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levine v. tci

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581 S.E.2d 734 (2003)

261 Ga. App. 128

LEVINE

v.

TELEVISION CABLECASTING, INC.

No. A03A0263.

Court of Appeals of Georgia.

May 5, 2003.

Gorby, Reeves, Peters & Burns, Michael J. Gorby, Hurt, **Levine** & Papadakis, David N. **Levine**, Atlanta, for appellant.

Jones, Jensen & Harris, Taylor W. Jones, Richard E. Harris, Atlanta, for appellee.

PHIPPS, Judge.

Attorney David N. **Levine** sued Television Cablecasting, Inc. (**TCI**) for attorney fees arising from his representation of **TCI** during a divorce between **TCI's** sole shareholder, Thomas Cassidy, and his wife, Susan Fasse. **TCI** counterclaimed for legal malpractice and breach of fiduciary duty. The trial court granted **TCI's** motion for summary judgment on **Levine's** claim, ruling that he was bound by the final judgment in the divorce case requiring Cassidy, not **TCI**, to pay his legal fees. The court also denied **Levine's** motion for summary judgment on **TCI's** counterclaims. **Levine** appeals both rulings. We affirm the grant of summary judgment to **TCI** on the main claim, but reverse the denial of summary judgment to **Levine** on the counterclaims.

In December 1993, Fasse sued Cassidy for divorce in the Cobb County Superior Court. She also sought the title to a farm in Illinois that she had inherited in 1982 but later transferred to **TCI**,^[1] which was then wholly owned by Cassidy. Cassidy asked **Levine**, his longtime attorney and friend, to represent **TCI** in the divorce proceeding. In April 1995, the court dismissed **TCI** from the case. Cassidy then asked **Levine** to represent him personally in the divorce.

On May 19, 1995, a jury awarded Fasse all the stock of **TCI**, including the farm, as alimony and an equitable division of marital property. The verdict emphasized that Fasse was to receive the farm "free and clear of any liens and indebtedness." The verdict also provided that Cassidy would pay any fees due to **Levine**. The court later entered a final judgment and decree that stated:

[Fasse] is awarded ... 100% of the stock in [**TCI**], which shall include the Illinois farm ..., which shall be transferred immediately. Said transfer shall be from [**Cassidy**] *735 to [Fasse] free and clear of any and all right, title, or interest of

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[Cassidy] and free and clear of all liens, and any indebtedness whatsoever...
[Cassidy] shall immediately satisfy and assume any and all liens,
encumbrances, attorney's fees and moneys owed to attorney David **Levine**...

Ten days before the jury award, **Levine** had filed a lien against the Illinois farm for **TCI's** attorney fees, even though there was a standing order in the divorce case prohibiting the parties from encumbering any property they owned. After the jury award, **Levine** billed **TCI** for \$42,765.35 for his legal services. At some point after **Levine** sent that bill, he and Cassidy drafted a backdated engagement letter purporting to obligate **TCI** to pay **Levine's** attorney fees. **Levine** has not attempted to collect any fee from Cassidy for his work in the divorce case.

In December 1995, **TCI**, under Fasse's ownership, transferred its interest in the farm to Suncoast Investments, Inc., a company wholly owned by her new husband, Michael Montgomery. Suncoast Investments later sued **Levine** in Illinois, seeking removal of the lien he had placed on the farm, as well as damages for slander of title to the farm.^[2] A jury eventually awarded damages against **Levine** in the amount of \$33,929.60, and the Illinois Court of Appeals affirmed the award.^[3]

In April 1996, **Levine** sued **TCI** for breach of contract for failing to pay his legal fees in the divorce case. He later added a claim for fraudulent conveyance based on **TCI's** assignment of its interest in the farm to Suncoast Investments. **Levine** also sought to add Fasse, Montgomery, and Suncoast Investments as additional defendants on the fraudulent conveyance claim. **TCI** counterclaimed for legal malpractice and breach of fiduciary duty, alleging that **Levine** had operated under a conflict of interest while representing it.^[4]

Levine moved for summary judgment on **TCI's** counterclaims, and **TCI** sought summary judgment on **Levine's** claims. The trial court denied **Levine's** motion for summary judgment but granted **TCI's** motion. The court concluded that **Levine** was bound by the divorce decree, which provided that Cassidy was liable for his attorney fees. In addition, the trial court denied **Levine's** motion to join Fasse, Montgomery, and Suncoast Investments as parties.

1. **Levine** argues that the Cobb County Superior Court's final judgment and decree do not bind him because he was not a party to the action. We agree.^[5]

Nevertheless, **TCI** is not responsible for **Levine's** legal fees. Although **Levine** maintains that he represented **TCI** in the divorce action, the record shows that **Levine's** true client was Cassidy, who hired him to prevent Fasse from getting **TCI's** main asset—the farm.

Cassidy testified that, while he was married to Fasse, she offered to give him her farm to pay a debt she owed him.^[6] They agreed, however, that the farm should be transferred to Cassidy's company, **TCI**, rather than to Cassidy personally because he was "up to [his] neck with the I.R.S." When Fasse filed for divorce, seeking to recover the farm, Cassidy—who is a lawyer—represented himself, but he asked **Levine** to represent **TCI** because he (Cassidy) is not licensed to practice in Georgia. Before **TCI** was dismissed from the proceedings, Cassidy gave **Levine** one payment for legal services—a \$1,250 check drawn not on a **TCI** account, but on Cassidy's attorney trust account. **TCI** was dismissed from the case only after **Levine** represented that it was an unnecessary party because Cassidy was its sole shareholder and the jury could award Fasse the farm by giving her the stock of **TCI**. And after **TCI's** dismissal, **Levine** continued to *736 represent Cassidy personally. The letter of engagement purporting to obligate **TCI** for **Levine's** legal services was not created until *after* the jury had awarded **TCI's** stock to Fasse, at which point Cassidy lacked authority to bind the corporation.

Thus, the relevant undisputed facts show that **Levine** worked to preserve the farm not for **TCl**, but for Cassidy. Because **Levine** was hired by Cassidy to act in Cassidy's interest, he must look to Cassidy for payment of his legal fees. Accordingly, the trial court properly granted summary judgment to **TCl** on **Levine's** breach of contract claim.^[7]

It follows that the trial court also properly granted summary judgment to **TCl** on **Levine's** fraudulent conveyance claim. Any transfer of the farm by **TCl** could not have constituted a fraud on **Levine** because **TCl** is not liable for **Levine's** attorney fees. Finally, because **Levine** has no valid fraudulent conveyance claim, the trial court properly denied his motion to add Fasse, Montgomery, and Suncoast Investments as defendants on that claim.

2. **Levine** challenges the trial court's denial of his motion for summary judgment on **TCl's** counterclaims for legal malpractice and breach of fiduciary duty. In the counterclaim, **TCl** alleged that its damages were "expos[ure] to a claim for legal fees" by **Levine**. Because we ruled in Division 1 that **TCl** is not liable for **Levine's** legal fees, **TCl** has no such damages. Accordingly, **Levine** is entitled to summary judgment on **TCl's** counterclaims for legal malpractice and breach of fiduciary duty. We reverse the trial court's ruling to the contrary.

Judgment affirmed in part and reversed in part.

BLACKBURN, P.J., and ELLINGTON, J., concur.

[1] Fasse initially assigned her interest in the farm to a trust naming Chicago Title & Trust Company as the trustee, and she later transferred the beneficial interest in the trust to **TCl**.

[2] Chicago Title & Trust Company also was a plaintiff in that action. See [Chicago Title & Trust Co. v. Levine, 333 Ill.App.3d 420, 789 N.E.2d 769 \(2002\)](#).

[3] Id.

[4] **TCl** also alleged slander of title on the farm, but later dropped that counterclaim.

[5] See [McDonald v. McDonald, 232 Ga. 190, 205 S.E.2d 850 \(1974\)](#); [C & S Nat. Bank v. Parker, 145 Ga.App. 802, 245 S.E.2d 48 \(1978\)](#).

[6] Fasse claimed that she transferred the farm at Cassidy's behest and received no consideration.

[7] See [Abellera v. Williamson, 274 Ga. 324, 326\(2\), 553 S.E.2d 806 \(2001\)](#) (Court of Appeals must affirm grant of summary judgment if it is right for any reason).

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