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Hazardous Duty:
Oregon Expands Breach of Fiduciary Duty Claims by Nonclients

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The Oregon Court of Appeals recently expanded lawyer liability to nonclients for breach of fiduciary duty. *Reynolds v. Schrock*, 197 Or App 564, 107 P3d 52 (2005), is worth reading carefully if your practice involves advising partnerships, joint ventures, corporate boards or others on their fiduciary duties. *Reynolds* holds that a lawyer can be liable to a nonclient by providing a client with legal advice that the client then uses to breach a fiduciary duty to the nonclient. In essence, *Reynolds* finds the lawyer jointly liable with the client for the breach of fiduciary duty.

Reynolds is painted against the backdrop of a real estate joint venture. Reynolds and Schrock purchased two parcels—one was commercial timber and the other was recreational. They had a falling-out and later entered into a settlement agreement to wind-up the joint venture. Under the settlement, Reynolds conveyed his interest in the recreational parcel to Schrock and, in return, Reynolds was to receive all proceeds from the sale of the timber. Reynolds had invested $500,000 in the joint venture by that point. To make Reynolds whole, the settlement provided that if the timber sale did not net him at least $500,000, Schrock would pay Reynolds any deficiency and Reynolds would have a lien on the recreational parcel to secure the deficiency.

After Reynolds had deeded his interest in the recreational parcel to Schrock, Schrock asked her lawyer if the settlement agreement required her to keep the recreational property pending the timber sale. Schrock's lawyer concluded that the settlement agreement contained no such obligation and advised Schrock accordingly. Schrock then sold the recreational parcel. Schrock later prevented the timber sale—leaving Reynolds without either his interest in the recreational property or his share of the timber sale proceeds.

Reynolds sued Schrock. Reynolds framed the primary claim against Schrock as breach of fiduciary duty. He argued that Schrock had a fiduciary duty to wind-up the joint venture as contemplated by the settlement agreement and that her failure to do so—notwithstanding the apparent loop-hole in the settlement agreement allowing the sale of recreational property—constituted a breach of that duty. Reynolds also sued Schrock's lawyer. Reynolds did not contend that Schrock's lawyer had an independent fiduciary duty to him. Rather, he argued that the lawyer was jointly liable with Schrock for the breach of Schrock's fiduciary duty to Reynolds by providing the advice upon which Schrock acted. Schrock settled with Reynolds. Her lawyer moved for summary judgment, which the trial court granted. The Court of Appeals, however, reversed and held that a lawyer can be liable to a nonclient when the lawyer's advice assists in the client's breach of a fiduciary duty to the nonclient.

In doing so, the Court of Appeals relied primarily on two other comparatively recent breach of fiduciary duty cases involving lawyers: G*ranewich v. Harding*, 329 Or 47, 985 P2d 788 (1999), and *Roberts v. Fearey*, 162 Or App 546, 986 P2d 690 (1999). In *Granewich*, the Supreme Court held that a law firm that advised the majority directors of a closely held corporation in "squeezing out" a minority director could be held liable for assisting in the majority's breach of fiduciary duty. In *Roberts*, the Court of Appeals applied *Granewich* and found that a lawyer who knowingly assists in a trustee's breach of fiduciary duties to the trust's beneficiaries may be held liable by the beneficiaries.

The *Reynolds* court acknowledged that its decision had "serious implications for attorneys" and cautioned that it should be narrowly construed. Nonetheless, the Court of Appeals concluded that a lawyer advising a client to act contrary to a fiduciary duty may be liable to a nonclient to whom that duty is owed *even if* the act would otherwise be permitted by an associated contract: "[I]f the attorney knows that the fiduciary relationship imposes a higher standard of conduct than the agreement, then the attorney who advises the client that he or she may do an act that the contract permits but that is incompatible with the fiduciary relationship may be liable for the breach of fiduciary duty." 197 Or App at 577. *Reynolds* has serious implications indeed for lawyers advising partnerships, corporate boards or other fiduciaries.

ABOUT THE AUTHOR

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