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KAYE LLC v. ROSEFIELDE**Introduction**

Brace Kaye, together with his family, had established themselves as business people. To ensure sound management of their businesses, he hired Alan Rosefelde to handle the companies' matters. Rosefelde was the acting COO (chief operating officer) of Kaye's company. The parties in this case were; brace Kaye and his companies (Flagship Resort Development Corporation, Atlantic Palace development and La Sammana Ventures, Jason Kaye his son, and the Plaintiffs against Plumrose Company, Rose associates and Alan Rosefelde, the owner of Rose associates and Plumrose Company. Alan Rosefelde was an attorney who practiced law in New York but represented Bruce Kaye in New Jersey. He represented Kaye as an attorney on matters of estate planning and taxation. From 1997 throughout 2002, Rosefelde was the attorney of Bruce Kaye and his son Jason and a group of companies owned and managed by Bruce.

In 2002, Kaye and Rosefelde reached an agreement that Rosefelde would work as the COO of Kaye's company and as a salaried employee. This meant that Rosefelde would become any employee of Kaye's companies. In their agreement, Rosefelde would be paid \$500000 as salary. This amount would be paid to Plumrose Company monthly. This agreement was reached after Kaye and Rosefelde had worked together for around four months. As a result of this agreement, Alan Rosefelde became the General Counsel and COO (Chief Operating Officer) of Atlantic palace and Flagship company. He occupied these positions for two years. It was during this time in office when he committed severe offenses as an attorney. As the COO of Kaye's companies, he was engaged in acts of civil fraud, legal malpractice, and breach of loyalty to his duties, and breached trust duty to Kaye and his son Jason. Upon realizing these acts, Kaye sued

Rosefielde and other entities related to him in his capacity and as a trustee of his companies and son, Jason. Upon investigating the cases, the following findings were drawn from the case;

First, Rosefielde formed a separate body to manage La Sammana ventures' affairs, that is, the La Santana Management. Though Kaye accepted this, Rosefielde went against Kaye's advice and drafted the operating management to suit his interests and not favor the company. In the draft, Rosefielde included more interests of his company (Rose Associates), an act that breached Kaye's instructions. The act was committed in February 2003. In December the same year, Rosefielde organized diversion of another employee's interests into La Sammana Ventures without informing Kaye, its owner. A ten percent was channeled to the company, but the incident was discovered two years after Rosefielde was dismissed. As a member of the attorneys, Rosefielde was supposed to follow the instruction given by his client and not carry out projects that breach his loyalty to the employer.

In 2004, Rosefielde formed another entity to manage the sales of La Sammana Ventures. In this entity, Rose Associates held 20% of the total shares of the management. He called this entity the BA management. This was to carry out marketing and sales of La Sammana Ventures sale across the world, although the drafting showed the entity was meant to manage La Sammana timeshares. Rosefielde acquired the signatures by false pretenses by informing them that their signatures were required in documenting Jason's trusts. As such, he needed them to sign a signature page that he presented to them. This incident was not noticed until Kaye and Jason agreed to form another entity that favored Rosefielde.

During his two-year tenure as the chief operating officer of Kaye's premises, Rosefielde decided to avoid a lengthy and costly foreclosure system to track down defaulting timeshare

owners but arranged for forgery of their signatures to fake their quitclaims. Employees raised the alarm, but he assured them that their work was safe. In this regard, Rosefelde acted independently but not for the employer's benefit and was against the law. Attorneys are supposed to prevent cases of fraud. It was surprising that Rosefelde was involved in fraud. An attorney involved in fraud may make the trial proceeding difficult and affect the delivery of fair judgment. In this case, Rosefelde interfered with the proceeding of the trial court and hindered the decision given. He did this to ensure the ruling does not go against him.

Also, Rosefelde acquired a health insurance policy for all sales representatives of Kaye's businesses. Most of these representatives were independent contractors, but he took the responsibility of representing them. In the procedure, he included Paradise Global Realty Company as the employer of the contractors. This company was a dormant institution and owned by Rosefelde. To commit this malpractice as an attorney, Rosefelde verified the insurance cover application and drafted a letter to the insurance company as a representative of the sales contractors claiming they were total employees on the timeshare. On this representation, the insurance company provided a health insurance cover to the sales representatives without prior knowledge of the owner. This malpractice was done in May 2004.

As if these instances of pride were not enough, Rosefelde made a trip to Las Vegas for personal leisure but billed Flagship's expenses. This amounted to the \$4000 that he incurred during the trip. According to the hotel employees he spent his time in Las Vegas, Rosefelde was accompanied by three women identified as adult film stars. Also, during his tenure, Rosefelde is accused of sexually abusing two women employees of the Flagship. This subjected his employer to the risks of being accused of sexual harassment of female employees. Rosefelde committed these acts in an attempt to acquire wealth at the expense of the Flagship.

Upon realizing these malpractices, Bruce Kaye terminated Rosefielde employment as the chief operating officer of the Atlantic place and the Flagship on 13th January 2005. He also ended his job as the general counsel of the businesses and as his attorney. Bruce Kaye then moved to court to seek legal justice for the harm done to his business. In the case, Rosefielde, BA Management, La Santana Management, Rose associates, and Plumrose were identified as the defendants. Simultaneously, the complainants were Bruce Kaye, Jason Kaye, First Resort Management Company, La Sammana Ventures, Atlantic Palace Development, Flagship Resort Management, and the other two trustees created by Kaye. Bruce wanted compensation for harm done while giving punitive measures to Rosefielde to discourage any further fraud attempts.

Case trial and ruling

The case was tried in a 26 sitting day before a judge, and there was no jury to listen and counterclaims. During the case, Rosefielde and his entities were accused of inducing Bruce Kaye and his son to sign documents that were not informed about the content of the documents, fraud, breach of fiduciary duty, unlicensed practice of law, and exposing his employer to claims of sexual harassment to employees and legal malpractices. Rosefielde and his colleagues dismissed the allegations and denied having been involved in such claims. They also asserted counterclaims against Bruce Kaye and his colleagues.

Upon listening to the claims, the sitting judge found Rosefielde guilty of engaging in legal malpractice, civil fraud, and breach of loyalty. The judge cited the instances of forming the separate entities of La Santana Management and the BA Management as fraud instances. His conduct of female employees and the billing of his expenses on personal trips and forgery cases. Also, the judge highlighted the Rosefielde act of attacking employees who refused to forge the

signature of quitclaims and application of health insurance to independent contractors as an unlicensed practice of law. Based on these findings, the judge gave both an oral ruling and written supplement as the court rule.

In the ruling, the judge said it was difficult to imagine an attorney of Rosefelde status would engage in egregious practices. As such, the judge withdrew all the Rosefelde interests from Kaye's businesses and dismissed the claims put across by Rosefelde and his colleagues. The court also failed to give the disgorgement compensation demand by Kaye and his colleagues. The court highlighted that no evidence of actual damage resulted from Rosefelde breaching his fiduciary obligations. According to the judge, the law does not allow disgorgement compensation if there was no substantial damage that arose from the acts of breaching loyalty or forgery. When denying the disgorgement, compensation claimed that Rosefelde was not a full time. Thus disgorgement can only be given when the person in question had reached an agreement with the employer. In this case, Rosefelde had reached a deal with Bruce Kaye and thus hired him as a full-time employee. The act of the judge to deny disgorgement compensation on this basis was illegal and against the laws.

Due to the judge's above irregularities, Rosefelde appealed the case favoring Kaye and his businesses. After a series of tries, the appellate court ruled the issue as follows; it overturned the trial court decision to decline giving disgorgement remedy Kaye and his businesses (plaintiffs) and passed the issuance certification disgorgement of Rosefelde salary to cover his acts disloyalty. Giving this verdict, a bench of three judges indicated that Rosefelde and the plaintiffs had employee-employer relations that they had agreed to in 2002. As such, the relationship validated the issuance of a disgorgement remedy if even the employer did not incur any economic damage. According to the appellate court, the appellate court ordered the trial

court to recalculate **the** value of damage incurred by the plaintiffs, which was more than the \$4000 spend by Rosefielde during his trip to Las Vegas. Though Rosefielde had appealed the case, he felt that the appellate court's rule was unfair and cooked. As such, he took the case to the supreme court of New Jersey.

On arrival in the Supreme Court, the judges affirmed the appellate court's decision that certification on disgorgement remedy should be based on the employer's economic damage and evidence that the person in question was an employee. As such, the economic damage is a prerequisite, and essential is the issuance of disgorgement remedy. This was contrary to the ruling of the trial court. The supreme court of New Jersey held this ruling following evidence that Rosefielde was an employee to the plaintiffs. According to Rosefielde, this ruling was unfair as he was an independent contractor and not a full-time employee to the plaintiffs. He also blames the plaintiffs for the verdict saying they provided false information about his contract and employment terms.

During the hearing of the case, Rosefielde hired an attorney named Archer to represent him. Rosefielde was not a New Jersey resident and thus had to acquire legal representation as required by the law. Rosefielde accuses Archer of legal malpractice after the case ruled against him in the Supreme Court. He accused him of not correcting the plaintiffs that Kaye did not employ him, but he was an independent contractor, and even Kaye viewed him as a contractor. According to him, these acts misled the Supreme Court and created the basis for issuing disgorgement certification. Rosefielde claims that Archer committed legal malpractice by breaching his loyalty to him. He says Archer failed to follow his request to explain his relationship with Kaye; Archer failed to on the judicial estoppel doctrine, requested for more than they had agreed as payments for his representation. Rosefielde and Archer had agreed on

\$30,000 as the amount Rosefielde should pay Archer, but Archer invoiced more than they agreed. According to Rosefielde, all these shorting from the attorney prompted the Supreme Court to disgorge his salary.

The implication of the attorneys' misconduct

The case involved the legal misconduct practiced by Rosefielde when representing Bruce Kaye and his business entities. Later in the case, Rosefielde identifies mistakes done by his attorney Archer that led to his disgorgement. Rosefielde was illegally representing Bruce Kaye and his son Jason Kaye together with their entities. He was not a registered attorney in New Jersey, which did not give his representation legal mandate. As such, he was supposed to withdraw all his representations. Thus, when the case was taken to Supreme Court, he was treated as an employee and an independent contractor as he terms his relationship with Kaye.

Upon realizing that Rosefielde has committed a fraud case to him and his company, Kaye decided to sue him and his involved entities. The impact of this is rescinding all the attachments between the attorney and the client. In this case, Rosefielde's interest in Kaye's plaintiffs was withdrawn. This included his employment. Loss of property and personal effects creates confusion for the affected attorney. Apart from rescinding and withdrawal of personal interest in your entities, disgorgement can be ordered to an attorney. This is a payment as a remedy to the damage to the client. In this case, Rosefielde's salary was disgorged as the payment remedy to the harm done to Kaye and his businesses. Though there was no evidence of actual damage, the treatment was given on the basis that Rosefielde was an employee of Kaye's companies. As such, Rosefielde was required to remit all monthly pay slips he had acquired during his tenure as the COO and general counsel of the Flagships and the Atlantic ventures.

Another Implication of attorney misconduct is seeking a legal process that deters the attorney from proceeding with the malicious acts. Cases of fraud, false misrepresentations, and forgery by the attorney are against the law, and thus, the attorney can be sued. This is evident in the case between Kaye and Rosefielde. Rosefielde was an attorney who represented Kaye on legal issues, but he was overtaken by the desire to acquire wealth. He was involved in fraud cases where he formed entities in the name of Kaye and his businesses to meet his interests. To deter Rosefielde from these acts, Bruce Kaye and his plaintiffs took Rosefielde to court and seek legal interpretation of the matters. This led to the prosecution of Rosefielde in a court, and the case developed complex proceedings. At the end of the proceedings, Rosefielde was convicted of committing fraud and misrepresentations.

In solving this case, complexities and contradictions developed during the process of giving justice. Attorney misconduct hinders the process of providing just, and thus contradicting judgments can be given. In this case, the trial court did not award disgorgement remedy to Kaye and gave outstanding reasons for the reason the court denied the disgorgement. Upon appealing the case, a contradiction arises after the judgment is granted. In the verdict given by the trial court, disgorgement should be given if the acts of the attorney in quest harm the client economically. This is upheld by the appellate court but provides the disgorgement on the basis that the attorney in the investigation was an employee of Kaye. As such, the supreme court intervened and gave a ruling that any employee involved in a fraud case should be disgorged regardless of whether there was a loss incurred or not. As such, being an employee permits disgorgement. Misconduct among the attorney can thus create complex court proceedings that may lead to misinterpretation of the law. Also may lead to the inclusion of clause and new meanings in the statutes as shown by Rosefielde case. For example, the Supreme Court added a

clause allowing disgorgement remedy when the person inquest causes no harm, but the person is an employee. This delayed the process of prosecution and thus affecting the judgment.

Kaye and his plaintiffs filed the case in 2005, seeking speedy trials and compensation for the harm caused by Rosefielde. The case took a length proceeding that took weeks, months, and years for the final ruling to be given. The initial trial took 26 sitting days to determine, after which the judge found Rosefielde guilty for practicing law illegally, committing fraud to Kaye and his entities, overbilling the Atlantic ventures bills that were used for personal expenses, for representation, and harassing female employees in the entities he was employed to manage. This ruling failed to give Kaye the disgorgement compensation he was seeking as the court determine the court determined the case in the initial meaning of the law, that is, disgorgement to be given upon occurrence of harm to the person posing the claim. The parties in the case appealed the case **in the court of appeal** and later **in the supreme court** of New Jersey and took years to be determined. The final verdict was delivered in 2015, ten years after the trial court's initial filing of the case. This is a prolonged period for such a case to be determined and thus delayed justice to the offended.

Misconduct among the attorneys can lead to unfair judgments arising from under-informed decisions. The attorneys and prosecutors provide information to the judge to determine the fate of the case. If they fail to deliver the appropriate information, the judges may give unfair judge based on the information they have acquired from the attorneys and prosecutors. The attorneys and the prosecutors may omit crucial information intentionally to influence the judgment given. Rosefielde is a victim of such misconduct among the attorneys. Archer, Rosefielde's attorney during the proceeding in the supreme court of New Jersey, failed to inform the court that Rosefielde was not an employee. Still, a contractor was hired to manage Kaye's

businesses. The failure to inform the court of the relationships between Kaye and Rosefelde was intentional; the attorney had prior knowledge about the relationship. The outcome of this act was the wrong judgment given to Rosefelde. The Supreme Court issued a certification of disgorgement remedy on the basis that Rosefelde was a full-time employee in Kaye's business. This was not the case, although there was oral agreement to be employed. This led to accusations and counter-accusation between Rosefelde and Archer, each accusing the other over the judgment given. This compelled the judge to give this ruling as the attorneys did not provide sufficient information to defend his client.

Although the case was later determined and judgment given at the Supreme Court, the case was dominated by controversies as outlined above. Unfair judgments were presented at various levels of the trials and thus hindered the process of justice. Rosefelde appealed the case twice to ensure fairness, but the case was ruled against him due to his attorney's misconduct. Also, he, as an attorney, committed crimes that led to the litigation. Therefore, attorneys and prosecutors should ensure they do their duties as required by the law.

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Reference

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