



Biting the hand that feeds you?

Suing clients for unpaid fees gaining prevalence

By Julia Reischel

Published: January 12, 2009

Search the Trial Court's database of cases and a surprising trend emerges: The state's largest and most prestigious law firms have been filing suit against some unlikely defendants in recent years - their own clients.

Last year, Bingham McCutchen sued private equity firm Ptarmigan Capital for nearly \$200,000. Foley Hoag, meanwhile, won judgments last summer against Petals Decorative Accents and Electric Red Corp. for hundreds of thousands of dollars. And Seyfarth Shaw sued a slew of entities, including Riverview Capital Associates,

Ahern & Partners Co. and the Boston Ballet, in 2008.

The issue at stake in each of the cases? Unpaid legal fees.

Suing clients when they don't pay their legal bills is frowned upon by malpractice insurers and the Office of Bar Counsel, but if the above firms are any indication, it seems to be happening more often nowadays.

While court records show a number of big Massachusetts law firms suing for "services, labor, or materials" in 2007 and 2008, representatives for those firms are reluctant to acknowledge a growing trend.

"At least the firms that I represent, and certainly the larger firms, are most reluctant to sue a client," claims Richard W. Renehan, a veteran Boston litigator who frequently represents law firms. "That is, in large part, because it frequently generates a counterclaim for malpractice, and in part because it is considered somewhat unprofessional - except in extreme cases."

Renehan's own firm, Goulston & Storrs, is suing Rubios Restaurant Inc. for \$87,071.35 in legal fees, and Renehan is currently representing Boston's Ropes & Gray in a lawsuit against a former client for hundreds of thousands of dollars in unpaid fees.

While Renehan says he is unaware of the Rubios suit and cannot comment on the Ropes & Gray matter, he tells Lawyers Weekly that, in general, an extreme case that warrants a lawsuit is when "the client is just absolutely, inexcusably not paying [a bill]. Sometimes, law firms and lawyers get annoyed just like any other creditor would."

According to Rodney S. Dowell, director of the Law Office Management Assistance Program, getting clients to pay, as in any service industry, is a constant challenge and the frequent source of practice-management issues. "What I tell attorneys myself is, 'You don't want to go there.' It certainly is a risk."

But given the current economic crisis, suing a client may be a risk that a growing number of law firms and lawyers are willing to take.

'Like a boomerang'

Experts say that suing a client is unwise but not inherently unethical.

"In general, if you're out of the case fully, it's not impermissible," says Bar Counsel Constance V. Vecchione. "That's the first prerequisite that lawyers don't always manage to follow. They have to be withdrawn from the case."

But even if a lawyer has properly and completely ceased representing a client, she says, taking that client to court should not be done casually.

"It has to be really worth it," she says. "You have to use your judgment on these things and make sure that you're not going to be spending twice as much time for just as little return. Two times zero is still zero."

If it is determined that the effort will be worth it, a law firm must brace for retaliation, warns Terence J. Welsh, president of the Massachusetts Bar Association Insurance Agency, which provides malpractice insurance to lawyers across the state.

"One of the faster ways to get a malpractice claim is to sue someone for your fee," he says. "It's like a boomerang - it comes right back."

And although it doesn't automatically make a lawyer's malpractice premiums rise, it will give an insurer pause, Welsh says.

"If you sue them for your fee, we ask questions," he says. "It can, but it doesn't definitely, raise your rates."

Welsh says he is asked about suing clients so often that he has put together a PowerPoint presentation outlining factors lawyers should think about before they file suit.

"Do you have an engagement letter?" he asks. "If you don't have an engagement letter, and you're trying to sue someone for your fee, it's an uphill battle. You'd be surprised at how many attorneys don't do engagement letters."

He continues: "What's the status of the relationship with your client? What's the deductible on your malpractice policy? If you have a \$5,000 deductible, do you want to sue somebody for \$2,500?"

Lawyers should get into the habit of asking themselves those questions, Welsh adds, because clients are likely to default on their legal bills in increasing numbers.

"It's been fairly slow, but the economy is causing this kind of friction between the lawyer and the client," he says.

'Collection is a problem'

Small-firm lawyers and solo practitioners face an especially difficult decision when confronted with a client who hasn't paid. Do they risk a Board of Bar Overseer complaint, higher malpractice insurance premiums and lots of potentially wasted time, or do they let income they sorely need walk out the door?

Salem solo Deirdre H. Robbins chose the former path. When her client, Barbara J. Krock, ran out of

money to pay her \$19,284 legal fee, Robbins had her sign a promissory note stipulating that Krock would pay a reduced fee within two years or be held liable.

When the two years were up and Krock had not paid the fee, Robbins took her to court. Armed with the contract, Robbins, representing herself, won a judgment for \$27,790.

When Krock still didn't settle her bill, Robbins sued again, this time naming the trustee of several of Krock's trusts in addition to Krock herself.

Once again, a judge ruled in Robbins's favor, awarding her \$42,989.71 to cover costs and counsel fees.

Krock appealed that ruling, arguing that a pro se lawyer could not be awarded attorneys' fees. Robbins fought back and won another judgment in her favor last November.

Despite the protracted litigation, Robbins has yet to be sued by her former client for malpractice. But it is unclear whether she has received any of her unpaid fees to date. While she refuses to discuss the case directly, she does offer advice for other lawyers who are considering going after non-paying clients.

"Collection is often a problem, especially for the sole practitioner or small firm representing individuals," she says. "What do you do when the lawsuit nears its end, and the client tells you she has run out of money? You want to finish the case and try for a good result for the client, but you also need to pay the bills. And, of course, we all know how difficult it is to withdraw from a case."

Robbins suggests that a lawyer insist that the client hire another attorney to negotiate a payment resolution. While the lawyer would still face the risk of a counterclaim for malpractice, "one can hope that any attorney defending the fee claim would be mindful of his or her Rule 11 obligations," she says.

Robbins adds: "Attorneys who sue their clients for payment should also consult the ethical rules for the extent to which they may reveal client confidences in the course of a suit."

'Inconsistent with the relationship'

While small firms and individual lawyers fear malpractice suits and BBO complaints, big firms worry that suing clients may result in a loss of potential business.

"Most of our clients are long-standing clients, and suing them is inconsistent with the relationship that we have with them," says Thomas J. Sartory, general counsel at Goulston & Storrs. "I don't think that the economy is going to create any greater influx of lawsuits by firms against their clients. I think that firms try hard to work with their clients in good times and in bad times. I would think that, for the most part, firms will be trying to work things out with their clients, recognizing the impact that the economy is having on the clients."

While Sartory acknowledges that Goulston & Storrs initiated a lawsuit in 2008 in an attempt to recoup unpaid legal fees, he stresses that the firm's case against Rubios Restaurant, which was filed on Dec. 10 over a sum of \$87,000, is not an example of a law firm suing a client.

"Our client was a bank, and under the bank's contract with its borrower the borrower is required to pay our fees," he explains. "So [Rubios] really wasn't our client. And without the established relationship with this particular entity that we have with our clients generally, I'm sure it was handled differently. We weren't in a position to work things out with this borrower as easily as we are with our regular clients."

Sartory adds that suing an entity for unpaid legal fees is unusual for Goulston. "I can't remember another instance where we've done it."

Meanwhile, at Boston's Seyfarth Shaw, it appears less unusual.

In 2008, Seyfarth filed at least four lawsuits in Suffolk Superior Court attempting to recoup payment for services rendered, one of them against the nonprofit Boston Ballet. A spokesman for Seyfarth declined to

comment on the litigation.

The disputes between big firms and their clients can involve large sums. According to court documents, Goodwin Procter went to court against fetal gender test-maker Acu-Gen Biolab in April 2007 to recover \$835,731 in legal fees. With interest, the total sum sought by Goodwin was nearly \$1 million. (The court eventually ruled in Goodwin's favor.)

In August 2007, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo sued flower shop chain Kabloom! for unpaid legal services totaling hundreds of thousands of dollars. And last November, Ropes & Gray filed suit against a former client in a libel case, a terrorism-tracking website called The Investigative Project, for more than \$300,000.

So apparently some firms are deciding that suing a client can be worth the risk. Even Welsh of the MBA Insurance Agency concedes that it's appropriate under certain circumstances.

"If it's a significant amount of money, well over the deductible, I would do it," he says. "If you think you have a good chance of recovery - meaning the person has some funds or assets - then yes."