

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

WALTERS BENDER STROBEHN & VAUGHAN, PC.,

Respondent,

v.

ELIZABETH MASON,

Appellant.

DOCKET NUMBER WD75140

Date: February 26, 2013

Appeal from:
Jackson County Circuit Court
The Honorable David M. Byrn, Judge

Appellate Judges:
Division One: Mark D. Pfeiffer, PJ., Victor C. Howard and Alok Ahuja, JJ.

Attorneys:
Stephen B. Millin, Jr., Kansas City, MO, for Respondent.
Elizabeth Mason, New York City, and Erich V. Vieth, St. Louis, MO for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

WALTERS BENDER STROBEHN & VAUGHAN, PC.

Respondent,

v.

ELIZABETH MASON,

Appellant.

WD75140

Jackson County

In 2007, Respondent Walters Bender Strohbahn & Vaughan, P.C., a Kansas City-based law firm, entered into an agreement with Appellant Elizabeth Mason, a New York attorney, to serve as co-counsel with Mason in a personal-injury case pending in the New York state courts. Mason terminated the arrangement after a mistrial was declared in the New York litigation. She enlisted the assistance of other co-counsel, and ultimately settled the case for a substantial sum before the jury returned a verdict at a second trial.

Walters Bender asserted an attorneys-fee lien on the settlement proceeds in New York under New York Judiciary Law § 475. It also filed this civil action in the Circuit Court of Jackson County, seeking to impose personal liability on Mason for its claimed fee. Mason petitioned the New York court to declare Walters Bender's lien void, and Walters Bender cross-petitioned to enforce the lien. Following a trial, the New York court entered a judgment determining that Walters Bender was entitled to a fee of \$109,425.39.

The circuit court adopted the findings of the New York court that the co-counsel agreement had not been terminated for cause, and concerning the amount of Walters Bender's fee, and entered a personal judgment against Mason for \$109,425.39, plus pre-judgment interest of \$39,141.35. Mason appeals.

AFFIRMED.

Division One holds:

Mason first argues that the trial court lack subject-matter jurisdiction due to the preclusive effect of the New York proceedings and judgment, under principles of *res judicata*, collateral estoppel, claim-splitting, and Full Faith and Credit.

Mason's preclusion argument do not raise issues of subject-matter jurisdiction. The preclusive effect of the New York judgment is governed by New York law. Under New York law, Walters Bender's assertion its attorneys lien in New York did not preclude it from later asserting a claim in Missouri against Mason, personally, to recover its fee. New York decisions recognize that a § 475 proceeding is a special, limited proceeding, which results in a judgment which can only be enforced against the proceeds generated through settlement or judgment in the underlying action. Because of the limited nature of the § 475 remedy, it does not preclude an attorney from thereafter prosecuting a separate lawsuit seeking to impose personal liability for its fees on the client or another attorney. This lawsuit by Walters Bender is fully consistent with New York law.

Mason also argues that the trial court lacked personal jurisdiction over her. The trial court found, however, that Mason specifically solicited the services of a Missouri law firm, understanding that it would perform a substantial part of its services in Missouri. The contract between the parties was made in Missouri. Following entry into the agreement, Mason supplied information and materials to Walters Bender in Missouri to permit it to perform the agreed services, maintained regular contact with Walters Bender as it performed its work, and offered to come to Missouri to participate in the joint trial-preparation effort. In these circumstances, Mason could reasonably anticipate that she might be sued in Missouri for breach of the agreement. Mason had sufficient minimum contacts with Missouri to support the circuit court's exercise of personal jurisdiction over her, even though she may never have been physically present in the State.

Before: Division One: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

February 26, 2013

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