

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**VINSTICKERS, LLC.,
APPELLANT
vs.**

**STINSON MORRISON HECKER, ET AL.,
RESPONDENTS**

DOCKET NUMBER WD74028

DATE: JUNE 5, 2012

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Ann Mesle, Judge

Appellate Judges:

Division One: Joseph M. Ellis, P.J., James E. Welsh and Alok Ahuja, JJ.

Attorneys:

Andrew B. Protzman, for Appellant

Lawrence A. Rouse, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

VINSTICKERS, LLC., APPELLANT

v.

STINSON MORRISON HECKER, ET AL., RESPONDENT

WD74028

Jackson County, Missouri

Before Division One Judges: Joseph M. Ellis, P.J., James E. Welsh and Alok Ahuja, JJ.

VinStickers LLC appeals from the dismissal of its legal malpractice action against Stinson Morrison Hecker LLP and Stephen Cosentino ("Respondents").

Stinson Morrison Hecker LLP is a law firm based in Kansas City, Missouri. Stephen Cosentino is a member of the firm. Respondents were originally retained to convert VinStickers from its prior corporate form into a limited liability company. Later, in 2007, VinStickers decided to remove its president, Eric Hinkle, and another employee, Ken Karg. VinStickers sought the help of Respondents in removing those two individuals. Hinkle and Karg were eventually removed from the company by a vote on September 11, 2007.

Subsequently, Hinkle and Karg filed suit in the Circuit Court of Jackson County alleging that they had been wrongfully terminated and that there had been procedural improprieties in their removal. In February 2009, VinStickers entered into a settlement agreement with Hinkle and Karg. In addition to agreeing to pay Hinkle and Karg \$1,221,000.00, VinStickers agreed to "quitclaim assign to Hinkle and Karg, and each of them, any and all right, title and interest in and to any legal malpractice claims" VinStickers had against Respondents. The settlement agreement further provided that "Karg and Hinkle shall secure legal counsel to prosecute such Claims, and they may bring the Claims in the name of VinStickers . . . and may act in the name of, and on behalf of VinStickers for the limited purposes of pursuing, resolving and releasing the Claims."

Subsequently, the present action was filed in the circuit court, naming VinStickers as the plaintiff. In response, Respondents filed a motion to dismiss the petition based upon an impermissible assignment of VinSticker's legal malpractice claim to Hinkle and Karg.

After hearing oral argument on the motion, the trial court entered its Order and Judgment granting Respondents' motion and dismissing the petition with prejudice. The court found that VinStickers had impermissibly assigned its legal malpractice claim to Hinkle and Karg.

AFFIRMED.

Division One holds:

(1) By relying upon and presenting the court with evidence outside the pleadings and offering no objection thereto, the parties implicitly acquiesced to the trial court's treatment of the motion to dismiss as a motion for summary judgment.

(2) Legal malpractice claims are not now and have never been assignable in Missouri.

(3) Based upon the unambiguous language of the settlement agreement, the trial court correctly determined that the action was actually being brought by Karg and Hinkle pursuant to an improper assignment of a legal malpractice action and properly entered judgment in favor of Respondents.

Opinion by Joseph M. Ellis, Judge

Date: June 5, 2012

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