MASSACHUSETTS SUPREME JUDICIAL COURT

Coke v. Equity Residential Properties Trust

440 Mass. 511 (2003) · Decided December 11, 2003

SUMMARY

The Massachusetts Supreme Judicial Court dismissed as moot an interlocutory petition concerning whether counsel had to be disqualified after joining a law firm that represented the opposing party in unrelated matters. The court declined to decide the merits of the conflict-of-interest issue because the opposing party had terminated its relationship with the law firm and no confidentiality violation or actual prejudice was alleged.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Marshall, C.J.
JURISDICTION	Massachusetts
DECIDED	December 11, 2003
DISPOSITION	dismissed
PROCEDURAL POSTURE	Equity sought interlocutory review of a Superior Court order denying its motion to disqualify the plaintiffs' counsel after counsel joined a firm that represented Equity in unrelated matters. While the interlocutory petition was pending, Equity terminated its relationship with the law firm.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court decision; precedential as to its mootness analysis, but it expressly declined to resolve the underlying Rule 1.7 disqualification issue.
PARTIES	Equity Residential Properties Trust v. Coke and other plaintiffs

TOPICS

mootness · interlocutory appeal · appellate procedure · civil procedure

PRACTICE AREAS

appellate procedure · professional responsibility · legal ethics · civil procedure

QUESTIONS PRESENTED

1. Whether Equity's petition for interlocutory review of the denial of its motion to disqualify plaintiffs' counsel became moot after Equity terminated its relationship with the law firm.
2. Whether the Supreme Judicial Court should reach the underlying Massachusetts Rule of Professional Conduct 1.7 conflict-of-interest and disqualification issue despite mootness.

HOLDINGS

1. The petition for interlocutory review was moot because Equity had unilaterally terminated its entire relationship with Seyfarth, leaving no continuing attorney-client relationship whose protection could be served by disqualifying Seyfarth from representing the plaintiffs, particularly where Equity alleged neither a confidentiality violation nor actual prejudice.
2. The court declined to decide whether Berthiaume or Seyfarth violated Rule 1.7 or whether the Superior Court correctly denied disqualification.

KEY QUOTATIONS

> *"We conclude otherwise."* (440 Mass. at 514)

> *"We express no opinion on the judge's ruling, which touches on an unsettled and vigorously debated area of professional ethics."* (440 Mass. at 516)

> *"In cases of lateral transfers or law firm mergers every effort should be made, however, to ensure that clients are apprised of any potential conflicts to avoid the circumstances that occurred here."* (440 Mass. at 517)

> *"Putting it as mildly as we can, we think it would be questionable conduct for an attorney to participate in any lawsuit against his own client without the knowledge and consent of all concerned."* (440 Mass. at 517)

FACTUAL BACKGROUND

The plaintiffs sued Equity over alleged breaches of contract and the covenant of good faith and fair dealing arising from the transfer of interests in a limited partnership. After plaintiffs' counsel, Mark A. Berthiaume, joined Seyfarth Shaw, the firm discovered that Equity was a current client in unrelated matters and incorrectly informed Berthiaume that Equity had consented to his continued representation of the plaintiffs. Equity demanded withdrawal and moved to disqualify Berthiaume and Seyfarth, but before appellate resolution Equity terminated its entire relationship with Seyfarth and did not claim that confidential information had been misused or that it had suffered actual harm.

PROCEDURAL HISTORY

The plaintiffs brought two contract-related actions against Equity in the Superior Court, and the actions were later consolidated. The Superior Court allowed the plaintiffs' motion for summary judgment in the first action, final judgments entered in both actions, and both sides appealed. After plaintiffs' counsel joined Seyfarth Shaw, which represented Equity in unrelated matters, Equity moved to disqualify counsel and the firm; the Superior Court denied the motion. Equity petitioned for interlocutory review under G. L. c. 231, § 118, the Appeals Court single justice reported the matter to a full panel, and the Supreme Judicial Court transferred the cases on its own motion.

DISPOSITION

dismissed

CASES CITED

- Hartford Accident & Indemnity Co. v. RJR Nabisco, Inc., 121 F. Supp. 534, 540-542 (S.D.N.Y. 1989)
- Wong v. Fong, 60 Haw. 601, 605-606 (1979)
- In re Dayco Corp. Derivative Securities Litigation, 102 F.R.D. 624, 627, 632 (S.D. Ohio 1984)
- Unified Sewerage Agency of Washington County v. Jelco, Inc., 646 F.2d 1339, 1345 n.4 (9th Cir. 1981)
- Tipton v. Canadian Imperial Bank of Commerce, 872 F.2d 1491, 1498-1499 (11th Cir. 1989)
- Lockhart v. Attorney General, 390 Mass. 780, 783 (1984)
- McCourt Co. v. FPC Properties, Inc., 386 Mass. 145, 149 (1982)
- Cinema 5, Ltd. v. Cinerama, Inc., 528 F.2d 1384, 1386 (2d Cir. 1976)