

California Supreme Court Holds Monster Energy Can Pursue Claim Against Attorney for Breach of Confidentiality in Settlement Agreement

Lawyers for the Profession® Alert | 4 min read

Jul 24, 2019

[*Monster Energy Co. v. Schechter, et al.*, California Sp. Ct., Case No. S251392 \(July 11, 2019\)](#)

Brief Summary

The California Supreme Court ruled that where an attorney signs a settlement contract under the notation: “approved as to form and content,” and where the terms of the contract repeatedly referenced both the attorney and the parties, it is not unreasonable for a court to find that just like the parties, the attorney is also bound by the terms of the settlement contract. However, the question of whether the attorney intended to be bound by the contract was a question of fact.

Complete Summary

Background and Procedural History

In 2012, the Plaintiffs sued Monster Energy Company (“Monster”) for wrongful death after their 14-year-old daughter consumed two 12-ounce Monster Energy drinks and subsequently died from cardiac arrest. Plaintiffs were represented by attorney Bruce Schechter (“Schechter”), and they ultimately entered into a confidential settlement agreement (the “Agreement”) with Monster in 2015. The parties’ attorneys, including Schechter, also signed the Agreement under the notation: “approved as to form and content.” Several months later, Schechter stated in the media that the settlement resulted in “substantial dollars for the family” but that “Monster wanted the settlement amount sealed.”

Monster then filed suit against Schechter, alleging he breached the terms of the Agreement by speaking about it publicly. The Agreement had a confidentiality clause that included the following language: “Plaintiffs *and their*

counsel agree that they will keep completely confidential all of the terms and contents of this Settlement Agreement ... Plaintiffs *and their counsel of record*, individually and on behalf of themselves and their principles... agree ... to not publicly disclose ... certain facts related to the settlement.” The Agreement also stated: “... the Parties *and their attorneys* ... hereby agree that neither shall make any statement about the Action...” (emphasis added).

Monster alleged four causes of action: breach of contract, breach of implied covenant of good faith, unjust enrichment, and promissory estoppel. Schechter filed a motion to strike the complaint pursuant to California’s anti-SLAPP^[1] statute, and argued the lawsuit implicated his constitutional free speech rights.

The trial court denied Schechter’s motion as to the breach of contract claim,^[2] finding the Agreement clearly contemplated that Schechter was bound by its terms. The appellate court reversed, holding that an attorney’s signature under the words: “approved as to form and content” does not objectively manifest that attorney’s intent to be bound by the agreement.

Supreme Court Review

The California Supreme Court reversed and found that Monster sufficiently established a probability of prevailing on its breach of contract claim, and Schechter’s anti-SLAPP motion should thus be denied. In reaching its ultimate ruling, the court analyzed whether Schechter was bound by the Agreement.

The court found there was no question the Agreement purported to encompass both the parties to the litigation as well as their counsel, at least with respect to the confidentiality clause. The court rejected the appellate court’s reasoning that since the Agreement did not identify counsel as parties to the Agreement, they could not be bound by it. Instead, regardless of the fact that Schechter was not a party to the lawsuit, the court reasoned it was the substance of the Agreement that determined Schechter’s status as a party *to the contract*.

The court acknowledged that generally, the language “approved as to form and content” simply affirms that a party’s attorney has read the document and perceives no impediment to his client signing it. However, the Agreement contained extensive confidentiality provisions that referred to both the parties and their counsels. At times, the Agreement even referred specifically to Plaintiff’s counsel. Additionally, the court noted that confidentiality was an important term of the settlement, and quoted Schechter’s deposition testimony that Monster probably would not have settled the case without Plaintiffs’ agreement to keep the settlement confidential. Ultimately, the court concluded that an attorney’s signature under the terms “approved as to form and content” *does not preclude*, as a matter of law, a finding that the attorney also intended to be bound by the contract.

Finally, the court noted that the question of whether Schechter actually intended to be bound by the Agreement was a question that would be resolved by the trier of fact.

Significance of Opinion

Attorneys who sign settlement agreements with confidentiality provisions “as to form and content” may also be bound by the terms of such agreements. By signing such agreements, they expose themselves to potential liability—including attorneys’ fees and expenses—for any alleged breach. If you agree to confidentiality, be quiet... or face exposure to a claim for breach of contract.

For more information contact Terrence P. McAvoy or Shelley M. Bethune

[1] “SLAPP” stands for ‘strategic lawsuit against public participation,’ and are lawsuits filed to challenge the exercise of constitutionally protected free speech rights. *Kibler v. Northern Inyo County Local Hospital Dist.*, 39 Cal.4th 192, 196 (2006). Resolution of an anti-SLAPP motion involves two steps: 1) the defendant showing that the challenged claim arises from protected activity; and 2) the plaintiff then demonstrating the merit of the claim by establishing a probability of success. Here, it was undisputed that defendant-Schechter had met the first-step showing.

[2] The trial court granted the motion with respect to the other claims.

Related People



Terrence P. McAvoy

Of Counsel

📞 312-704-3281