

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PRISCILLA J. STERLING and RAYMOND J.  
STERLING,

UNPUBLISHED  
May 27, 1997

Plaintiffs-Appellees,

v

SHIRLEY A. CHEATLE and ROBERT V.  
CHEATLE,

No. 190313  
Oakland Circuit Court  
LC No. 93-460820-CH

Defendants-Appellants.

---

Before: McDonald, P.J., and Griffin and Bandstra, JJ.

McDONALD, P.J. (concurring).

I write separately because the majority's opinion and the lower court judgment are not clear with regard to the extent of defendant's attorney's liability in the event the parties' confidentiality agreement is breached.

The disputed provision provides:

2. The parties and their respective attorneys shall not disclose the claims involved in the Civil Action nor the terms of this Agreement to any persons other than immediate family, financial and legal advisors, or as required by law. This provision is a material part of this Agreement. If any party breaches this provision, he, she, or they shall indemnify any non-breaching party for any damages recoverable at law resulting from the breach.

Attorney's of record are not parties in any cause of action unless formally joined in the suit. Thus an agreement reached between the parties cannot personally obligate the attorneys to the opposing parties without the attorney's specific and unequivocal consent. An attorney is bound to abide by the terms of a client's confidentiality agreement by virtue of their fiduciary relationship. An attorney whose actions expose his client to damages under these type of agreements likewise exposes himself to a suit for damages by his client for a breach of their fiduciary relationship. However, because the attorney is not a

party to the agreement and has no fiduciary relationship with his client's party opponent the non-breaching party does not have a cause of action against the breaching party's attorney.

Although a court may prohibit attorneys of record from disclosing information arising out of a cause of action, a violation of the prohibition subjects the attorney to contempt sanctions only. No cause of action on behalf of the aggrieved party is created.

The record fails to show any specific and unequivocal agreement by defendant's attorney to be personally bound to the terms his client's confidentiality agreement. However, the agreement clearly states the parties intended that their respective attorney's "... not disclose the claims involved in the civil action nor the terms of this agreement to any persons ...". Thus any unauthorized disclosure by an attorney would subject that attorney to a claim by their client for breach of their fiduciary relationship.

The settlement agreement incorporated into the consent judgment states a party who breaches the confidentiality agreement shall indemnify the non-breaching party for damages. Because the attorneys are not parties to the agreement they should not be held to indemnification of the non-breaching party for damages.

If this is the result the majority opinion and the lower court intended I would affirm otherwise I would reverse the court on this issue.

I agree and join in the majority's disposition of the remaining issues.

/s/ Gary R. McDonald