

Collateral Estoppel Slams Door on Malpractice Action Spawned by Another Malpractice Action

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[*Abramson v. Marderosian*, 2018 IL App \(1st\) 180081 \(11/30/18\)](#)

Brief Summary

Illinois' First District Appellate Court affirmed a grant of summary judgment in favor of the defendant-attorney, finding that the speculative damages ruling in the prior “malpractice” case filed by the defendant on behalf of the plaintiff’s behalf barred the subsequent malpractice action filed against the defendant. The underlying case was a *quasi*-legal malpractice case against plaintiff’s prior counsel premised upon claims of an inadequate settlement. Collateral estoppel applied to bar this legal malpractice case because plaintiff could not prove that he would have obtained a better settlement but for his attorney’s alleged conduct in the prior action for breach of fiduciary duty and breach of contract. Plaintiff’s requests for additional discovery and for leave to amend were denied.

Complete Summary

This case has a complex procedural history—a case within a case within a case—involving two lawsuits against attorneys, as well as a prior appeal (*Abramson v. Chuhak & Tecson, P.C.*, 2013 IL App (1st) 121842-U). So bear with us.

In the current case, plaintiff appealed an order granting summary judgment in favor of the defendant. Defendant had represented plaintiff in a prior action against a law firm that represented plaintiff in a will contest involving his deceased mother and his estranged father. The law firm represented plaintiff in the will contest on a contingency basis, agreeing to 50% of any proceeds recovered. The parties settled after a two-day mediation. Plaintiff signed an agreement reflecting a settlement in the amount of \$1 million, with a 50% allocation to the law firm.

Claims Against Law Firm

Approximately 1 ½ years after the mediation and settlement, plaintiff hired defendant to recover some or all of the fees paid to the law firm. The original complaint filed by defendant on plaintiff's behalf against the firm asserted three alternative theories: declaratory judgment; equitable estoppel; and breach of the fee agreement. According to defendant, plaintiff specifically instructed him that plaintiff did *not* wish to bring a malpractice claim against the firm. The trial court granted the firm's motion to dismiss, but allowed plaintiff to amend. Plaintiff's amended complaint asserted a claim for breach of fiduciary duty and other claims, but not for malpractice. The trial court dismissed those claims, this time with prejudice. With respect to the breach of fiduciary claim, the court found "any damage the plaintiff might claim in this regard would be purely speculative."

Plaintiff appealed the dismissal of his claims against the firm. He argued that "[e]ven if Plaintiff did not state breach of fiduciary duty and contract claims, its allegations satisfy the pleading elements for legal malpractice." In an order entered in December 2013, the appellate court disagreed. In affirming the dismissal, the court cited a lack of any well-pleaded facts demonstrating that the plaintiff had to settle for a lesser amount than he could reasonably expect without the alleged malpractice. The court further explained "that plaintiff's beliefs as to the value of [his mother's] estate and that he could have obtained a more favorable settlement constituted mere speculation."

Claims Against Attorney

Plaintiff proceeded to file a legal malpractice action against defendant alleging the defendant should have pleaded legal malpractice in the underlying lawsuit against the law firm. After answering the complaint (and prior to oral discovery) the defendant moved for summary judgment, arguing that the December 2013 order collaterally estopped plaintiff's claims. In response, plaintiff sought to stay briefing on the summary judgment motion for purposes of conducting depositions of the defendant and others. That request was denied by the trial court. In ruling on defendant's motion for summary judgment, the trial court agreed that collateral estoppel applied based on the appellate court's December 2013 order, finding it irrelevant that a legal malpractice claim had not been pled in the complaint because the appellate court nonetheless addressed its lack of merit. The trial court also denied plaintiff's oral and written requests for leave to replead. Plaintiff appealed again.

The appellate court affirmed the trial court's dismissal, along with other rulings, and found all three elements of collateral estoppel were satisfied to bar the present claims:

1. the issue decided in the prior adjudication was identical with the one presented in this action;
2. there was a final judgment on the merits in the prior adjudication; and
3. the party against whom estoppel was asserted was a party or in privity with a party to the prior adjudication.

Only the first element was in dispute. The appellate court reasoned: "our prior order thoroughly discussed and decided an identical issue that is relevant to this case, namely, plaintiff's ability to prove damages resulting from [the firm's] alleged negligence. Our prior order discussed and decided that plaintiff could not establish damages, regardless of whether [the firm] was actually negligent in representing him."

The appellate court's December 2013 order found that plaintiff could not prove damages, whether pleaded under *either* breach of fiduciary duty or legal malpractice, as he could not establish that he would have received a larger settlement in the will contest dispute, even if [the firm] had acted differently in representing him. See [Abramson, 2013 IL App \(1st\) 121842-U, ¶ 40](#) (agreeing that “plaintiff’s beliefs as to the value of the estate and that he could have obtained a more favorable settlement constituted mere speculation”). In other words, the appellate court found in December 2013 that plaintiff could not show that any negligence by [the firm] proximately resulted in a lower settlement amount.

The same showing of damages would also be a prerequisite to recovery in this action against defendant because plaintiff’s claims in this case were wholly derivative of his claim that the firm’s alleged negligence deprived him of a more favorable settlement in the prior case. Here, plaintiff alleged his damages include “the amount he should have received in the underlying will contest”—in other words, that he should have received more than what he settled for.

The court concluded that plaintiff’s ability to recover any damages from defendant depended upon establishing that defendant could have proven the firm’s liability to plaintiff for legal malpractice—which, in turn, would require proof of damages resulting from the firm’s negligence in the prior representation. This case thus raised the same fundamental damages problem discussed in the court’s 2013 order. To recover, plaintiff would be required to show that he would have obtained a larger settlement in the will contest. The appellate court’s prior order found that whether plaintiff filed a breach of fiduciary duty claim or a legal malpractice claim, plaintiff could not prove, without speculation, that he would have obtained a better settlement. Plaintiff would face the very same barrier regarding proof of damages in this case against defendant. The court’s December 2013 order thus decided an identical issue that would also be dispositive of this issue in this case, thereby fulfilling the threshold requirements for collateral estoppel.

The court also affirmed the trial court’s other rulings regarding the denial of plaintiff’s requests for additional discovery and to amend.

Significance of Decision

This case demonstrates the preclusive effect of collateral estoppel. It also reiterates Illinois’ longstanding requirement that in order to prevail in a legal malpractice action based on an alleged inadequate settlement, a plaintiff must demonstrate—i.e. not speculate—that but for the attorney’s negligence, he or she would have obtained a more favorable settlement.

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