



---

## Settlement Agreement Precluded Client From Establishing Justifiable Reliance

August 15, 2012

[Schrager v. Bailey, 2012 IL App \(1st\) 111943, 2012 WL 2106217](#)

### **Brief Summary**

The Illinois Appellate Court, First District, held that a nonreliance clause in a settlement agreement precluded plaintiff client from proving justifiable reliance as an element of his fraudulent misrepresentation claim against defendants, his former lawyers.

### **Complete Summary**

In 2002, the client filed a legal malpractice suit against his former lawyers and another attorney. The client alleged that his former lawyers committed legal malpractice when they took a voluntary dismissal of a federal lawsuit they had filed on the client's behalf. The suit was refiled in the Circuit Court of Cook County, but was then dismissed with prejudice based on the single-refiling rule.

In June 2006, the client agreed to dismiss the malpractice suit and settle his claim against his former lawyers based upon their representations that they had relied on advice from the other attorney in deciding to dismiss the federal suit. As part of the settlement negotiations, the client requested affidavits from his former lawyers to support their representation. The settlement agreement that the client signed contained a nonreliance clause. It also contained an acknowledgment by the parties that they received independent legal advice as to the "effect and import" of its provisions. By June 30, 2006, the agreement had been signed by all parties. The trial court found that the agreement had been made in good faith and dismissed the client's alleged claims against his former lawyers. The client's alleged claims against the other attorney remained pending for another four years.

In 2011, the client filed his second amended complaint against his former lawyers in a subsequent case. Count I alleged that the client's former lawyers had committed fraud by misrepresenting the basis for the decision to dismiss the federal suit. In Count II, the client alleged that his former lawyers aided and abetted the other attorney in an act of fraud by supporting the other attorney's defense in the malpractice case.

The appellate court concluded that the integration/nonreliance clause in the settlement agreement precluded the client from proving justifiable reliance, which was fatal to his cause of action for fraud.



## **Significance of Opinion**

This decision is significant because it provides a risk management point with respect to the drafting of releases and settlement agreements. Generally, one should always provide an integration/nonreliance provision for a client's protection.

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

---

*Hinshaw & Culbertson LLP prepares this publication to provide information on recent legal developments of interest to our readers. This publication is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. We would be pleased to provide such legal assistance as you require on these and other subjects if you contact an editor of this publication or the firm.*

*Copyright © 2012 Hinshaw & Culbertson LLP. All Rights Reserved. No articles may be reprinted without the written permission of Hinshaw & Culbertson LLP, except that permission is hereby granted to subscriber law firms or companies to photocopy solely for internal use by their attorneys and staff.*

*ATTORNEY ADVERTISING pursuant to New York RPC 7.1. The choice of a lawyer is an important decision and should not be based solely upon advertisements.*