FEWER POCKETS TO PICK

Limits on the Use of Conspiracy Allegations to Add Additional Defendants to a Civil Lawsuit

By: Gerard J. Gaeng

When plaintiffs' lawyers file lawsuits, they are usually looking for the greatest number of pockets – and the deepest pockets – from which their clients can recover. Accordingly, they frequently name as defendants parties only tangentially involved in the underlying dispute. One theory utilized to achieve this end is conspiracy, *i.e.*, the assertion that defendants who did not commit the alleged wrong are nevertheless civilly liable because they conspired with the wrongdoer to commit the underlying wrong. However, recent case law in Maryland shows there are important limitations on this theory.

In *Shenker v. Laureate Education, Inc.*, 411 Md. 317, 352 (2009), Maryland's highest state court, relying on several Maryland federal court cases, held that in Maryland, if an alleged co-conspirator owed no duty to the plaintiff and was thus "legally incapable" of committing the underlying wrong alleged by the plaintiff, then that co-conspirator could not be civilly liable for conspiracy. Thus, in *Shenker*, where the plaintiff alleged a breach of fiduciary duty by one party, plaintiff could not recover against a co-conspirator where the co-conspirator did not have any fiduciary relationship to the plaintiff.

This limitation was recently reiterated and expanded by the Maryland federal court in the context of a statutory consumer class-action suit that was defended by Rosenberg Martin Greenberg.

In *Jones v. Pohanka Auto North, Inc.*, a purported class-action plaintiff sued her auto dealer claiming that a provision in her retail installment sales contract violated a Maryland statute regulating such financing arrangements. She sued not only her own dealer, but also entities that owned other dealerships in the same "automotive group," claiming that they all conspired together to violate the statute in numerous transactions at the various dealerships. If the plaintiff were successful, she would have had additional pockets (the alleged co-conspirator dealers) to recover against for her claim and the claims of others who purchased from her dealership. Even more significantly, she would have greatly increased the potential size of the class by including in it the customers of all of the alleged co-conspirator dealers.

RMG attorneys convinced the court that the statutory claims against the alleged co-conspirator dealers should be dismissed under the principle of the *Shenker* case. They argued, and the court agreed, that because the alleged co-conspirator dealers were not the creditors of the plaintiff, and had no duty to the plaintiff under the statute, those defendants were "legally incapable" of committing the underlying violation of plaintiff's statutory rights and could not be civilly liable for conspiring to violate them. The court also agreed that it was irrelevant to the analysis that the alleged co-conspirators might be legally capable of violating the statute in *other* transactions.

The plaintiff in *Jones* thus failed in her attempt to use civil conspiracy to gain additional pockets for recovery and to add as additional class members the customers of the co-conspirator dealerships. For the full opinion in *Jones* click HERE.

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