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## Defendant's Failure to Keep Quiet Negates His Legal Malpractice Claim

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On May 12, 2022, the Appellate Court of Illinois, First District decided *3Red Grp. of Illinois, LLC v. Johnson*, 2022 IL App (1st) 200593-U, ¶ 2. The opinion is the latest decision related to a complex and drawn out dispute involving former business partners, Edwin Johnson (“Johnson”) and Igor B. Oystacher (“Oystacher”), and their proprietary trading company, 3Red Group of Illinois, LLC (“3Red Group”). *Id.* On June 17, 2013, 3Red Group terminated Johnson’s employment, claiming he misused company funds and committed fraud. *Id.*, ¶ 5. On August 15, 2013, the parties entered into a “Confidential Settlement Agreement and Reciprocal Release” (the “settlement agreement”) to resolve all disputes regarding Johnson’s termination. *Id.* “In connection with the termination of his employment, on June 27, 2014, Johnson filed a complaint for legal malpractice against the law firm of Gardiner Koch Weisberg and Wrona (“Koch Law”) (the “Koch litigation”) *Id.*, ¶ 7. Johnson was represented by Jefferey O. Katz and The Patterson Law Firm, LLC (collectively “Patterson Law”). While represented by Patterson Law, Johnson responded to Koch Law’s motion to dismiss and attached a copy of the settlement agreement without filing it under seal in violation of the protective order entered in the case. *Id.*

On December 10, 2014, Oystacher and 3Red Group filed suit against Johnson alleging that he breached the settlement agreement by disclosing confidential information. *Id.*, ¶ 2. In response, Johnson filed suit against his former attorneys, Patterson Law, arguing that they were responsible for the impermissible disclosure. The third-party complaint set forth five counts: indemnity, contribution, legal malpractice, fraud and defamation. “On May 27, 2015, the circuit court entered an order consolidating the Koch litigation and the instant litigation for discovery purposes.” *Id.*, ¶ 9.

“The parties proceeded to engage in discovery, in which Johnson admitted that his attorneys in the Koch litigation inadvertently filed a pleading which contained the settlement agreement as an exhibit, but claimed that he had no knowledge of their actions at the time.” *Id.*, ¶ 10. Meanwhile, Johnson failed to comply with other discovery requests – his refusals resulted in extensive litigation. *Id.* “[O]ver the course of the litigation, five motions for sanctions were granted, including one for attorney fees in the amount of \$500 and another in the amount of \$12,462, both due to Johnson’s noncompliance with the circuit court’s discovery orders.” *Id.* In addition to these monetary sanctions, the trial court held that Johnson’s actions demonstrated “egregious and contumacious disregard for this Court’s authority” and “barred Johnson ‘from introducing any and all evidence denying his disclosure of confidential information about Plaintiffs and the Confidential Settlement Agreement to the press, in lawsuits, or to any third party unless such disclosure was required by process of law.’” *Id.*, ¶ 11.


On March 7, 2017, Patterson Law filed a motion to dismiss Johnson’s complaint “claiming (1) Johnson could not establish that the Patterson parties proximately caused his damages, as the damages were a direct result of Johnson’s own conduct during the litigation; (2) Johnson’s fraud and defamation claims were barred by the attorney litigation privilege and were duplicative of the legal malpractice counts; and (3) Johnson’s defamation claim was barred by the statute of limitations.” *Id.*, ¶ 24. The trial court dismissed counts I and II with prejudice and (2) dismissed counts III, IV, and V “with leave to replead.” *Id.*, ¶ 31. The court reasoned that because Johnson was prohibited from denying that he disclosed confidential information in violation of the settlement agreement he could

not prove that Patterson Law proximately caused his damages. *Id.*, ¶ 25. The court added: “Johnson’s behavior in discovery matters was an intervening cause breaking the chain of causation.” *Id.*

“On August 8, 2017, Johnson filed a motion to reconsider the dismissal of counts I and II of the third-party complaint.” *Id.*, ¶ 33. In support of reconsideration, Johnson argued that he was in the process of appealing the discovery sanctions and therefore the court’s decision to grant the motion to dismiss was “inappropriate or, at best, premature.” *Id.* On December 5, 2017, the circuit court entered an order granting Johnson’s motion to reconsider in part, striking the words “with prejudice” in relation to counts I and II. *Id.*, ¶ 34.

On January 9, 2018, Johnson filed an amended third-party complaint against Patterson Law alleging the same five counts: indemnity, contribution, legal malpractice, fraud, and defamation. *Id.*, ¶ 36. Patterson Law again filed a motion to dismiss the complaint asserting that Johnson’s amendments did nothing to cure the defects of the original complaint. The trial court entered and continued the motion awaiting the Appellate Court’s decision regarding the sanctions imposed against Johnson. *Id.*, ¶ 38. The Appellate Court affirmed the circuit court’s sanction order. Following that decision, on September 17, 2019, the court granted Patterson Law’s motion to dismiss the amended third-party complaint. *Id.* Johnson then appealed.

The Appellate Court affirmed the circuit court’s decision. In regards to the legal malpractice claim, the Appellate Court stated that in order to state a claim for legal malpractice the plaintiff must plead and prove “actual damages.” *Id.*, ¶ 64. The Court concluded that Johnson’s amended complaint did not establish that but for Patterson Law, he would not have been “hailed into court.” *Id.*, ¶ 65. Instead, the Court found that Plaintiffs Oystacher and 3Red Group did not just accuse Johnson of violating the settlement agreement in the Koch litigation, but rather alleged four separate violations including disclosing confidential information to the press. *Id.*, ¶ 67. Given that the actions of Patterson Law were not the only reason Plaintiffs filed suit, he failed to state a claim for legal malpractice. The Court reasoned that Johnson’s actions were the superseding cause and he was responsible for this own damages.



## *3Red Group of Illinois, LLC v. Johnson, 2022 IL App (1st) 200593-U*

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