

MASSACHUSETTS LAWYERS WEEKLY

Legal-Mal Suit Names Office-Share 'Partners'

By: jason.m.scally March 26, 2001

A plaintiff suing his lawyer for malpractice could also sue the attorneys with whom his lawyer shared office space — even though the lawyers did not hold themselves out as a partnership, the 1st U.S. Circuit Court of Appeals has held.

A U.S. District Court judge had granted summary judgment to the defendants, finding that a “partnership by estoppel” could not be established against the lawyers who shared an office as a professional association.

But the 1st Circuit disagreed.

U.S. District Court Judge Mary M. Lisi of the District of Rhode Island, sitting on the 1st Circuit Court of Appeals by designation, wrote that “the individual Appellees were not in fact partners in a law firm. They shared office space and certain expenses and practiced under the trade name Field, Hurley, Webb & Sullivan. ... [But] a reasonable factfinder [might find] that [the lawyer] shared equal standing with the other attorneys who make up the ‘firm’ Field, Hurley.”

The 15-page decision is *Gosselin v. Webb*, Lawyers Weekly No. 01-083-01.

Wake-Up Call

Joseph H. Reinhardt of Boston, counsel to the plaintiff, stated that “there are a ton of lawyers that share space and don’t really give a thought about the space they are sharing. This decision should certainly be a wake-up call to people who are involved in space-sharing arrangements.”

Reinhardt warned that attorneys sharing space should be aware that there may be a partnership by estoppel imposed upon them, especially in a state like Massachusetts where so many lawyers engage in solo careers and have space-sharing arrangements.

Philip Y. Brown of Boston, who also represented the plaintiff, felt this decision “gives a little bit of a road map as to what might ultimately create a partnership by estoppel.”

William N. Hurley of Lowell, one of the defendants who is also acting as counsel for all the defendants, declined comment on the specifics of the decision since the case has been remanded, but he noted that “the court was extremely careful to make a very narrow decision.”

Neva Kaufman Rohan of Springfield, an attorney who handles professional malpractice cases, stated that this decision “clarifies what the existing law is in Massachusetts. The impact that I think it has is on the small office or group of solo practitioners who practice in the same physical space.”

Rohan noted that this decision is especially significant for attorneys that practice outside the Route 128 area, because often those attorneys must share space by necessity since it is more cost-effective.

Carlos M. Gomez of Springfield agreed that this issue impacts attorneys in western Massachusetts and other less populated areas because many attorneys share space as “a matter of survival.”

Gomez noted that practitioners sharing office space must be wary if they “take a position that in one context may be beneficial [holding oneself out as a member of a group] and then deny the existence of that position if in another context it’s disadvantageous.”

Rohan added that partnership by estoppel is not unique to law and that this decision could “impact all professionals that practice on their own.”

Member of the Firm?

In April 1992, plaintiff William J. Gosselin, a former second mate on a merchant marine freighter, was fired from his employer, American President Lines, Inc.

Through his union, Gosselin filed a grievance on which a hearing was held by an arbitrator later that year.

Gosselin met his attorney, James O'Dea, while attending a family member's funeral since O'Dea was Gosselin's cousin.

During discussions of Gosselin's situation, O'Dea told the Gosselins that he was "now with Field, Hurley, Webb & Sullivan in Lowell [Massachusetts]," and asked Gosselin to let him know how the arbitration hearing turned out.

O'Dea also had an office in Washington, D.C.

After this meeting, the arbitrator reinstated Gosselin to his former position, but did not provide an award for back pay.

Gosselin, before consulting O'Dea, looked into the O'Dea's background and asked his wife's brother had heard of Field, Hurley, Webb & Sullivan.

After Mrs. Gosselin's brother stated that he knew of the firm and that it was a "well-respected law firm in Lowell," Gosselin scheduled an appointment to meet O'Dea at the Field, Hurley offices in November 1992.

In the foyer of the building, O'Dea's name was listed under the Field, Hurley heading.

There was no indication on the heading that Field, Hurley was not a partnership, or that O'Dea was not a member of the group.

While at the office, Gosselin was introduced to Arthur Sullivan and he "exchanged pleasantries" with the lawyer before retreating to O'Dea's office with O'Dea only to discuss his claims.

O'Dea and Gosselin discussed suing Gosselin's former employer for back wages and damages under the Americans With Disabilities Act.

In January of 1993, Gosselin was fired again, and he contacted O'Dea to represent him in a lawsuit against his former employer.

Soon after, O'Dea directed the Gosselins to go to the Field, Hurley offices to sign documents that were necessary for filing a Chapter 11 bankruptcy petition.

Though O'Dea prepared the documents out of his Washington D.C. office, he needed an attorney licensed in New Hampshire, the Gosselin's place of residence, to file the papers.

O'Dea asked Sullivan to recommend an attorney, and when the Gosselins arrived at the office they met with Sullivan's secretary who showed them where to sign the documents.

While at the office, Sullivan also helped answer one of the Gosselins' questions regarding bankruptcy, and he indicated that his office would forward the documents to the New Hampshire attorney.

The facts also indicated that on one other occasion Sullivan spoke to Gosselin and on three to four other occasions, Sullivan spoke to O'Dea about the Gosselin case.

Throughout his representation of Gosselin, O'Dea wrote on letterhead which bore only his name, but it included both the Washington, D.C. and Field, Hurley addresses.

O'Dea represented Gosselin at the arbitration hearing in August 1993, and advised him to reject his former employer's offers of settlement since "the A.D.A. suit would be a million dollar law suit."

Later in 1993, the arbitrator ruled against Gosselin and he also found out that O'Dea had failed to file a timely claim under the A.D.A., and he had not filed a claim for back wages.

Gosselin then filed suit against O'Dea and the defendants for legal malpractice.

Gosselin reached a settlement with O'Dea and the defendants filed a summary judgment motion which U.S. District Court Judge George A. O'Toole granted.

Gosselin appealed the decision, and the 1st Circuit vacated the judgment and remanded the case for further proceedings.

Partnership By Estoppel

Lisi found that there was a sufficient evidence of a genuine dispute of material fact as to whether or not O'Dea had been held out as a partner of Field, Hurley to deny the defendants summary judgment motion at the district court level.

Since the defendants were not actually partners in a law firm, the judge examined Gosselin's theory of partnership by estoppel.

The decision listed four elements that a plaintiff must prove to show that a partnership by estoppel existed: "(1) that the would-be partner has held himself out as a partner; (2) that such holding out was done by the defendant directly or with his consent; (3) that the plaintiff had knowledge of such holding out; and (4) that the plaintiff relied on the ostensible partnership to his prejudice."

A key element to proving this relationship lied in the "holding out" requirement, in which Lisi noted that "a plaintiff may establish the first two elements of his claim by pointing out not only to what the putative partners have said, but also to what they did."

Lisi stated that she believed the District Court judge erred by focusing on the fact that neither the defendants or O'Dea "expressly described" O'Dea as a partner, because they did not take into account the parties words and conduct.

Lisi wrote that the court below did not properly view the facts in a light most favorable to the plaintiff as was required under Rule 56.

Lisi, relying on Massachusetts precedent in *Atlas Tack v. DiMasi*, *Brown v. Gerstein*, and *Standard Oil v. Henderson*, defined the elements required in determining what constitutes "holding out."

The judge stated that the first principle to be gathered from these cases is that "ordinarily, whether a partnership by estoppel exists is a question of fact."

The second principle Lisi noted was that if the "only evidence of holding out consists of the use of a person's name in a business," then that person "may escape liability as a matter of law."

Finally, the judge noted that where, as in this case, there is "significant evidence" regarding the "holding out" elements "beyond mere use of the partner's name," then summary judgment will not be appropriate for the defendants involved.

Applying these principles to Gosselin's case, Lisi noted that O'Dea first referred to his association as being "with" Field, Hurley.

Lisi explained that pursuant to Rule 56, which governs summary judgment, the word "with" and the other evidence proffered by Gosselin as "holding out" evidence should be viewed in the light most favorable to the plaintiffs.

The judge also stated that the fact that O'Dea's name was listed under Field, Hurley's directory in the foyer could reasonably imply a "partnership-like arrangement."

Lisi noted that the lobby directory did not include any statements referencing the fact that the group was not practicing as a partnership, and it did not have any disclaimer as to the defendants' relationship to O'Dea.

The judge also pointed to the incidents where the Gosselins were directed to go to Field, Hurley when O'Dea would not be there, as further evidence that O'Dea was a possible "equal member of the 'firm.'"

Lisi further cited the incidents in which the Gosselins called Field, Hurley and spoke with Sullivan and his secretary as further evidence that there were enough factual events to make the "holding out" element a question of fact.

The judge noted that although many of the factual events were disputed, there was enough evidence, taken in the light most favorable to Gosselin, to let the issue of whether or not O'Dea was indeed in a partnership by estoppel go to a factfinder and thus the defendants' summary judgment motion should not have been granted.

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