2014 IL App (1st) 13-3952

FOURTH DIVISION
September 30, 2014

No. 1-13-3952

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JAMES R. STEVENS, ARBOR RESEARCH HOLDING, INC., RICHARD L. CHAMBERS, CLYDE C. HARRISON, FRED D. HANDLER, PAUL TYALOR, and THE WORTH TRUST,	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, Law Division.
Plaintiffs-Appellants,	)	No. 2011 L 11291
v.	)	
McGUIREWOODS L.L.P,	)	The Honorable Margaret Ann Brennan,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Taylor concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court partly erred in granting summary judgment in favor of the defendants on the basis of collateral estoppel. The circuit court incorrectly concluded that the plaintiffs' one-count complaint alleging the breach of fiduciary duty against their former counsel for failure to bring certain claims against another law firm in the underlying law suit was in its entirety barred under the doctrine of collateral estoppel because the trial judge in the underlying case had ruled that the plaintiffs had no standing to pursue any individual claims

against the law firm. Although the trial court in the underlying case ruled that the plaintiffs could not make individual claims against the law firm, it did not, nor could it have, ruled that the plaintiffs did not have standing to bring a derivative law suit against the law firm on behalf of their corporation. To the extent that the plaintiffs had standing to pursue derivative claims against the law firm, and those derivative claims had merit, the plaintiffs' claim against their former counsel for failure to raise those claims in a timely manner is not barred by collateral estoppel, and summary judgment was improper.

¶ 2 The plaintiffs-appellants, James R. Stevens, Arbor Research Holding, Inc., Richard L. Chambers, Clyde C. Harrison, Fred D. Handler, Paul Taylor, and the Worth Trust, appeal the circuit court's order granting summary judgment in favor of the defendant, their former counsel McGuireWoods, LLP (hereinafter McGuireWoods). The plaintiffs filed a one-count breach of fiduciary duty complaint against McGuireWoods, alleging that in an underlying law suit in which they were represented by McGuireWoods, McGuireWoods failed to assert claims against the law firm of Sidley Austin LLP (hereinafter Sidley). McGuireWoods filed a motion for summary judgment alleging that the plaintiffs could not establish any injury that the alleged breach of fiduciary duty could have caused them because in the underlying lawsuit the trial judge had ruled that the plaintiffs lacked standing to sue Sidley. The circuit court granted McGuireWoods' motion for summary judgment, and the plaintiffs now appeal. For the reasons that follow, we affirm in part and reverse and remand for further proceedings in part.

¶ 3 I. BACKGOURND

¶ 4 The record reveals the following facts and procedural history. The plaintiffs are former minority shareholder members of a company called Beeland Management LLC (hereinafter Beeland). They hired McGuireWoods in 2005 to bring both individual claims on their behalf and derivative claims on behalf of Beeland against Beeland's managers Tom Price (hereinafter Price) and Alan Goodman (hereinafter Goodman), as well Beeland's majority shareholder and owner Jim Rogers (hereinafter Rogers).

¶ 5 A. The Underlying Lawsuit

¶ 6 In January 2007, the plaintiffs, represented by McGuireWoods, filed a multi-count complaint (hereinafter the underlying lawsuit) asserting, *inter alia*, both individually and derivatively that Rogers, aided by Price and Goodman, had misappropriated Beeland's trademarks and other intellectual property. In that complaint, the plaintiffs also asserted that Price, Goodman and Rogers had caused Beeland to enter into an ill-advised deal with a firm then known as Refco, causing Beeland harm.

¶ 7 That same year, the plaintiffs, represented by McGuireWoods, also filed a motion to disqualify Sidley from representing Price and Goodman in the pending litigation. The plaintiffs argued that because Sidley represented Beeland in some critical negotiations and corporate governance issues in connection with the transfer of intellectual property from Beeland to Rogers about which the plaintiffs complained, the firm should be disqualified as Price's and Goodman's counsel. The circuit court agreed, and on November 28, 2007, granted the plaintiffs' motion to disqualify Sidley.

¶ 8 On August 21, 2008, the trial court dismissed all the claims against Price and Goodman and three of the nine counts against Rogers. The plaintiffs subsequently replaced the defendant with new counsel. Successor counsel was permitted to file an amended complaint in June 2009 and then a second amended complaint on February 15, 2010.

¶ 9 The plaintiffs' second amended complaint sought the relief originally pleaded against Price, Goodman and Rogers, but also included new claims brought "individually and derivatively on behalf of Beeland" against Sidley. The plaintiffs alleged that Sidley "had become a pawn of Rogers" and "aided and abetted" and "conspired" with Rogers to breach his fiduciary duties to

Beeland. Specifically, the plaintiffs alleged the following seven causes of action[1] against Sidley: (1) conspiracy in breach of fiduciary duty (individually and derivatively) (count I); (2) usurpation of corporate opportunities (derivatively) (count II); (3) unjust enrichment (individually and derivatively) (count III); (4) conversion (derivatively) (count IV); (5) misappropriation of Beeland assets (individually and derivatively) (count VII); (6) fraud (individually and derivatively) (count VIII); and (7) "aiding and abetting" of Rogers (individually and derivatively), and contributory trademark infringement (derivatively) (count IX).

¶ 10 In response, Sidley filed a motion to dismiss, contending, *inter alia*: (1) that all the claims against it were time-barred under the applicable statutes of limitations (735 ILCS 5/13-214.3 (West 2010)); (2) that the plaintiffs had failed to allege the necessary elements for several of the causes of action; and (3) that they should be precluded from brining counts I, III, VI, VII, VIII, and IX, in an individual capacity.

¶ 11 Price and Goodman also filed motions to dismiss (735 ILCS 5/2-615, 2-619 (West 2010)) asking, *inter alia*, the court to strike counts I, III, VI, VII, VIII, and IX of the plaintiffs' complaint to the extent that the plaintiffs sought relief in their individual capacity rather than derivatively on behalf of Beeland. Rogers filed a separate motion to dismiss (735 ILCS 5/2-615,

[1] Although the second amended complaint contained a total of nine counts, two of the counts excluded Sidley. Specifically, count V, alleging constructive trust, was made only against Rogers and Beeland Interests, Inc. (one of Rogers' spin-off corporations), and count VI, alleging breach of contract, was brought only against Rogers, Price and Goodman, who were contractually bound to Beeland and the plaintiffs under Beeland's (third) operating agreement.

2-619 (West 2010)) making, *inter alia*, the same argument as to the claims filed against him in the plaintiffs' individual capacity.

¶ 12 On February 22, 2011, the circuit court granted Sidley's motion to dismiss. In doing so, in a comprehensive written memorandum, the court first found that all seven counts against Sidley were barred under section 13-214.3 of the Illinois Code of Civil Procedure (Code), which sets forth the statutes of limitation and repose for all legal malpractice actions in Illinois. See (735 ILCS 5/13-214.3 (West 2010) (providing that all legal malpractice actions must "be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought," and "in any event [not] more than 6 years after the date on which the act or omission [complained of] occurred."). The court found that the plaintiffs had knowledge of Sidley's involvement prior to the court's August 2008 ruling and had ample opportunity to file timely claims against Sidley. As the court noted: "[The] plaintiffs [represented by McGuireWoods] had two years to inquire into the matter and file suit [against Sidley], yet neglected to do so. The statue of limitations has expired, and [the] plaintiffs' cause of action is therefore barred." Accordingly, the court dismissed all seven counts with prejudice.

¶ 13 The court nevertheless then considered the merits of the plaintiffs' claims. It first held that the plaintiffs could not pursue the following five counts in an individual capacity: (1) conspiracy in breach of fiduciary duty (count I); (2) unjust enrichment (count III); (3) misappropriation of Beeland funds (count VII); (4) fraud (count VIII); and (5) "aiding and abetting of Rogers" and contributory trademark infringement (count IX)). The court specifically held that Sidley, as Beeland's corporate attorney, owned only a duty to the corporation itself and not to its individual shareholders. See *Felty v. Hartweg*, 169 Ill. App. 3d 406, 408 (1988). Accordingly, it dismissed the aforementioned counts, brought by the plaintiffs' in their individual capacity with prejudice.

¶ 14 The court next held that even a derivative suit on behalf of Beeland on these same five counts (I, III, VII, VIII, and IX) would not be successful, because the plaintiffs failed to allege sufficient facts to state the requisite elements of those causes of action. Specifically, the court found that the plaintiffs failed to properly allege conspiracy in breach of fiduciary duty (count I), unjust enrichment (count III) and fraud (count VIII) by failing to plead a necessary element of civil conspiracy—the existence of an agreement between Sidley and Rogers. The court further found that the plaintiffs had failed to state causes of action for misappropriation of corporate funds (count VII), fraud (count VIII) and "aiding and abetting" Rogers and contributory trademark infringement (count IX) because they did not plead the necessary element for aiding and abetting, upon which all three claims were premised. With respect to fraud (count VIII), the court additionally found that the plaintiffs had failed to allege the necessary element of "a false statement of material fact" made by Sidley in connection with any deals it made on Beeland's behalf.

¶ 15 The court finally addressed the plaintiffs' derivative cause of action for conversion (count IV), and found that the plaintiffs had failed to sufficiently plead this cause by making no allegations that they had a right to the property at issue, or that Sidley had aided or abetted in the conversion.

¶ 16 Accordingly, the court dismissed counts I (breach of fiduciary duty), III (unjust enrichment), IV (conversion), VII (misappropriation of corporate funds), VIII (fraud) and IX ("aiding and abetting of Rogers" and contributory trademark infringement), filed by the plaintiffs derivatively on behalf of Beeland on the merits, but did so without prejudice.[2]

[2] We note that in its thorough analysis of all the issues at hand, the trial court chose not to address the merits of counts II, but rather dismissed it with prejudice, only on the basis of untimeliness.

¶ 17 In two separate rulings, also issued on February 22, 2011, the circuit court also addressed Price's, Goodman's and Rogers' motions to dismiss. The court dismissed the plaintiffs' complaint as to Price and Goodman in its entirety. As to Rogers, the court first dismissed counts I, III, VI, VII, VIII, IX to the extent that the plaintiffs sought relief in their individual capacity. The court then also dismissed counts I (conspiracy in breach of fiduciary duty); count IV (conversion) and count V (constructive trust), which were brought derivatively by the plaintiffs on behalf of Beeland, on their merits. The cause proceeded on the remaining counts. Four months later, on July 12, 2011, the plaintiffs settled with Rogers and dismissed the underlying case with prejudice.

¶ 18 B. The Current Proceedings against McGuireWoods

¶ 19 On October 28, 2011, the plaintiffs filed the instant one-count complaint against McGuireWoods for breach of fiduciary duty. The plaintiffs alleged that McGuireWoods owed them a duty to "act with the skill, loyalty, competence and diligence of an ordinary reasonable attorney" and breached that duty in the underlying case by failing to: (1) assert any claims against Sidley in a timely manner; and (2) initiate and conduct discovery in advance of the

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In count II, the plaintiffs brought a derivative suit on behalf of Beeland alleging that the defendants wrongfully usurped Beeland's corporate opportunities for the personal gain of Rogers, Price and Goodman. They asserted that as the fiduciaries of Beeland, the defendants, including Sidley, owed Beeland the duty to present it with any opportunities that arose with respect to any of Beeland's intellectual property and/or the licensing of such. Count II further specifically alleged that as counsel to Beeland, Sidley, *inter alia*, owed Beeland a duty to protect its interests (including presenting it with any future opportunities), instead of "deferring to the whims of Rogers."

original August 21, 2008, order.[3] The plaintiffs further alleged that as a direct and proximate result of McGuireWoods' failures the value of the underlying law suit was "materially compromised" and they were forced to settle the litigation for significantly less money than it was originally worth. The plaintiffs therefore sought: (1) damages in the amount to be proven at trial but in no event less than $10 million; (2) the disgorgement of all the legal fees paid by the plaintiffs to McGuireWoods in connection with the underlying lawsuit; and (3) any other further relief that the court deems equitable.

¶ 20 On January 39, 2012, McGuire Woods filed a section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2012)), contending, *inter alia*: (1) that failure to add Sidley to the underlying litigation in a timely manner did not cause any harm to the plaintiffs, since the court dismissed the plaintiffs' eventual claims against Sidley on the basis that they lacked standing to sue that firm. The circuit court, disagreed, and on January 30, 2012, denied McGuireWoods' motion to dismiss. In doing so, the court found that there remained issues of fact as to whether McGuireWoods breached a fiduciary duty owed to the plaintiffs, and if so, whether that breach was the proximate cause of the injury allegedly sustained by the plaintiffs.

¶ 21 The parties proceeded with very limited discovery, and deposed only Michael Lieber (hereinafter Lieber), the McGuireWoods' attorney who had handled the underlying case. In that deposition, Lieber testified, *inter alia*, that in 2006 by way of a joint representation agreement (hereinafter the JPA), the individual plaintiffs hired McGuireWoods to represent their interest in the underlying litigation. Lieber admitted that each plaintiff separately executed a copy of the JPA and agreed to pay McGuireWoods "in proportion to [his] percentage interest." In addition,

[3] On appeal, the plaintiffs drop the second issue, and only litigate McGuireWoods' failure to bring claims against Sidley in the underlying litigation in a timely manner.

Lieber acknowledged that under the JPA the litigation proceeds were to be paid directly to each plaintiff form a "litigation account" held by McGuireWoods. Lieber further averred that in executing the JPA, McGuireWoods agreed that it was advisable "to commence litigation on [the plaintiffs'] individual behalves and derivatively" against, *inter alia*, Price, Goodman and Rogers. Lieber explained, however, that the claims brought derivatively on behalf of Beeland, if successful, were to benefit the individual plaintiffs.

¶ 22 In his deposition, Lieber next acknowledged that McGuireWoods did not name Sidley as a party in the underlying action in a timely fashion, but rather chose to proceed only on a motion to disqualify Sidley. Lieber testified however that this was a tactical decision. When asked who made the decision, Lieber initially stated that it was made collectively by all the attorneys in McGuireWoods working on the case. He then added that "it was a collective decision with our client." However, when later questioned about whether he or anyone from McGuireWoods ever had discussions in June 2007 when the complaint was filed with the clients about filing a lawsuit against Sidley instead of a motion to disqualify, he answered in the negative.

¶ 23 After this limited discovery the parties filed cross-motions for summary judgment. In its motion, McGuireWoods argued that the plaintiffs' allegations impermissibly sought to overturn rulings made by the trial judge in the underlying case, and that they were therefore precluded under collateral estoppel. McGuireWoods asserted that the trial judge in the underlying case had already ruled that the plaintiffs lacked standing to sue Sidley and that, as such they were precluded from arguing that McGuireWoods should have brought Sidley into the litigation earlier.

¶ 24 On June 25, 2013, after hearing arguments by the parties, the trial court granted

McGuireWoods motion for summary judgment, finding that the trial court in the underlying litigation had already ruled the plaintiffs had no standing to bring individual claims against Sidley. The plaintiffs filed a motion to reconsider, arguing that collateral estoppel did not apply. On December 2, 2013, the trial court denied the plaintiffs' motion, stating, "what my ruling then [was] and remains my ruling now is [the trial court in the underlying case] had determined that there w[ere] no individual claims by the now plaintiffs here." The plaintiffs now appeal the court's grant of summary judgment in favor of McGuireWoods.

¶ 25 II. ANALYSIS

¶ 26 Summary judgment is " ' a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt.' " *Carlson v. Chicago Transit Authority*, 2014 IL App (1st) 122463, ¶ 22 (citing *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005 (West 2010); see also, *Carlson*, 2014 IL App (1st) 122463, ¶ 21; *Fidelity National Title Insurance Company of New York v. West Haven Properties Partnership*, 386 Ill. App. 3d 201, 212 (2007) (citing *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004)); *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007). In determining whether the moving party is entitled to summary judgment, the court must construe the pleadings and evidentiary material in the record in the light most favorable to the nonmoving party and strictly against the moving party. *Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 186 (2002); see also *Pearson v. DaimlerChrysler Corp.*, 349 Ill.App.3d 688, 697 (2004).

¶ 27 The moving party "bears the initial burden of proof" and satisfies it either by: (1)

affirmatively showing that some element of the case must be resolved in his or her favor; or (2) by establishing " 'that there is an absence of evidence to support the nonmoving party's case.' " *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). The burden then shifts to the nonmoving party to present a *bona fide* factual issue and not merely general conclusions of law. *Caponi v. Larry's 66*, 236 Ill. App. 3d 660, 670 (1992). A genuine issue of material fact exists where the facts are in dispute or where reasonable minds could draw different inferences from the undisputed facts. *Morrissey v. Arlington Park Racecourse, LLC*, 404 Ill. App. 3d 711, 724 (2010); see also *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 114 (1995); see also *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill.App.3d 313, 328 (1999) ("Mere speculation, conjecture, or guess is insufficient to withstand summary judgment."). We review a trial court's entry of summary judgment *de novo*. *Ragan v. Columbia Mutual Insurance Co.*, 183 Ill. 2d 342, 349 (1998).

¶ 28 On appeal, the plaintiffs contend that the circuit court erred in granting McGuireWoods motion for summary judgment on the basis of collateral estoppel. Collateral estoppel is an equitable doctrine that precludes a party from relitigating an issue decided in a prior proceeding. *Building Venture v. O'Donnell*, 239 Ill. 2d 151, 158 (2010); *Illinois Health Maintenance Organization Guar. Ass'n v. Department of Ins.*, 372 Ill. App. 3d 24, 34-35 (2007) (citing *Herzog v. Lexington Township*, 167 Ill. 2d 288, 295 (1995)). "When properly applied, collateral estoppel or issue preclusion promotes fairness and judicial economy by preventing relitigation in one suit of an identical issue already resolved against the party against whom the bar is sought." *Kessinger v. Grefco, Inc.*, 173 Ill. 2d 447, 460 (1996); see also *Du Page Forklift Service, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77 (2001). Collateral estoppel applies where: (1) the issue decided in the prior adjudication is identical with the one presented in the suit in

question, (2) there was a final determination on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication. *Du Page Forklift Service*, 195 Ill. 2d at 77; see also *Herzog*, 167 Ill. 2d at 295. Because collateral estoppel is an equitable doctrine, even where these three requirements have been satisfied, however, the doctrine will not be applied if injustice would result. *LaSalle Bank National Ass'n v. Village of Bull Valley*, 355 Ill. App. 3d 629, 636 (2005). "[T]he party against whom the estoppel is asserted [must have] had a full and fair opportunity and an incentive to litigate the issue in the prior proceeding." *LaSalle Bank National Ass'n*, 355 Ill. App. 3d at 636. As our supreme court explained: "There must have been the incentive and opportunity to litigate, so that a failure to litigate the issue is in fact a concession on that issue." *Talarico v. Dunlap*, 177 Ill. 2d 185, 192 (1997). Determining whether collateral estoppel applies is a question of law that we review *de novo*. *O'Donnell*, 239 Ill. 2d 151 at 158.

¶ 29 In the present case, McGuireWoods asserts that summary judgment in its favor was proper because the plaintiffs' one-count complaint alleging the breach of fiduciary duty against it for failure to bring Sidley into the underlying law suit was barred under the doctrine of collateral estoppel where the trial judge in the underlying case ruled that the plaintiffs had no standing to pursue individual claims against Sidley. McGuireWoods, however, misses the point.

¶ 30 The record below establishes that although the trial court in the underlying law suit ruled that the plaintiffs could not make any individual claims against Sidley it did not, nor could it have, ruled that the plaintiffs could not bring any derivative claims against the law firm. In fact, after dismissing the claims the plaintiffs individually brought against Sidley, the trial court in the underlying law suit, meticulously analyzed the merits of all seven claims the plaintiffs brought derivatively on behalf of their corporation against Sidley.

¶ 31 Although in that analysis, the trial court found that the plaintiffs failed to sufficiently plead a cause of action for six of the seven derivative claims (counts I, III, IV, VII, VIII, and IX), it dismissed those six claims *without prejudice*. As such, for purposes of collateral estoppel, the court never made a final decision on the issues on the merits. See *e.g.*, *Ballweg v. City of Springfield*, 114 Ill. 2d 107, 113 (1986) ("For purposes of applying the doctrine of collateral estoppel, finality requires that the potential for appellate review must have been exhausted") (citing *Relph v. Board of Education*, 84 Ill. 2d 436, 442-44 (1981)); *Flores v. Dugan* (1982), 91 Ill.2d 108, 114 (1982) (noting that the language "without prejudice" in a dismissal order "clearly manifests the intent of the court that the order not be considered final and appealable."); see also *Austin's Rack, Inc. v. Gordon & Glickson, P. C.*, 145 Ill. App. 3d 500 (1986) (holding that for purposes of *res judicata*, a doctrine similar to collateral estoppel "dismissal without prejudice is not a dismissal on the merits.").

¶ 32 What is more, the trial court never dismissed count II of the plaintiff's underlying complaint on the merits. In that count, the plaintiffs alleged a derivative claim for usurpation of corporate opportunities. Specifically, they asserted that all of the defendants wrongfully usurped Beeland's corporate opportunities for the personal gain of Rogers, Price and Goodman. They alleged that as counsel to Beeland, Sidley, *inter alia*, owed Beeland a duty to protect its interests (including presenting it with any future opportunities), instead of "deferring to the whims of Rogers." The trial court nowhere in its memorandum found that these allegations were insufficient to state a cause of action for usurpation of corporate opportunities.

¶ 33 Accordingly, the record establishes that the trial court never dismissed the plaintiffs' derivative claims against Sidley on the basis of lack of standing. What is more, none of the plaintiffs' derivative claims against Sidley were dismissed with prejudice on the merits. Rather,

they were dismissed with prejudice solely on the basis of timeliness, with which the plaintiffs now fault McGuireWoods. Accordingly, while the trial court correctly concluded that the doctrine of collateral estoppel bars the plaintiffs from relitigating any claims they may have had against Sidley in their individual capacity, that doctrine cannot be used to bar them from litigating the claims they brought derivatively against Sidley on behalf of Beeland.

¶ 34 McGuireWoods nevertheless argues that even if the derivative claims against Sidley survive, the plaintiffs cannot now raise those claims against McGuireWoods because at the time McGuireWoods represented the plaintiffs, it was representing the corporation, Beeland, and not the individual shareholders—the plaintiffs. We disagree.

¶ 35 We acknowledge that a shareholder seeking relief for an injury to the corporation, rather than a direct injury to the shareholder himself, must bring his or her suit derivatively on behalf of the corporation, unless he or she has a direct, personal interest in that cause of action. *Sterling Radio Stations, Inc. v. Weinstine*, 328 Ill. App. 3d 58, 62 (2002); see also *Small v. Sussman*, 306 Ill. App. 3d 639, 643 (1999). We further acknowledge that a shareholder in an ordinary corporation does not become a beneficiary of an attorney-client relationship between a lawyer and the corporation in which he owns shares, and that the lawyer for the corporation therefore, owes no fiduciary duty to the shareholder. *ABC Transit National Transportation, Inc. v. Aeronautics Forwarders, Inc.*, 90 Ill. App. 3d 817, 831 (1980). However, the record here clearly establishes that this is not a situation where the plaintiffs, as shareholders, are attempting to sue a corporate attorney for failure to bring claims on behalf of the corporation. McGuireWoods was never the corporate attorney for Beeland. Rather, McGuireWoods was hired by the minority shareholders of Beeland to represent their individual interest in the underlying litigation, which involved both derivative and individual suits against the corporate

leaders. Just because McGuireWoods advised the plaintiffs to pursue derivative as well as individual suits in the underlying cause of action, does not automatically transform McGuireWoods' into Beeland's corporate attorney. Neither does the fact that the trial judge indicated that the plaintiffs would have only had derivative suits against Sidley. That finding is solely limited to the question of the correct plaintiffs to sue Sidley in the underlying action, and has no bearing on any recovery the plaintiffs may have against McGuireWoods for failing to timely bring Sidley into the action. McGuireWoods was contractually bound to the individual plaintiffs as their attorney of record, and it owed a duty to them to timely file any derivative claims they may have had against Sidley.

¶ 36 Accordingly, the plaintiffs can proceed against McGuireWoods in this cause of action. The plaintiffs must be permitted an opportunity for full discovery so as to determine whether they would have been successful in a derivative suit against Sidley but for McGuireWoods' failure to bring Sidley into the action in a timely manner.

¶ 37 III. CONCLUSION

¶ 38 For these reasons, we affirm the trial court's grant of summary judgment for McGuireWoods' on the basis of collateral estoppel as to the claims raised in the underlying law suit by the plaintiffs in their individual capacity, but reverse and remand for further proceedings on the issue of McGuireWoods' failure to timely raise the plaintiffs' derivative claims against Sidley in that same litigation.

¶ 39 Affirmed in part; reversed and remanded in part.