

Monster Energy Co. v. Schechter – (2018) Cal.App.5th

By signing under a as “approved as to form and content” of a settlement agreement Plaintiff’s attorney did not consent to be bound by the settlement agreement

FACTS

Richard Fournier and Wendy Crossland (the Fourniers) filed an action against Monster Energy Company (Monster) and a related defendant when their 14-year-old daughter went into cardiac arrest and died after consuming two monster brand energy drinks. On July 29, 2015, the Fourniers, through their attorney, Bruce Schechter (Schechter), entered into an agreement to settle the case.

Schechter was later interviewed by Lawyersandsettlements.com regarding cases involving energy drinks. In his interview he mentioned a recent case he handled against Monster involving a 14-year-old girl, which resulted in “substantial dollars for the family,” and that Monster wanted that amount sealed. Lawyersandsettlements.com published an online article that included all of Schechter’s statements. Monster filed this action against Schechter and his firm for: 1) breach of contract, 2) breach of the implied covenant of good faith and fair dealing, 3) unjust enrichment, and 4) promissory estoppel.

Schechter filed a SLAPP motion arguing that Monster could not show a probability of prevailing on its breach of contract claim because they were not parties to the settlement. In response, Monster argued: 1) Schechter’s statements were unprotected commercial speech, and 2) the attorneys were clearly bound by the settlement agreement. The trial court denied the motion with respect to the breach of contract claim but granted it with respect to the other causes of action. The trial court reasoned that the “the settlement clearly contemplates counsel as being subject to the agreement.” Its reasoning was that the plaintiffs had authority to execute the settlement on behalf of their attorneys; the settlement specified what the attorneys could and could not do; and the attorneys signed the settlement.

DISCUSSION

On appeal, the Court of Appeals reversed the trial courts denial of the motion in regard to the breach of contract claim. Important to this case was the finding that when an attorney signs an agreement under the words “approved as to form and content,” they could not be liable for a breach of confidentiality provision, because they were signing solely in the capacity of attorneys who reviewed the settlement agreement and gave their professional approval.

The Court relied on *Freedman v. Brutzkus* (2010) 182 Cal.App.4th 1065, though not on point, it stands for the proposition that an attorney’s signature under words such as “approved as to form and content” means only that the document has the attorney’s professional thumbs up. It does not manifest an intent to be bound. In order to avoid the argument that this will be contrary to the public policy favoring settlement, the Court noted that a settlement agreement can be drafted to explicitly make an attorney a party to the confidentiality provision of an agreement.

This holding did not address the issue of liability an attorney might face. Though, the Court did mention that plaintiff would have a claim against their attorneys, based on the ethical risks associated with disclosure.