

Case Study: Oasis West Realty V. Goldman

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On May 16, the California Supreme Court handed down a decision holding that an attorney may violate his duty of loyalty by publicly opposing a development project that he at one time had been engaged to promote.

Oasis West Realty LLC v. Goldman

In 2004, Oasis West Realty undertook to redevelop and revitalize a nine-acre parcel in Beverly Hills with a five-star hotel and luxury condominiums. It engaged attorney Kenneth Goldman and his law firm, Reed Smith LLP, to provide legal services in connection with the project. Oasis alleged that during the representation Goldman became intimately involved in Oasis's plan to develop the property, its overall strategy to secure necessary approvals and entitlements from the city, and its efforts to obtain public support for the project.

In 2006, Goldman advised Oasis that he and Reed Smith would no longer represent Oasis in connection with the project.

In 2008, the Beverly Hills city council certified an Environmental Impact Report ("EIR") and gave preliminary approval for the project. Shortly thereafter, a group of citizens opposed to the project undertook to put a referendum on the ballot, enabling voters to overturn the city's approval.

According to Oasis's complaint, Goldman campaigned for and solicited signatures for the referendum. Goldman himself confirmed in a declaration

that he and his wife walked the street to solicit signatures for the petition to overturn the city council's decision. Goldman denied, however, using any of Oasis's confidential information or even informing people that he once represented the developer on this project. The citizens' committee collected the necessary signatures to put the referendum on the ballot, but the voters narrowly affirmed the city council's decision to approve the project.

Oasis then sued Goldman and Reed Smith for breach of fiduciary duties, professional negligence and breach of contract. Goldman and Reed Smith filed what is called an "anti-SLAPP" motion to strike the complaint, asserting that Goldman's actions were protected by his First Amendment rights. The trial court denied the motion, but was reversed by the Court of Appeal. The Supreme Court then reversed the Court of Appeal.

"SLAPP" stands for "strategic lawsuit against public participation." Because such suits have been brought to pressure project opponents into dropping their challenges to development projects, the California legislature has authorized the anti-SLAPP procedure providing an early hearing to determine whether the lawsuit may proceed.

An anti-SLAPP motion may be brought in a lawsuit when the suit asserts claims against a defendant arising from any act of the defendant in furtherance of the defendant's right of petition or free speech under the United States or California Constitution in con-

nection with a public issue. In such cases, when the defendant brings an anti-SLAPP motion, the court must strike the claim unless the plaintiff can establish a probability that it will prevail on the claim.

The Supreme Court concluded that Goldman's rights of free speech do not eliminate his duty of loyalty owed to Oasis, even as a former client. The court found that "[t]he effective functioning of the fiduciary relationship between attorney and client depends on the client's trust and confidence in counsel ... The courts will protect clients' legitimate expectations of loyalty to preserve this essential basis for trust and security in the attorney-client relationship."

Further, "an attorney is forbidden to do either of two things after severing [the] relationship with a former client. [The attorney] may not do anything which will injuriously affect [the] former client in any matter in which [the attorney] formerly represented [the client] nor may [the attorney] at any time use against [the] former client knowledge or information acquired by virtue of the previous relationship."

Oasis asserted that Goldman acquired confidential and sensitive information relating to the project through the course of his representation of Oasis, and that he used that information when he later actively opposed the project. The Supreme Court

had little difficulty concluding that Oasis had met its burden of establishing the probable validity of its claim.

It held that "[i]n light of the undisputed facts that Goldman agreed to represent Oasis in securing approvals for the project, acquired confidential information from Oasis during the course of the representation, and then decided to publicly oppose the very project that was the subject of the prior representation, it is reasonable to infer that he [used Oasis' confidential information to oppose the project]."

Conclusion

So, the California Supreme Court has confirmed what most attorneys have always understood — an attorney cannot represent a developer on a project, quit, then turn around and actively oppose the project. While this may seem like an obvious result, keep in mind that the Supreme Court had to reverse the Court of Appeal on this one. In court, there are no "gimmies."



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