

Summary of SC89795, *Moore Automotive Group, Inc. v. Sandy Goffstein and Goffstein, Raskas, Pomerantz, Kraus & Sherman, LLC*

Appeal from the St. Louis County circuit court, Judge Maura B. McShane
Opinion issued Dec. 22, 2009

Attorneys: Moore Automotive was represented by Ms. Jamie L. Boock and Matthew J. Rossiter of Rossiter & Boock LLC in St. Louis, (314) 754-1500, and Goffstein and his law firm were represented by Michael A. Fisher, Charles Alan Seigel and Matthew J. Aplington of The Stolar Partnership LLP in St. Louis, (314) 231-2800.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An automotive company challenges a trial court's grant of summary judgment in favor of a law firm in the company's suit against the firm. In a 5-2 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri reverses the trial court's judgment and remands (sends back) the case for further proceedings. The company's failure to file exceptions to the law firm's answers in a previous garnishment proceeding constitutes a judicial admission that is binding against the company only in the garnishment proceeding, not the company's subsequent suit against the law firm, and the company may explain or contradict the admission in the subsequent suit. In a dissenting opinion, Judge Richard B. Teitelman argues the company's previous admission as to a dispositive fact should be binding on it in the subsequent suit, which is a closely related proceeding.

Facts: Julie Lewis resigned her position as chief financial officer of Moore Automotive Group after she learned that another employee had discovered she had embezzled more than \$2 million from the company over a three-year period. Almost immediately, she retained Sandy Goffstein and his law firm to represent her in any legal matters arising from her misappropriation of funds and transferred nearly \$287,000 to the law firm. Moore Automotive filed a civil suit against Lewis and her husband and obtained a writ allowing it to attach the Lewises' assets prior to judgment. During a hearing on Lewis' motion to dissolve the attachment and quash (prevent) its execution, Goffstein stated in open court that Lewis intended for the funds she transferred to his law firm to be used as initial payment of her restitution to Moore Automotive. After the trial court overruled Lewis' motion, the law firm was served – pursuant to Moore Automotive's request – with a writ of garnishment and interrogatories inquiring whether the firm had in its possession or control any property, money or other effects owned by Lewis or her husband. The firm timely replied that it did not and stated in its interrogatory answers that all funds Lewis previously paid to the firm were to be used by the firm for the purpose of representing Lewis and paying her attorneys' fees and costs incurred as a result of litigation. Moore Automotive never filed any exceptions or denials to the law firm's interrogatory answers.

Based on the law firm's answers and Moore Automotive's failure to file exceptions to those answers, the company was unsuccessful in garnishing the funds the firm possessed.

After Lewis pleaded guilty to wire fraud in federal court and was ordered to pay more than \$2.4 million in restitution, Moore Automotive filed a two-count action against Goffstein and his law firm for conversion and civil conspiracy. The trial court granted summary judgment to Goffstein and the law firm, finding that Moore Automotive was bound by the law firm's interrogatory answer in the previous proceeding that it possessed or controlled no money or property belonging to Lewis and that the funds she had paid to the firm were for the purpose of the firm representing her. Moore Automotive appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) Chapter 521, RSMo 2000, authorizes attachment of a defendant's property prior to judgment, and section 525.040, RSMo 2000, permits the use of garnishment to effectuate an attachment. These are ancillary to the main suit, have nothing to do with the merits and are merely anticipatory methods of impounding a defendant's assets and collecting any judgment on the merits the plaintiff may obtain against a defendant. Under section 521.170(2), a garnishee summoned by the sheriff pursuant to a writ of attachment is required to answer interrogatories. Effectively, under Rule 90.07(c) and section 525.210, RSMo 2000, a garnishor's failure to file exceptions to the garnishee's interrogatory answers is deemed to be a judicial admission by the garnishor that the garnishee's interrogatory answers are true. Neither the rule nor the statute, however, addresses the effect of such a judicial admission in a subsequent case.

(2) The trial court erred in granting summary judgment to Goffstein and his law firm on the basis that Moore Automotive failed to file exceptions to the firm's interrogatory answers in the previous garnishment proceeding. To the extent that *Wayland v. Nationsbank, N.A.*, 46 S.W.3d 21 (Mo. App. 2001), is inconsistent with this opinion, it is overruled. A judicial admission is an act done in the course of judicial proceedings that concedes, for the purpose of litigation, that a certain proposition is true. While judicial admissions are conclusive in the proceeding where made, an admission introduced in a subsequent proceeding is not conclusive or binding but rather is an ordinary admission against interest, and the party that made it may explain or contradict the admission. Accordingly, although binding in the garnishment proceeding, Moore Automotive's judicial admission – through its failure to respond to the law firm's interrogatory answers – that the firm did not possess any property belonging to Lewis is not binding on Moore Automotive in the present suit, and the company may explain or contradict the admission. Further, Moore Automotive's failure to file exceptions in the garnishment action constituted an abandonment of that proceeding, so there was no judgment on the merits in the garnishment proceeding on which the law firm could prevent proceedings in the present action under the doctrines of collateral estoppel or res judicata.

Dissenting opinion by Judge Teitelman: The author would hold that Moore Automotive's judicial admission in the garnishment proceeding is conclusively binding on it in the present case, wholly eliminating the company's cause of action against the firm. Although a judicial admission generally is not binding in a separate proceeding, the subsequent proceeding here is closely related, involving the same underlying facts. The plain language and purpose of Rule 90.07(c) and section 525.210 establish – as a matter of dispositive, not ancillary, fact – that the law firm does not hold any property owned by Lewis. Once admitted and established pursuant to rule and statute, facts should not readily be subject to revision. Permitting otherwise wastes judicial resources and is inconsistent with the goal of providing a predictable system for establishing the facts underlying a dispute.