

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Oorah, Inc. v. Kane Kessler, P.C.

No. 18-2803-cv, United States Court of Appeals for the Second Circuit (May 20, 2019)

SUMMARY

The Second Circuit vacated dismissal of a New York Judiciary Law § 487 claim, holding that a prevailing party in the underlying action may bring a separate plenary action for attorney deceit without collaterally attacking the judgment. The district court erred in requiring the claim to be brought in the underlying action unless part of a broader fraudulent scheme. The key distinction is whether the plaintiff prevailed; if so, it may seek damages for additional legal costs incurred due to alleged misconduct.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	José A. Cabranes; Peter W. Hall; Timothy C. Stanceu
JURISDICTION	Federal
DECIDED	May 20, 2019
DOCKET	18-2803-cv
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from the United States District Court for the Southern District of New York (Paul A. Engelmayer, Judge) dismissing with prejudice, pursuant to Federal Rule of Civil Procedure 12(b)(6), Oorah's claim under New York Judiciary Law § 487.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	Unpublished
PARTIES	Oorah, Inc. v. Kane Kessler, P.C. and Gerard Schiano-Strain, Esq.

TOPICS

[civil procedure](#) [motions to dismiss](#) [standard of review](#) [statutory interpretation](#) [professional negligence](#)
[fraud](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court erred in dismissing Oorah's § 487 claim on the ground that New York law requires claims under Section 487 to be brought in the underlying action where the attorney misconduct occurred, unless the misconduct is part of a broader fraudulent scheme.

HOLDINGS

1. A prevailing party may bring a separate plenary action under § 487, provided the party does not seek to collaterally attack the judgment. The District Court erred in requiring the claim to be brought in the underlying action.

KEY QUOTATIONS

“Although plaintiffs were aware of the alleged misconduct during the pendency of the prior foreclosure action, they are not precluded from bringing a plenary action alleging a violation of Judiciary Law § 487 provided that they are not collaterally attacking the judgment from the prior action.”

“Generally, a party who has lost a case as a result of alleged fraud or false testimony cannot collaterally attack the judgment in a separate action for damages against the party who adduced the false evidence, and the plaintiff's remedy lies exclusively in moving to vacate the default judgment. Under an exception to that rule, a separate lawsuit may be brought where the alleged perjury or fraud in the underlying action was merely a means to the accomplishment of a larger fraudulent scheme which was greater in scope than the issues determined in the prior proceeding.”

“In sum, while the court where the alleged misconduct occurred may be better positioned than a federal court sitting under diversity jurisdiction to assess the merits of a § 487 claim, the District Court misread New York state law to require a prevailing party to file its § 487 claim in the pending underlying state action.”

FACTUAL BACKGROUND

Oorah, Inc. was the prevailing party in a prior state court action against Covista Communications Inc. Oorah subsequently filed a separate action against Kane Kessler, P.C. and Gerard Schiano-Strain, alleging that they violated New York Judiciary Law § 487 by making material misrepresentations that caused Oorah to incur additional legal costs. The District Court dismissed the § 487 claim, concluding that New York law requires such claims to be brought in the underlying action unless the misconduct is part of a broader fraudulent scheme.

PROCEDURAL HISTORY

The District Court dismissed Oorah's complaint with prejudice. Oorah appealed, challenging only the dismissal of its § 487 claim against Kane Kessler.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with this order.

CASES CITED

- Dettelis v. Sharbaugh, 919 F.3d 161 (2d Cir. 2019)
- Kimbrook Route 31, L.L.C. v. Bass, 47 N.Y.S.3d 203 (4th Dep't 2017)
- Specialized Indus. Servs. Corp. v. Carter, 890 N.Y.S.2d 90 (2nd Dep't 2009)
- Melcher v. Greenberg Traurig LLP, 24 N.Y.S.3d 249 (1st Dep't 2016)
- Seldon v. Bernstein, 503 F. App'x 32 (2d Cir. 2012) (summary order)
- Oorah, Inc. v. Covista Commc'ns Inc., 52 N.Y.S.3d 347 (1st Dep't 2017)

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