

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Feiner & Lavy, P.C. v. Zohar

2021 NY Slip Op 03407 (App. Div. 2021) · No. Appeal No. 13954; Case No. 2020-03752; Index No. 656169/17 · Decided June 1, 2021

SUMMARY

The Appellate Division, First Department, modified and otherwise affirmed an order denying defendants’ motion for summary judgment in a dispute involving an immigration law firm’s employment and confidentiality agreements. The court held that the employment agreement’s broad noncompetition provision was void and unenforceable insofar as it restricted the former attorney’s practice of law, but that client nonsolicitation and confidentiality claims presented triable issues of fact. The court dismissed the punitive damages claim because punitive damages are not a separate cause of action and the allegations did not support such damages.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Gische, J.P.; Webber, J.; Singh, J.; Kennedy, J.
JURISDICTION	New York
DECIDED	June 1, 2021
DOCKET	Appeal No. 13954; Case No. 2020-03752; Index No. 656169/17
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order of Supreme Court, New York County, denying their motion for summary judgment dismissing the complaint.
STANDARD OF REVIEW	Summary judgment is appropriate only where there is no triable issue of fact; the court reviews whether the movant established entitlement to judgment as a matter of law and whether factual issues remain for trial.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Gadi Zohar, Esq., Jihan Asli, Zohar Law PLLC v. Feiner & Lavy, P.C.

TOPICS

noncompete agreements

restrictive covenants

employment contracts

breach of contract

remedies

PRACTICE AREAS

contract law

employment law

legal ethics

remedies

QUESTIONS PRESENTED

1. Whether the employment agreement's noncompetition and nonsolicitation provisions were enforceable under Rule 5.6(a)(1) of the New York Rules of Professional Conduct.
2. Whether defendants established as a matter of law that they did not solicit plaintiff's clients or disclose confidential client information.
3. Whether Rule 5.6(a)(1) rendered Asli's confidentiality agreement void and unenforceable.
4. Whether plaintiff could maintain a separate cause of action or demand for punitive damages.

HOLDINGS

1. The provision barring Zohar from conducting business activities the same as or similar to plaintiff's within 90 miles of New York City or in the Israeli community is void and unenforceable under Rule 5.6(a)(1).
2. The nonsolicitation provision may be enforceable because it restricts solicitation of plaintiff's clients rather than the practice of law generally, and defendants failed to establish its unenforceability as a matter of law.
3. Summary judgment was properly denied because triable issues remained concerning whether defendants solicited plaintiff's clients and whether Asli disclosed confidential client information in violation of the agreements.
4. Rule 5.6(a)(1) did not render Asli's confidentiality agreement void or unenforceable because the rule applies to agreements restricting a lawyer's right to practice, not to an otherwise enforceable confidentiality agreement.
5. Plaintiff's punitive-damages claim should have been dismissed because there is no separate cause of action for punitive damages and the allegations did not support a demand for such damages.

KEY QUOTATIONS

"Rule 5.6(a)(1) of the Rules of Professional Conduct (22 NYCRR 1200.0) bars lawyers from "participat[ing] in offering or making a partnership, shareholder, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship," except under limited circumstances that are not relevant to this appeal." (*2)

"Plaintiff's claims for punitive damages should have been dismissed, as "there can be no separate cause of action for punitive damages"" (*3)

FACTUAL BACKGROUND

Feiner & Lavy is an immigration-law firm. Zohar, a former associate, allegedly agreed to confidentiality, noncompetition, and nonsolicitation restrictions, while Asli, a former office manager, allegedly agreed to maintain the confidentiality of client information. The firm alleged that Zohar practiced immigration law and solicited its clients in violation of his agreement and that Asli disclosed confidential client information and solicited clients for Zohar Law PLLC. Conflicting affidavits from the parties and the firm's clients created factual disputes concerning solicitation and disclosure.

PROCEDURAL HISTORY

Feiner & Lavy sued former associate Gadi Zohar and former office manager Jihan Asli for alleged breaches of employment and confidentiality agreements, including client solicitation and disclosure of confidential information. Supreme Court denied defendants' summary-judgment motion, finding triable issues concerning enforceability, solicitation, disclosure, and witness credibility. The Appellate Division modified the order to dismiss the punitive-damages claim and otherwise affirmed.

DISPOSITION

affirmed

CASES CITED

- Cohen v Lord, Day & Lord, 75 NY2d 95 (1989)
- Denburg v Parker Chapin Flattau & Klimpl, 82 NY2d 375, 381 (1993)
- Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 119-120 (1995)
- Feldman v Minars, 230 AD2d 356 (1st Dept 1997)
- Greenwich Mills Co. v Barrie House Coffee Co., 91 AD2d 398, 404-405 (2d Dept 1983)
- Ocap Acquisition Corp. v Paco Pharm. Servs., 209 AD2d 232, 232 (1st Dept 1994)
- Goldstein v Winard, 173 AD2d 201, 202-203 (1st Dept 1991)