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Dog Bites Man: When Attorneys Sue Their Clients

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As a firm with a practice group dedicated to legal malpractice defense, Novack and Macey LLP has represented countless attorneys who were sued by a former client. But lawsuits between attorneys and ex-clients do not move exclusively in one direction. There are also plenty of situations beyond the mundanities of fee collection where a former client might find himself holding a complaint from an aggrieved ex-counselor. This article presents three such situations, and may help attorney-readers recognize when a client’s conduct has become so egregious as to be actionable.

A Client Lies to and Smears His Lawyer

In *Pampattiwar v. Hinson*, Jan Hinson sued her former client, Vivek Pampattiwar, for fraud, libel per se, and false light invasion of privacy.¹ In her fraud claim, Hinson accused Pampattiwar of lying to her during their initial consultation. There Pampattiwar told her he was represented by other counsel in a maintenance action against his wife in Fulton County, Georgia, but that he wanted Hinson to take over and file a divorce for him in neighboring Gwinnett County. Hinson asked Pampattiwar repeatedly if his wife had filed a counterclaim for divorce in the Fulton County case, but Pampattiwar insisted she hadn’t.

Shortly after filing for Pampattiwar’s divorce, opposing counsel informed Hinson that Pampattiwar’s wife had in fact filed a counterclaim for divorce. A copy of Pampattiwar’s deposition from earlier in the case demonstrated that he was well-aware of this. Hinson accused Pampattiwar of “playing fast and loose with [her] bar license” and of “making a fool out of [her] in the courts in which [she] practice[d],” to which Pampattiwar responded, “You can’t get out now. We’re on a trial calendar.”²

Hinson's turbulent representation of Pampattiwar continued through arbitration with his wife, during which time Hinson and Pampattiwar had numerous heated confrontations over billing. After Hinson ended her representation of Pampattiwar, he began posting blistering reviews of her and her firm online, from which Hinson's claims for libel and false light invasion of privacy arose. Among other things, the reviews called Hinson a "crook" and said she "inflates her bills by 10 times" and "asks her office staff to post bogus reviews."³

At trial, a jury awarded Hinson damages for all three claims. Pampattiwar filed motions for judgment notwithstanding the verdict and for a new trial, but both were rejected.

On appeal, the Court of Appeals of Georgia affirmed the decision. It determined there was sufficient evidence for a jury to find that Hinson justifiably relied on Pampattiwar's false assurances about his divorce, that Hinson could pursue wounded feelings damages on her fraud and libel per se claims, and that there was enough evidence for a jury to determine Pampattiwar's reviews were published as required for a false light invasion of privacy claim. With respect to the fraud claim, the Court explained that "while a party must exercise reasonable diligence to protect himself against the fraud of another, he is not bound to exhaust all means at his command to ascertain the truth before relying on the representations."⁴

A Client Meddles with Its Lawyer's Employment

In *Hurst v. Alabama Power Co.*, Corinne Hurst, an attorney, and her husband sued Hurst's former client, Alabama Power Company, for fraud, misrepresentation, and tortious interference with her employment.⁵ The dispute emanated from a squabble between the Hursts and Alabama Power over a piece of land they had rented from the company. The Hursts alleged that Alabama Power had made certain misrepresentations to them in trying to sell them the land. Hurst knew that her law firm, Samford, Denson, Horsley, Pettey, and Martin, had a retainer agreement with Alabama Power, and so disclosed her troubles to a senior partner. The senior partner contacted the company several times on the Hursts' behalf.

A year later, the Hursts' sued Alabama Power for fraud and misrepresentation in connection with their property dispute. A month after that, another partner at Samford, Denson bumped into a colleague from the firm Alabama Power had retained for its dispute with the Hursts. This was the first time the partner learned of Hurst's suit against the company.

The partner confronted Hurst, who resigned from her firm two months later. Hurst then amended her complaint to include tortious interference with her employment contract.

Unfortunately for the Hursts, their tortious interference claim was defeated on summary judgment and the jury returned a verdict for Alabama Power on the fraud and misrepresentation claims. The Hursts appealed up to the Supreme Court of Alabama, but were defeated. The Court

agreed that the Hursts had “produced no evidence [...] that APCo interfered with Mrs. Hurst’s employment” and “no evidence of an intentional interference” as required to state a claim for tortious interference.⁶

Another Client Meddles with Its Lawyer’s Employment

In *Drake v. Dickey*, Carol Sparks Drake, a partner at Parr Richey Obremskey & Morton, became embroiled in a real estate dispute with one of her firm’s major clients, Duke Realty, when Duke wanted to construct a mixed-use development on land adjacent to her own.⁷ Duke wanted to buy Drake’s land, but instead entered into an agreement with Drake limiting how Duke could develop its property. Unfortunately, this agreement did not put a stop to the conflict.

When Drake applied to the local school board, a Duke representative told a partner at Parr Richey that “if [Drake] did not withdraw that application [...] he would not [...] represent Duke [Realty] again.”⁸ On hearing this, the partner spoke to Drake who withdrew her application.

Later, Drake wrote a letter to Duke outlining its alleged breaches of their land-use agreement. In response, Duke informed a group of partners at Parr Richey that “if Drake [] formally intervene[s] or protest[s] or either party files a complaint on the [Land Use Agreement, Parr Richey’s] relationship with [Duke Realty] will be terminated.”⁹ The partners present passed this along to the rest of the partnership.

Prior to this, no partner had “indicated in any way that [Drake’s] future with the firm was in any jeopardy.”¹⁰ Two weeks later, however, two partners told Drake that she would be terminated if she did not sell her land to Duke. Drake refused, and was removed from the partnership after three weeks.

Drake sued Duke for tortious interference with her partnership agreement with Parr Richey. In response, Duke moved successfully for summary judgment, and Drake appealed.

The Court of Appeals examined whether a genuine issue of material fact existed regarding two issues: whether Duke intentionally induced Parr Richey to fire Drake and whether Duke’s interference was justified. Regarding intent, it stated that even though Duke may not have specifically intended to have Drake fired, intent can still be inferred if Duke was “certain or substantially certain” its conduct would lead to Drake’s termination.¹¹ As to whether Duke’s actions were justified, the Court maintained that Drake’s personal real estate conflict with Duke did not necessarily “present a significant risk of materially limiting the representation of the client by the remaining lawyers of the firm.”¹² It also asserted that Duke had every right to terminate its relationship with Parr Richey, but that it could have done so without threatening the firm about Drake.

Closing Thoughts

Attorneys can take two important lessons from these cases. The first should come as no surprise: beware a client whose lies jeopardize not only his lawsuit, but the career and reputation of his counsellor. If an attorney makes procedural errors after reasonably relying on his client's lies, there may be grounds for a claim of fraud. Subsequent lies by the client about his attorney's integrity or work product may warrant a claim for libel per se as well.

Second, beware a client who uses his influence with an attorney's firm as leverage in a personal matter between himself and the attorney to the point where the attorney's career is in danger. Doing so may warrant a claim for tortious interference with a contract.

¹ 326 Ga. App. 163 (2014)

² Id. at 165

³ Id. at 166-67

⁴ Id. at 168

⁵ 675 So.2d 397 (1996)

⁶ Id. at 400

⁷ 2 N.E.3d 30 (2013)

⁸ Id. at 32

⁹ Id. at 33

¹⁰ Id. at 41

¹¹ Id. at 39

¹² Id. at 4

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