

SUPREME COURT OF WASHINGTON

LK Operating, LLC v. Collection Group, LLC, 181 Wn. 2d 48

331 P.3d 1145 (2014) · No. 88132-4 · Decided July 31, 2014

SUMMARY

The Washington Supreme Court considered whether a joint venture proposal for a debt collection business was entered into in violation of former Washington RPC 1.8(a) and RPC 1.7. The court held that the proceedings satisfied procedural due process, the business transaction violated former RPC 1.8(a) and RPC 1.7, the transaction was unenforceable under the circumstances, and rescission was an appropriate remedy.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Fairhurst, J.; C. Johnson, J.; Owens, J.; Wiggins, J.; González, J.; J.M. Johnson, J. Pro Tem.
JURISDICTION	Washington
DECIDED	July 31, 2014
DOCKET	88132-4
DISPOSITION	affirmed
PROCEDURAL POSTURE	Review of a published Court of Appeals decision affirming a trial court's summary judgment and rescission remedy in consolidated contract and legal-malpractice actions.
STANDARD OF REVIEW	Constitutional due process issues and whether undisputed facts establish an RPC violation are reviewed de novo. On summary judgment, reasonable inferences and disputed facts are construed in favor of the nonmoving parties.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	LK Operating, LLC, Leslie Powers, Keith Therrien v. Collection Group, LLC, Brian Fair, Fair's wife and marital community

TOPICS

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PRACTICE AREAS

contracts

legal ethics

commercial litigation

constitutional law

remedies

QUESTIONS PRESENTED

1. Whether considering the merits of the alleged former RPC 1.8(a) violation violated Powers's or LK Operating's procedural due process rights.
2. Whether Powers entered the business transaction contemplated by the joint venture proposal in violation of former RPC 1.8(a).
3. Whether Powers violated former RPC 1.7 by representing clients with directly adverse interests without the required written informed consent.
4. Whether rescission was an appropriate remedy for the RPC violations and the resulting public-policy infirmity of the transaction.

HOLDINGS

1. The proceedings below satisfied procedural due process. Powers did not assert a protected liberty or property interest in the contract action, and LK Operating received sufficient notice and a meaningful opportunity to be heard regarding former RPC 1.8(a).
2. The joint venture proposal constituted a business transaction subject to former RPC 1.8(a), and Powers entered that transaction in his capacity as an attorney even though LK Operating, rather than Powers personally, received the ownership interest.
3. Powers violated former RPC 1.8(a) as a matter of law because the transaction and its essential terms and parties were never fully disclosed and transmitted to Collection Group in writing.
4. Powers violated former RPC 1.7 by representing Fair and LK Operating in matters involving directly adverse interests without the required written informed consent and disclosures.
5. The business transaction was presumptively unenforceable as contrary to the public policy embodied in former RPC 1.8(a), and rescission was an appropriate remedy under the circumstances.

KEY QUOTATIONS

"The proceedings below satisfied the requirements of procedural due process because the parties received sufficient notice and a meaningful opportunity to be heard regarding the issues presented for judicial determination." (58)

"A contract formed in violation of former RPC 1.8(a), by definition, includes at least one attorney and one current client as parties to the contract and, by definition, meets at least one of the following criteria:" (81)

"We simply reaffirm that a contract entered in violation of former RPC 1.8(a) may not be enforced unless it can be shown that notwithstanding the violation, the resulting contract does not violate the underlying public policy of the rule." (90)

"Neither LKO's nor Powers' rights to procedural due process were violated." (95)

FACTUAL BACKGROUND

Brian Fair formed Collection Group, LLC to operate a debt-collection business and proposed a joint venture under which Fair would provide management services, Powers and the Law Firm would provide legal services without itemized fees, and LK Operating would provide financing in exchange for an ownership interest. LK Operating funded approximately one-half of the cost of multiple debt portfolios, while Powers and the Law Firm provided Collection Group with legal services without billing it. The proposed transaction was never memorialized in a writing identifying the parties, terms, and roles, and the parties later disagreed over ownership and the disposition of Collection Group's business.

PROCEDURAL HISTORY

LK Operating filed a contract action against Fair and Collection Group concerning ownership interests, breach of contract, and breach of fiduciary duty. The trial court consolidated that action with Fair and Collection Group's legal-malpractice action against Powers, granted partial summary judgment for Fair and Collection Group, ordered rescission of the joint venture transaction, and awarded LK Operating the amount it had invested plus interest. The Court of Appeals affirmed, and the Washington Supreme Court granted review and affirmed.

DISPOSITION

affirmed

CASES CITED

- LK Operating, LLC v. Collection Grp., LLC, 181 Wn.2d 117, 330 P.3d 190 (2014)
- C.B. & T. Co. v. Hefner, 98 N.M. 594, 651 P.2d 1029 (N.M. Ct. App. 1982)
- City of Redmond v. Moore, 151 Wn.2d 664, 668, 91 P.3d 875 (2004)
- Wilkinson v. Austin, 545 U.S. 209, 221, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005)
- Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 460, 109 S. Ct. 1904, 104 L. Ed. 2d 506 (1989)
- In re Personal Restraint of Meyer, 142 Wn.2d 608, 620-22, 16 P.3d 563 (2001)
- Paul v. Davis, 424 U.S. 693, 701, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976)
- Washington Medical Disciplinary Board v. Johnston, 99 Wn.2d 466, 474, 663 P.2d 457 (1983)
- In re Disciplinary Proceeding Against Romero, 152 Wn.2d 124, 136-37, 94 P.3d 939 (2004)
- In re Disciplinary Proceeding Against King, 170 Wn.2d 738, 741, 246 P.3d 1232 (2011)
- In re Disciplinary Proceeding Against Cramer, 165 Wn.2d 323, 339, 198 P.3d 485 (2008)
- In re Disciplinary Proceeding Against McGlothlen, 99 Wn.2d 515, 526-27, 663 P.2d 1330 (1983)
- Olympic Forest Products, Inc. v. Chaussee Corp., 82 Wn.2d 418, 423-24, 511 P.2d 1002 (1973)
- Boddie v. Connecticut, 401 U.S. 371, 377, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)
- Dix Steel Co. v. Miles Construction, Inc., 74 Wn.2d 114, 119, 443 P.2d 532 (1968)
- Weden v. San Juan County, 135 Wn.2d 678, 695-96, 958 P.2d 273 (1998)
- Bock v. State, 91 Wn.2d 94, 95 n.1, 586 P.2d 1173 (1978)

- Auto. United Trades Organization v. State, 175 Wn.2d 214, 222-35, 285 P.3d 52 (2012)
- State v. Shelmidine, 166 Wn. App. 107, 114, 269 P.3d 362 (2012)
- Sanders v. Woods, 121 Wn. App. 593, 597-600, 89 P.3d 312 (2004)
- Public Utility District No. 1 of Klickitat County v. International Insurance Co., 124 Wn.2d 789, 811-12, 881 P.2d 1020 (1994)
- Grader v. City of Lynnwood, 45 Wn. App. 876, 879, 728 P.2d 1057 (1986)
- DGH Enterprises v. Pacific Cities, Inc., 137 Wn.2d 933, 942-43, 977 P.2d 1231 (1999)
- Schroeder v. Excelsior Management Group, LLC, 177 Wn.2d 94, 104, 297 P.3d 677 (2013)
- Otis Housing Association v. Ha, 165 Wn.2d 582, 587, 201 P.3d 309 (2009)
- State v. Taylor, 150 Wn.2d 599, 602, 80 P.3d 605 (2003)
- In re Dependency of J.W.H., 147 Wn.2d 687, 696, 57 P.3d 266 (2002)
- In re Disciplinary Proceeding Against Carmick, 146 Wn.2d 582, 595, 48 P.3d 311 (2002)
- In re Disciplinary Proceeding Against Sanai, 177 Wn.2d 743, 767-68, 302 P.3d 864 (2013)
- In re Personal Restraint of Adams, 178 Wn.2d 417, 423, 309 P.3d 451 (2013)
- State v. Noah, 103 Wn. App. 29, 50, 9 P.3d 858 (2001)
- Torgerson v. One Lincoln Tower, LLC, 166 Wn.2d 510, 524, 210 P.3d 318 (2009)
- Scott v. Cingular Wireless, 160 Wn.2d 843, 851, 161 P.3d 1000 (2007)
- King v. Riveland, 125 Wn.2d 500, 511, 886 P.2d 160 (1994)
- Kommavongsa v. Haskell, 149 Wn.2d 288, 311, 67 P.3d 1068 (2003)
- Hizy v. Carpenter, 119 Wn.2d 251, 258, 264-66, 830 P.2d 646 (1992)
- Sherwood & Roberts—Yakima, Inc. v. Leach, 67 Wn.2d 630, 637, 409 P.2d 160 (1965)
- Fallahzadeh v. Ghorbanian, 119 Wn. App. 596, 605, 82 P.3d 684 (2004)
- Morelli v. Ehsan, 110 Wn.2d 555, 562, 756 P.2d 129 (1988)