



Alleged Fiduciary Duty Breach Duplicative of Negligence Claim

June 5, 2013

[*Pippen v. Pederson & Houpt*, 213 Ill.App. \(1st\) 111371, 2013 WL 702507 \(Ill. App. 1st Dist. 2013\)](#)

Brief Summary

The First District Appellate Court of Illinois affirmed a trial court's entry of summary judgment against plaintiff former clients on their breach of fiduciary duty claim as duplicative of their negligence claim because the same operative facts supported both claims. The court examined the complex transaction at issue, which involved the purchase of an aircraft. Although the former clients asserted that the conflicts of interest of defendants — the lawyers that represented the former clients' financial advisor (the "Lawyers") — were operative facts that supported a claim for breach of fiduciary duty, those facts were insufficient to establish breach of fiduciary duty where the former clients could not show that the conflicts caused their injuries. The conflicts, therefore, only satisfied the breach element and not the causation element of a breach of fiduciary duty claim. Summary judgement on the fiduciary duty claim was appropriate.

Complete Summary

The former clients brought claims against the Lawyers for inadequate representation in connection with the purchase of an aircraft. They alleged that the Lawyers represented their financial advisor and that their financial advisor and attorneys structured a complex deal to purchase an aircraft for \$7 million. One of the former clients was to own a 51 percent interest in the aircraft. The former clients asserted a negligence claim, alleging that the Lawyers breached their duty by failing to: (1) investigate the former clients' business partners; (2) inform the former clients of a management fee and allowing the financial advisor to control disbursement of the former clients' money; (3) ensure that the former clients' money was not distributed until after the agreements comprising the purchase had been executed; (4) ensure that the former clients did not execute or deliver documents or agreements until the purchase documents had been executed by all parties; (5) alert the former clients of concerns regarding the purchase; and (6) advise the former clients that the co-ownership agreement had been altered to provide a 50 percent interest to the other party. The former clients alleged damages included \$1.7 million that they had initially invested with the aircraft; \$5 million plus interest, penalties, and attorneys' fees and liability in connection with a promissory note for the purchase of the aircraft; and legal fees incurred in defending resulting litigation.

The former clients' breach of fiduciary duty claim asserted that the Lawyers owed a fiduciary duty and breached it by representing the financial advisor's interests while simultaneously representing the former clients in the aircraft purchase; failing to disclose the conflict of interest to the former clients; and



collecting fees while knowing of the conflict of interest, in violation of the Illinois Rules of Professional Conduct. The former clients asserted that they would have avoided the \$6.7 million in losses had they been able to obtain competent and loyal counsel to represent them.

The Lawyers argued in a partial motion for summary judgment that the breach of fiduciary duty claim was duplicative of the negligence claim. After initially allowing the evidence relating to both claims to be presented at trial, the court reconsidered its ruling and granted summary judgment in favor of the Lawyers on the breach of fiduciary duty claim, finding that the operative facts underlying both claims were the same. The jury returned a verdict in favor of the former clients for \$8 million in damages and found 75 percent of the negligence attributable to the former clients. Therefore, a judgment was entered in favor of the former clients for just under \$800,000, after set-offs were applied.

The appellate court affirmed the trial court's dismissal of the fiduciary breach claim on the basis that it was duplicative of the professional negligence claim. Whether a claim is duplicative requires examining the operative facts, which are those that actually caused the plaintiff's injuries. Here, the former clients asserted that the Lawyers' negligent acts were the direct and proximate cause of their injuries. They also asserted that but for the Lawyers' negligence, the former clients either would have refused to proceed with the purchase of the aircraft, or would have purchased the aircraft subject to valid and binding agreements between the parties. In their breach of fiduciary duty claim, the former clients alleged that but for the Lawyers' breach, they would have obtained competent and loyal counsel to represent them in the purchase and protect their interests. Thus, the facts relating to the Lawyers' negligent representation were the operative facts supporting both claims because the former clients' injuries were caused by those negligent acts and the Lawyers' breach of fiduciary duty only contributed to the former clients' injuries insofar as it prevented the former clients from retaining other counsel to represent them in a competent and loyal manner.

Significance of Opinion

This decision is significant because the court held that claims for negligence and breach of fiduciary duty may be subject to dismissal as duplicative when they are based on the same operative facts.

For more information, please contact [Jennifer Riccolo DeBower](#), [Terrence P. McAvoy](#) or your regular [Hinshaw attorney](#).

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