

PROFESSIONAL LIABILITY UPDATE

DISQUALIFICATION

By John B. Sullivan

Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811

The California Supreme Court overrules a Court of Appeal decision granting an anti-SLAPP motion where an attorney acted adversely to his former client with respect to an ongoing matter that was the precise subject of his prior representation.

Oasis West Realty (“Oasis Realty”) retained Reed Smith partner Goldman to represent it in its effort to obtain approval of a redevelopment project. Goldman represented Oasis Realty on the project from 2004 until he terminated the representation in 2006. In 2008, after the city council approved the redevelopment project, Goldman participated in a campaign to thwart the same project by soliciting signatures on a referendum petition to overturn the council’s approval. Oasis Realty sued Goldman and Reed Smith for breach of fiduciary duty, professional negligence and breach of contract arguing Goldman had breached his fiduciary duties to Oasis Realty by opposing the project.

Defendants filed an anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) motion pursuant to Code of Civil Procedure §425.16 arguing that the client’s claims arose from Goldman’s protected speech. The trial court denied the motion, ruling that the Oasis Realty action was premised on breach of the attorney’s duties of loyalty and confidentiality rather than from protected speech. The Court of Appeal reversed, holding that Goldman’s activities were protected.

Without even addressing whether Goldman’s conduct arose from protected speech, the California Supreme Court reversed the Court of Appeal’s judgment on the ground that Oasis Realty had stated and substantiated the sufficiency of its legal claims against its former attorney. Oasis Realty proffered sufficient evidence that Goldman breached his duties to it when he relied on confidential information acquired during his representation in opposing the project. Oasis Realty set forth a prima facie case of actual injury and entitlement to damages by asserting that because of Goldman’s opposition to the project, it was compelled to protect its rights by retaining legal counsel to prepare a letter demanding that Goldman cease and desist from further misconduct.

The Supreme Court made clear it was not announcing a broad categorical bar on attorney speech. Its task was solely to determine whether any portion of Oasis Realty’s causes of action had even minimal merit within the meaning of the anti-SLAPP statute.

Comment: Attorneys have a fiduciary duty to avoid using confidential information to the

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detriment of a former client even with regards to
acts an attorney take on his or her own behalf.