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04 | 24 | 2008 Posted By Andrew Lavooott Bluestone

Another Example of the Collateral Estoppel Trap in Legal Malpractice

In re D.A. ELIA CONSTRUCTION CORP., Plaintiff, v. *DAMON & MOREY, LLP*, Defendant.

07-CV-143A

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

2008 U.S. Dist. LEXIS 25496

March 31, 2008, Decided

March 31, 2008, Filed

“While the matter [the bankruptcy matter] was on appeal to the Second Circuit, Elia filed a complaint against Damon & Morey on February 14, 2007 in New York State Supreme Court asserting [*5] various state law causes of action relating to the firm's legal representation of Elia during the Chapter 11 proceeding. Specifically, the complaint alleges breach of a legal retainer agreement (first cause of action); legal malpractice (second cause of action); conversion (third cause of action) and attorney misconduct in violation of § 487 of the New York State Judiciary Law (fourth cause of action).”

“In *Grausz v. Englander*, 321 F.3d 467 (4th Cir. 2003), the Fourth Circuit addressed whether a legal malpractice claim brought after the entry of a final order approving fees under 11 U.S.C. § 330 was barred by the doctrine of res judicata. The Court held that it was because the "legal malpractice claim [was] rooted in the same cause of action as the earlier claim for [attorneys'] fees." *Id.* at 473. Likewise, the First and Fifth Circuits have also considered this issue and held that HN9 state law malpractice claims brought after the entry of a final order approving 11 U.S.C. § 330 fees are barred by the doctrine of res judicata. See *In re Iannochino*, 242 F.3d 36 (1st Cir. 2001); *In re Intelogic Trace, Inc.*, 200 F.3d 382 (5th Cir. 2000); see also *In re Robotic Vision Sys., Inc.*, 343 B.R. 393 (D.N.H. 2005); *In re Blair*, 319 B.R. 420 (D. Md. 2005) In so ruling, [*13] the Circuits considered whether the plaintiff knew or should have known about the basis of its malpractice claim at the time that attorneys fees were approved and whether the bankruptcy court provided an effective forum to litigate those claims. See *Grausz*, 321 F.3d at 473-74; *In re Intelogic Trace*, 200 F.3d at 388.

As in *Grausz* and *Intelogic*, all of the misconduct alleged to have been committed by Damon & Morey was known to Elia at the time that the bankruptcy court approved the final fee application. In fact, many of the same allegations made by Elia in its state law complaint were previously made by Elia in its objections to Damon & Morey's final fee application. Specifically, Elia argued to the bankruptcy court that the firm had labored under a conflict of interest, had committed legal malpractice and had failed to turn over money owed to the estate. The bankruptcy court provided Elia with ample opportunity raise those claims, but ultimately rejected them as meritless. Both this Court and the Second Circuit have expressly determined that the bankruptcy court gave adequate consideration to Elia's allegations of malpractice. See *In re Elia*, 04-cv 975, Dkt. No. 21 (this Court's order [*14] affirming bankruptcy court's award of § 330 fees and finding that bankruptcy court considered but rejected the malpractice allegations); and *id.* at Dkt. No. 33, at 3 and 4 (Second Circuit's Summary Order determining that the bankruptcy court gave Elia "more than ample

opportunity to present its arguments" regarding its claims of "conflicted and negligent representation"). As such, it cannot be said that Elia was denied the opportunity to raise these claims in the prior action. 4”