability to plaintiff. Plaintiff's alleged claims against the firm were based on "acquiring documents from a client that are the subject of the litigation against the client, reviewing the documents, copying the documents, retaining custody of the documents, analyzing the documents, making demands of the client's behalf, advising a client on a course of action, and even threatening particular consequences such as disclosure of confidential information if demands are not met." The court concluded that these kinds of actions were all part of an attorney's duties in representing a client.

Significance of Opinion

This decision is significant because the court held that the doctrine of attorney immunity bars all claims by non-clients based on the attorneys' conduct pertaining to their representation of clients, so long as the alleged conduct does not amount to fraud or conduct which is clearly outside the scope of an attorney's duties to clients. *See also O'Callaghan v. Satherlie*, 2015 IL App (1st) 142152 (absolute attorneys' litigation privilege is not limited to communications in a defamation context, but also bars claims by non-clients based on the attorneys' conduct pertaining to litigation).

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