

PROFESSIONAL LIABILITY UPDATE

August 4, 2006

Issue No. 239

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COLLATERAL ESTOPPEL

California Law

By Jennifer A. Becker

Mooney v. Caspari (2006) 138 Cal.App.4th 704

The First District holds that a malpractice case against counsel retained to pursue an underlying legal malpractice case is barred by principles of collateral estoppel when the underlying attorney was absolved of responsibility in a companion legal malpractice case.

Shawn Mooney inherited from his father the exclusive right to sell or lease a piece of real estate owed by Specialty Restaurant, Inc. Praxis and its principal Dan Levin entered into a limited partnership with Specialty to form Bridge Landing Associates to subdivide, develop, and lease the property as an office building complex. Praxis was to obtain all necessary approvals and financing and Specialty gave Bridge an option to acquire title at fair market value. The option was to expire in twenty four months unless the delay was due to the public approval process or difficulties in finding favorable financing, in which case the option was extended for an additional eighteen months.

At the time of the agreement the parties anticipated the California Department of Transportation would obtain approval to construct a four-way freeway interchange near the property, an event critical to the success of the project.

Specialty promised to use its best efforts to negotiate and facilitate the approval process. The dates in the agreement concerning construction were specified to start on the day the interchange agreement was signed. Bridge gave Mooney an exclusive right to lease agreement consistent with Mooney's agreement with Specialty.

Levin repeatedly expressed his belief that the twenty-four month option period did not commence until the interchange exchange agreement was executed and the property lines of the project were definitively determined.

The interchange was never approved and was deleted from the municipality's general plan. Despite the disapproval of the freeway interchange, Levin and Mooney continued to work with a prospective tenant to finalize a lease. Specialty notified Levin that the option was no longer valid by the terms of its agreement and requested dissolution and

liquidation of the Bridge partnership. Levin and Mooney were also directed to cease negotiations with the prospective tenant and any other activity regarding the property.

Specialty filed an action in its Chapter 11 bankruptcy proceeding to dissolve the Bridge partnership and quiet title to the property. Levin retained attorney Kenneth Greene to represent Praxis in the bankruptcy action. Mooney realized he had a vested interest in the action because his commission agreement with Bridge was dependent upon Praxis's rights. Mooney actively assisted Greene in the presentation of Praxis's claims and simultaneously retained Greene to file two separate claims in the bankruptcy proceeding: one based on his commission agreement with Bridge, the other based on his father's contract with Specialty.

Praxis's action was tried first. Mooney was present and assisted Greene. The Bankruptcy court dissolved the partnership and granted Specialty's request to quiet title to the property. Mooney was very concerned that his derivative rights would fail and that Praxis's loss was Greene's fault. Ultimately the bankruptcy court ruled against Mooney on his claims against Specialty.

Levin retained Bill Caspari to, among other things, file an action for legal malpractice against Greene and his firm.

In the *Specialty v. Praxis* appeal the court found that the option expired by the terms of the contract. The bankruptcy court did not reach the issue of the tolling of the option period, because Praxis had not raised the issue prior to the close of trial and had

abandoned its breach of contract claim. The Ninth Circuit held that Praxis's claims had not been delineated in its answer or preserved in the pretrial conference order and could not be considered on appeal.

Caspari then filed a legal malpractice suit on behalf of Praxis and Levin against Greene and his firm entitled *Praxis v. Richman*. He did not file suit on behalf of Mooney. Caspari then perceived a conflict of interest in representing Mooney but did not advise him immediately that he would need to find new counsel. Caspari failed to notify Mooney that he would not represent him until after the statute of limitations expired. Mooney filed a legal malpractice action against Caspari based on the failure to timely file a legal malpractice action against Greene.

In *Praxis v. Richman* numerous claims of deficient performance by Greene were presented. However the court granted summary judgment for Greene, finding that notwithstanding any errors or omissions of Greene, the option period expired by the terms of the agreement. This judgment was affirmed on appeal.

Prior to final judgment in *Praxis v. Richman, Mooney v. Caspari* resulted in a jury verdict of \$1,500,000. On appeal from that verdict the court reached only the question of whether the action was precluded by the collateral estoppel effect of *Praxis v. Richman*. Caspari argued that Mooney was precluded from establishing liability against him because of the result in Praxis's case against Greene.

Collateral estoppel applies where the issue necessarily decided at the previous proceeding is identical to the one which

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is sought to be relitigated; the previous proceeding resulted in a final judgment on the merits; the party against whom collateral estoppel is asserted is a party or in privity with a party in the prior proceeding; and where there was a full and fair opportunity to litigate the issue in the prior proceeding.

In each case the court must determine whether the application of collateral estoppel will advance the public policies that underlie the doctrine. Those policies are to promote judicial economy by minimizing repetitive litigation; to prevent inconsistent judgments that undermine the integrity of the judicial system; and to provide repose by preventing a person from being harassed by vexatious litigation. Collateral estoppel will not be applied if injustice would result or if the public interest requires that relitigation not be foreclosed.

The opinion in *Praxis v. Richman* established the first two elements of identity of issues and a final adjudication. The central question was whether Mooney was in privity with Praxis. Privity is a mutual or successive relationship to the same rights of property, or such an identification in interest of one person with another as to represent the same legal rights, or a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is 'sufficiently close' so as to justify application of the doctrine of collateral estoppel. In the final analysis, the determination of privity depends upon the fairness of binding a party with a result obtained in earlier proceedings in which it did not participate.

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There was obvious interconnectedness between the rights and interests of Mooney and Praxis. Both depended upon the successful development of the property and worked together to achieve that end. Mooney acknowledged that he did not distinguish between his and Praxis's claims under the agreement.

The record demonstrated adequate representation of those interests in the prior litigation. Mooney had the same motive as Praxis to first prevail in the suit against Specialty, then, failing that, to obtain a finding of Greene's liability for malpractice. Mooney intimately and vigorously participated in both the *Specialty v. Praxis* dispute and the *Praxis v. Richman* case. During the preparation and presentation of the malpractice case against Greene and the Richman law firm, Mooney was the primary consultant and source of information for Caspari.

Due process considerations did not preclude application of collateral estoppel doctrine. Mooney should reasonably have expected to be bound by the prior decisions in *Specialty v. Praxis* and *Praxis v. Richman*, and knew his own claims were dependent for success upon resolutions favorable to Praxis in those prior cases. He knew that if Praxis prevailed in those prior actions the results would be binding on the defendants in any subsequent litigation he pursued. Although Mooney did not control the Praxis litigation, he participated so intimately that his interests were thoroughly represented.

Neither the unfavorable outcome nor the failure of Caspari to offer additional evidence and arguments precluded application of collateral estoppel.

Privity does not depend upon an identity

of evidence or arguments presented; nor does it depend upon the result obtained. An assessment of the quality or competence of the prior legal representation provided is not required.

The court concluded that a finding of privity serves the underlying fundamental principles of collateral estoppel. Application of collateral estoppel did not undermine Mooney's due process rights, thus maintaining the integrity of the judicial system. Precluding relitigation of Greene's malpractice avoids harassment of Caspari and the reality of inconsistent judgments. It is fundamentally unfair that Caspari could be liable for improperly pursuing an action for Greene's malpractice, while Greene, whose negligence is the basis for that liability, has been absolved of any actionable negligence.

Comment: The court did not directly discuss the fact that in the *Praxis v. Richman* case Caspari, as the attorney representing Praxis, had considerable control over the litigation. An attorney in that position, knowing that his or her own liability is dependent on the favorable or unfavorable outcome of the lawsuit, has conflicting motivations. If the attorney's client prevails, the attorney could be subject to a claim by the second client for malpractice. If the attorney's client loses the case, the attorney is protected from a claim by the second client. A different court could find this conflict sufficient reason to not apply collateral estoppel principles in the case against the legal malpractice attorney.

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