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Oasis West Realty, LLC v. Goldman: Duties of Loyalty and Confidentiality Trump Free Speech and Petition Rights

June 11th, 2011 by [Steve Wasserman](#)

The California Supreme Court has taken a firm position as to when a lawyer may oppose a client on a matter on which the attorney has worked, and the position is “virtually never”. The Court issued its opinion in [Oasis West Realty, LLC v. Kenneth Goldman](#) (2011) addressing whether a lawyer in his private capacity as a citizen can oppose a client’s project on which the lawyer worked several years earlier. The Supreme Court’s answer was the lawyer – at least on the facts at hand – could not.

Attorney Kenneth Goldman was a transactional attorney in Los Angeles who worked for several years for Oasis West in connection with a proposed housing development in Beverly Hills. After two years of work, Goldman advised Oasis that he and his firm would no longer work on the project. Two years after that, Goldman and his wife went door to door in their neighborhood to solicit signatures on a petition opposing the development. Goldman also attended a city council meeting and during public comment expressed his opinion that it was unreasonable for the City to require that persons soliciting signatures carry with them the full text of the proposal, as it was hundreds of pages long and weighed several pounds.

Upon learning of these activities, Oasis filed suit against Goldman and his firm for breach of fiduciary duty, professional negligence and breach of contract. The defendants filed a special motion to strike the complaint under California’s anti-SLAPP statute. They argued that Goldman’s activities came within his right of free speech and petition in connection with a public issue. They further argued that Goldman did not disclose any confidential information. However, the trial court concluded that the statute did not apply, finding that the complaint was based on Goldman’s alleged breach of duty, rather than on his petitioning and public commentary. The Court of Appeal reversed, holding that the gravamen of the complaint was Goldman’s public activity and that Oasis had not shown a substantial likelihood of prevailing such that the motion should have been granted.

The Supreme Court reversed the court of appeal. In evaluating a special motion to strike, a court must consider two prongs: (1) whether the activity arises from protected activity; and (2) whether the plaintiff has shown a substantial probability of prevailing on its claims. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, at 76) If both prongs are met, the claim is subject to the special motion to strike.

In an unusual approach, the Supreme Court addressed the second prong at the outset (and never addressed the first prong), declaring that it readily found Oasis had shown a substantial probability of prevailing. The Court treated all three causes of action together, as the gravamen was the same for each. The Court referred to a number of authorities regarding an attorney’s duties of loyalty and

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confidentiality being of the highest order and that these duties continue even after the engagement has ended. The attorney may not do anything after the engagement has concluded that might injure the client in any matter in which the attorney had represented the client, nor may the attorney use confidential information to the client's detriment.

The Court made reference to its "oft-quoted" opinion in *Wutchumna Water Co. v. Bailey* (1932) 216 Cal. 564, 573-74 to the effect that "an attorney is forbidden to do either of two things after severing his relationship with a former client. He may not do anything which will injuriously affect his former client in any manner in which he formerly represented him nor may he at any time use against his client knowledge or information acquired by virtue of the previous relationship."

In light of the work Goldman had done for Oasis and the type of information he likely received, and given the nature of his opposition to that very project, the Court concluded Oasis had shown a substantial probability of prevailing on its claims. The Court also concluded Oasis had made a prima facie showing of damages by virtue of engaging counsel to write to Goldman to insist that he desist from his conduct.

The Court rejected the lawyers' argument that limitations on a lawyer's post-representation conduct only applied if the attorney took on a client whose interests opposed the former client. The Court saw no reason why the limitations should be so narrow. Whether the lawyer's adversity was private and personal or on behalf of a subsequent client, the breach of duty was the same and the conduct prohibited. Further, a lawyer's ethical duties are such that he may be subject to limitations on what might otherwise be his right of free speech.

The Court reversed the court of appeal and remanded without ever addressing whether the conduct was protected activity. A concurring opinion addressed that issue and found that the conduct did fall within the right to petition and free speech on a public issue, but agreed that Oasis had shown a likelihood of prevailing such that the motion to strike should have been denied.

This decision makes clear that lawyers must steer clear of opposing clients on matters on which the attorneys worked. It does not matter whether the attorneys' post-engagement conduct is personal or professional, the duties of confidentiality and loyalty remain in force and control.