

California Supreme Court Holds Attorney Can Be Sued for Civic Efforts Against Former Client's Interests

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Oasis West Realty, LLC v. Goldman, et al. (Slip Copy, 2011 WL 1833208 (Cal. May 16, 2011))

Brief Summary

The California Supreme Court upheld the denial of a lawyer and law firm's anti-SLAPP motion to strike claims brought by a former client for breach of fiduciary duty, professional negligence and breach of contract. The Court held that the former client had stated *prima facie* legally sufficient claims, which were not protected by the First Amendment and which alleged that the client's former attorney on a redevelopment project had subsequently been active in an effort to place the project on the ballot for a citizen vote to overturn city council approval.

Complete Summary

Because the case arose in the context of an anti-SLAPP motion to strike, for purposes of the Court's decision the facts alleged are stated in the manner most favorable to the plaintiff's position. The client hired the attorney and law firm to assist in a development plan for a nine-acre parcel in Beverly Hills, California, on which client intended to build a five-star hotel and luxury condominiums. The attorney and law firm worked with the client for two years, during which time the client revealed confidences to the attorney to assist in the matter. In the second year, the attorney informed client that he and the law firm would no longer represent the client for the development project. Over the course of the following two years, the client continued moving the project forward, finally securing approval from the city council.

Around time of approval, the attorney began personally supporting a group opposed to the project. He worked with the group to collect signatures for a referendum on the next ballot to overturn the council's approval of the project and ultimately collected approximately 20 signatures.

The client sued the attorney and law firm for breach of fiduciary duty, professional negligence, and breach of contract, seeking damages in excess of \$4 million, which included the cost of defending against the political campaign. The attorney insisted that he disclosed no confidential information and that he did not inform members of the group that he had previously represented the client in the development plan. The attorney defended his actions under the anti-SLAPP statute, which requires that the defendant (here, the attorney) make a threshold showing that the challenged cause of action is one “arising from” protected activity. If a court finds this true, then the court must consider whether the plaintiff has demonstrated a probability of prevailing on the claim. The party bringing the anti-SLAPP motion must satisfy both prongs of the test for the court to strike the claim.

The Court found that the former client had put forward a legally sufficient complaint, supported by a sufficient *prima facie* showing of facts that met at least a minimal threshold of likelihood of prevailing on the claims. The Court also noted that it neither weighed credibility, nor determined the ultimate weight of the evidence.

The Court held that “an attorney is forbidden to . . . do anything which will injuriously affect [the] former client in a matter in which [the attorney] formerly represented [the client] nor may [the attorney] at any time use against [the] former client knowledge or information acquired by virtue of the previous relationship.” The First Amendment protection for political speech provides no protection in such an instance.

Specific to the facts of the case, the Court found that although no direct evidence existed showing that the attorney relied on or exposed confidential information gained during the attorney-client relationship, one might make an inference of such reliance. As the attorney did not disclose any bias or personal dislike of the project at the outset, the Court concluded that it was reasonable to infer that his opposition arose due to a reliance on confidential information gained during the course of the relationship.

Significance of Opinion

Although it presumably is unusual for a lawyer who represented a client in a matter of civic importance to personally later publicly oppose the former client’s position in the same matter, it may well be more common for attorneys in large law firms to be involved on different sides of political or civic matters in which a lawyer in the firm (and thus each of the lawyers in the firm by imputation) may be representing or may have represented a client on the matter. This decision by the California Supreme Court points out the potential risks attendant upon such circumstances and suggests the importance of adequate internal conflicts notifications and/or screening when a firm initially takes on representation in such matters.

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