



LYNN REDGRAVE

*In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Mayer & Casey, 157 B.R.
1 (D.C.N.Y. 1993).*

Lynn Redgrave
Chronology

1979 – Starring in “House Calls,” a series with Wayne Rogers

- Redgrave appeared under contract with MCA and Universal Television

July 1981 – Terminated from House Calls

- She claimed it was because she wanted to breast feed her three-year-old daughter
- MCA/Universal said it was over a salary disagreement

August 1981 – Redgrave, through her attorney Gloria Allred, sues MCA and Universal Television for \$10.5 million.

- The Plaintiffs in the lawsuit are Redgrave, her husband John Clark, and Kellybee Enterprises, their production company
- The lawsuit was anticipated to be a precedent-setting case for breast-feeding mothers

Before all is said and done, MCA and Universal counterclaim for breach of contract by Redgrave and for John Clark illegally taping telephone call settlement negotiations

January 1986 – Redgrave fires Allred and hires Robert Wrede of the Finley Kumble law firm

May-June 1986 – Court Ordered settlement conferences are conducted, resulting in the following proposal from MCA and Universal:

1. Universal would pay Redgrave’s attorney’s fees, court costs and \$90,000-\$100,000 **AND** hire her for a movie of the week;
2. Universal would issue two public statements in the Hollywood press as apologies to Redgrave; and
3. The terms of the settlement were to be confidential

June 1986 – Redgrave and Clark claim to have felt Wrede was pressuring them into settlement

- They did not like the wording of the proposed apology letter
- They became estranged from Wrede, their lawyer

June 9-12, 1986 – Redgrave’s husband Clark calls Universal president Harris directly, tells him they are sick of litigation and ready to settle, and tells him to just pay their attorney’s fees and publish a full-page ad of the letter of apology

- Follow-up discussions are conducted between Redgrave, Clark and Harris concerning the settlement
- A Written settlement agreement was sent to Clark and Redgrave
- The written settlement agreement was never signed or returned
- It was later revealed that Clark recorded his telephone discussions and settlement negotiations with Universal president Harris

Sometime July-September 1986 – Clark, Redgrave and Wrede reconcile

- Wrede notified Universal counsel that Clark and Redgrave no longer wish to settle

Several months later – Universal filed a Motion to Enforce the June Settlement Agreement negotiated between Clark and Harris, but never signed

February 1987 – MCA Chairman Lew Wasserman invited Clark and Redgrave to his Beverly Hills home for a meeting (apparently without lawyers)

- Two days later Universal substantially increased their settlement offer
- The new offer included a \$750,000 payment
- Redgrave rejected this offer – she commented that she would have to work in order to get that \$750,000

Mid-February 1987 – A hearing (sometimes also referred to as a three-day bench trial) is conducted on the Motion to Enforce the Settlement Agreement (the one negotiated by Clark, without counsel, in June of 1986)

- At the hearing there was no mention of the subsequent February 1987 settlement meeting at Wasserman's Beverly Hills home

QUERY – If there really was a June 1986 settlement in the eyes of MCA and Universal, why was there a February 1987 settlement meeting at Wasserman's?

ETHICS – in subsequent malpractice litigation against him Wrede said there was no mention in the hearing to enforce the settlement agreement of the February 1987 settlement meeting at Wasserman's home because he contended that he was precluded by the Code of Professional Ethics from discussing the settlement offer

- Redgrave did not attend the hearing or trial, as she was performing in a stage production of "Sweet Sue" with Mary Tyler Moore

February 23, 1987 – The Judge found a binding oral agreement existed between Clark/Redgrave and Universal based on the June 1986 settlement discussions between them

May 18, 1987 – By this time Redgrave had fired Wrede and hired Peter diDonato

- diDonato had filed a Motion for New Trial

Appeals proceed and are exhausted in connection with the enforcement of the settlement agreement, including appellate claims of incompetent counsel by Redgrave and Clark

December 1987 – malpractice lawsuit was filed against Wrede and his law firm Finley Kumble

By October 1988 Finley Kumble was in chapter 11 bankruptcy

October 1988 – the Malpractice lawsuit by Redgrave and Clark was converted to a \$12 million Proof of Claim in the Finley Kumble bankruptcy

Attempts by a Chapter 11 Trustee to settle the claim all failed

1991 – The Redgrave and Clark malpractice claim was denied entirely on summary judgment

Appeals proceed

Also, Redgrave and Clark appealed the confirmation of the Finley Kumble plan which eliminated individual partner liability in exchange for monetary contributions to the plan

These appeals were all pursued *pro se*

Redgrave and Clark never followed through in prosecuting the multiple appeals

The bankruptcy judge and appellate judges all bent over backwards for Redgrave and Clark because they were *pro se*, but eventually ruled against them for failing to prosecute the appeals

March 1990 – The Finley Kumble Trustee filed an adversary proceeding against Redgrave for recovery of Finley Kumble fees for services rendered by them in 1986 and 1987

December 1991 – Trial was conducted on the adversary proceeding

- Judgment was rendered against Redgrave for \$155,756 plus interest on attorney's fees owing to Finley Kumble

NOTE:

- Redgrave never got the \$10.5 million she (and Gloria Allred) sued for in 1981
- Redgrave never got the \$750,000 that had been offered by Universal in connection with the February 1987 settlement offer
- Redgrave never got the \$90,000-\$100,000 that was an element of the settlement proposal made by MCA and Universal in the June 1986 court-ordered settlement negotiations
- Redgrave never got her attorney's fees and costs paid, plus a published apology as apparently had been negotiated and discussed between Clark, *pro se*, and the President of Universal in June of 1986

WHAT DID SHE GET?

- In May 1994 Redgrave filed bankruptcy
- She claimed that her pursuit of MCA, Universal and her attorneys had cost her \$600,000

THE ETHICS ISSUE

- Plaintiffs Redgrave, Clark and Kellybee Enterprises, Inc., and Defendants MCA and Universal Television were all represented by lawyers at the time of the June 1986 telephonic settlement discussions – no lawyers participated
- A settlement was agreed upon, and thereafter a settlement agreement was drafted and sent to Plaintiffs
- **Does an ethics violation exist if the settlement agreement was prepared by counsel for Defendants and sent by her to the Plaintiffs?**
- **How about if she simply prepared the settlement agreement, then instructed Defendants to send it to the Plaintiffs?**
- Texas Rules of Professional Conduct 4.02.:
- (a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

157 B.R. 1
United States District Court,
S.D. New York.

In re FINLEY, KUMBLE, WAGNER, HEINE,
UNDERBERG, MANLEY, MYERSON & CASEY,
Debtor.

Lynn REDGRAVE, John Clark and Kellybee
Enterprises, Inc., Claimants–Appellants,

v.

Francis H. MUSSELMAN, Chapter 11 Trustee of
the Estate of Finley, Kumble, Wagner, Heine,
Underberg, Manley, Myerson & Casey, Debtor,
Appellee.

Lynn REDGRAVE, Defendant–Appellant,

v.

Francis H. MUSSELMAN, Chapter 11 Trustee, of
the Estate of Finley, Kumble, Wagner, Heine,
Underberg, Manley, Myerson & Casey, Debtor,
Plaintiff–Appellee.

Nos. 92 Civ. 0366 (JES), 92 Civ. 0795 (JES).

|
July 6, 1993.

Former clients of bankrupt law firm sued to recover for law firm's alleged malpractice. The Bankruptcy Court granted law firm's motion for summary judgment on legal malpractice claim, and entered judgment in favor of law firm on claim for recovery of unpaid legal fees, and former clients appealed. The District Court, [Sprizzo, J.](#), held that: (1) any negligence on part of law firm in prosecuting settlement trial was not cause of any legally cognizable injury to clients, and (2) clients were collaterally estopped from relitigating issue of law firm's negligence.

Affirmed.

West Headnotes (4)

[1] **Attorney and Client**
🔑 Conduct of Litigation

Any negligence on part of law firm in representing client in proceeding to determine that no binding settlement agreement had been reached did not result in any legally cognizable

harm, and thus would not support legal malpractice claim, where trial court's finding that settlement had been reached was based upon indisputable documentary proof.

[Cases that cite this headnote](#)

[2] **Judgment**
🔑 Bankruptcy

California trial court's finding that there was no attorney negligence during settlement trial, such as would entitle client to new trial was entitled to preclusive effect on question of attorneys' negligence in subsequent malpractice proof of claim in bankruptcy proceeding; legal malpractice plaintiffs had fair and full opportunity to litigate question of attorney's negligence in moving for new trial in underlying settlement action, particularly since they had retained new counsel to present their claim of attorney negligence before California trial court.

[1 Cases that cite this headnote](#)

[3] **Attorney and Client**
🔑 Defenses

In suit for recovery of legal fees, client may raise unreasonableness as defense.

[1 Cases that cite this headnote](#)

[4] **Attorney and Client**
🔑 Value of Services
Attorney and Client
🔑 Defenses

Alleged acts of professional negligence can and do affect reasonable value of legal services performed, and may be raised as defense in attorney's action for recovery of legal fees, even

though attorney's alleged negligence was not legal cause of any damage to client, such as would support legal malpractice claim.

3 Cases that cite this headnote

Attorneys and Law Firms

*1 Lynn Redgrave, pro se.

John Clark, pro se.

Milbank, Tweed, Hadley & McCloy, New York City ([Susanne M. Toes](#), of counsel), Christy & Viener, New York City ([Salvatore A. Santoro](#), of counsel), for defendant.

MEMORANDUM OPINION AND ORDER

[SPRIZZO](#), District Judge:

For the reasons that follow, the decisions of the bankruptcy court are affirmed.

*2 BACKGROUND

These two bankruptcy appeals arise out of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey's ("Finley, Kumble") representation pursuant to a retention contract dated January 15, 1986, Aff. of Susanne Toes dated October 25, 1991 ("Rec."), Ex. H, of actress Lynn Redgrave ("Redgrave"), her loanout company Kellybee Enterprises, Inc. ("Kellybee"), and her husband John Clark ("Clark"), President of Kellybee, in their California state court action against MCA, Inc. and Universal Television, Inc. for the alleged wrongful termination of Redgrave from the television show "Housecalls" (the "MCA action"). Rec.Ex. A. The MCA action never went to trial on the merits because of a purported settlement of that action which was subsequently disputed. That dispute was resolved after a three-day bench trial that was conducted before the Hon. Jack T. Ryburn of the Superior Court of California, County of Los Angeles, from February 9 through 11,

1987, who found that between June 9 and 12, 1986, Clark had negotiated a binding oral settlement of the MCA action without the assistance of counsel. Rec.Ex. V at 3.

Redgrave, Clark and Kellybee tried to attack this finding three times. First, on behalf of Redgrave, Clark and Kellybee, Finley, Kumble filed a motion to reopen the MCA action and to admit taped recordings of the settlement negotiations as newly discovered evidence. However, contrary to prior assertions made by Clark twice under oath, the tapes had been in Clark's possession at the time of the trial. Rec.Ex. G at 12-13. Judge Ryburn denied the motion on the ground that the tape recordings were clearly not newly discovered evidence. The Court further found that, in any event, the transcript of the tapes was consistent with its finding that a binding oral settlement had been reached. Rec.Ex. M at 2.

After the denial of the motion to reopen, Redgrave, Clark and Kellybee terminated their employment of Finley, Kumble and retained Peter DiDonato, Esq. ("DiDonato"), Rec.Ex. N, and filed a second motion for a new trial, this time alleging that Finley, Kumble's conduct prejudiced the outcome of the settlement trial. Judge Ryburn denied the motion, specifically finding that Finley, Kumble was "competent trial counsel" for Redgrave, Clark and Kellybee. Rec.Ex. O.

Finally, Redgrave, Clark and Kellybee appealed both the trial court's decision in the settlement trial and its denial of the motions for a new trial. On December 27, 1988, the Court of Appeal of the State of California affirmed the trial court's decisions in all respects. Rec.Ex. G.

After exhausting all appeals in the underlying MCA action, on or about December 28, 1987, Redgrave, Clark, and Kellybee commenced a malpractice action against Finley, Kumble in the Superior Court of California, County of Los Angeles, based upon the same conduct in the settlement trial that formed the basis for the second motion for a new trial referred to above. Redgrave Party's [sic] Brief (hereinafter "Decls. of Redgrave and Clark")¹ Ex. X. On October 25, 1988, Redgrave, Clark and Kellybee converted this action into a malpractice proof of claim for \$12,000,000 in the Finley, Kumble bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of New York. Rec.Ex. P. After attempts to settle the claim failed, Aff. of Susanne Toes dated September 4, 1992 ("Toes Aff.") ¶ 5, in September 1991 the Trustee brought a motion for summary judgment pursuant to [Fed.R.Civ.Proc. 56](#) and Bankruptcy Rule 7056. United States Bankruptcy Judge Francis Conrad granted the Trustee's motion and, on December 3, 1991, entered an order setting forth his findings of fact and

conclusions of law. Redgrave, Clark and *3 Kellybee² filed a notice of appeal from this order on December 20, 1991.³

Meanwhile, on March 5, 1990, Finley, Kumble's Trustee filed an adversary proceeding in the United States Bankruptcy Court for the Southern District of New York against Redgrave to recover payment of legal fees allegedly owed to Finley, Kumble for representation in the MCA action during 1986 and 1987. Aff. of Susanne Toes dated July 23, 1992 ¶ 3. After a trial on December 4 and 5, 1991, Bankruptcy Judge Conrad rendered judgment in favor of the Trustee and, by order dated January 10, 1992, directed Redgrave to pay to the Trustee \$155,756.30, plus interest. *Id.* Redgrave filed a notice of appeal from this judgment on January 17, 1992.⁴

DISCUSSION

I. The Bankruptcy Court's Summary Judgment on the Malpractice Claim

The decision of the Bankruptcy Court to grant summary judgment on Redgrave, Kellybee and Clark's malpractice claim is affirmed for the following reasons.

[¹] First, Redgrave and Clark's malpractice claim was properly dismissed because no rational finding could be made that but for Finley, Kumble's negligence, they would have prevailed in the settlement trial. *See Budd v. Nixen*, 6 Cal.3d 195, 98 Cal.Rptr. 849, 852, 491 P.2d 433, 436 (1971). The documentary proof establishing the oral settlement left no room for a rational dispute as to the binding nature of the oral settlement agreement. Indeed, on Redgrave, Clark and Kellybee's motion to admit tapes of the settlement negotiations as new evidence, the California trial court explicitly found that the unadmitted tapes were consistent with and supported its previous finding that the oral settlement was binding. Rec.Ex. M at 2. It is clear that the finding of the California court ultimately rested upon indisputable documentary proof, *i.e.*, a tape recording, *id.*, and not upon the resolution of differing recollections of what had occurred. It follows that any attorney negligence in the trial on the issue of whether a binding settlement had been reached could not have affected the trial court's ultimate finding.

[²] Furthermore, the California trial court specifically addressed the issue of attorney negligence on Redgrave, Clark and Kellybee's motion for a new trial, in which they alleged, *inter alia*, that their settlement trial had been "prejudicially compromised as a result of [their] former

attorneys' misconduct," Decls. of Redgrave and Clark, Ex. Y at 20 ¶ 24, and that "a retrial would bring about a different result." *Id.* at ¶ 25. After considering these allegations of negligence, which Redgrave and Clark have also made here, the California trial court held that Finley, Kumble's representation was reasonable:

"Plaintiffs were represented by competent counsel who as a matter of strategy waived jury [sic], and plaintiffs could not wait until after a decision adverse to them and then claim their attorney had no authority, nor can they complain that Miss. [sic] Redgrave was not present at *4 trial, since it was at their request that she was not required to attend as defendants demanded.... Trial counsel were allowed to testify over objection for the benefit of plaintiffs."

Rec.Ex. O. Moreover, on appeal the California Court of Appeal considered what it found to be Redgrave, Clark and Kellybee's "bald assertions" of attorney misconduct and held that Redgrave, Clark and Kellybee had "failed to bear their burden of showing reversible error." Rec.Ex. G at 15.

The California trial court's finding that there was no attorney negligence during the settlement trial is binding and entitled to preclusive effect on the issue of negligence in this proceeding. *Bernhard v. Bank of America*, 19 Cal.2d 807, 122 P.2d 892, 895 (1942). Therefore, the Bankruptcy Court was not even required to reexamine the California trial court's finding in concluding that as a matter of law the alleged acts of malpractice could have caused no legal damage to Redgrave and Clark. *See, e.g., Hashemi v. Shack*, 609 F.Supp. 391 (S.D.N.Y.1984); *Geraci v. Bauman, Greene & Kunkis, P.C.*, 171 A.D.2d 454, 567 N.Y.S.2d 36, 37 (1991).

The fact that Finley, Kumble was not a party to the first suit does not render the doctrine of collateral estoppel inapplicable. Under both California and federal law, mutuality is not required so long as Redgrave and Clark had a similar incentive and a fair and full opportunity to litigate the issue before the California judge. *Id.*; *see also Bernhard v. Bank of America*, 19 Cal.2d 807, 122 P.2d 892 (1942); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327, 99 S.Ct. 645, 649-50, 58 L.Ed.2d 552 (1979).

The Court is convinced that Redgrave and Clark possessed the requisite incentive to litigate the issue of

attorney negligence in the proceedings in the MCA action because the amount Redgrave, Clark and Kellybee claimed in that action exceeded \$5,000,000, Rec.Ex. A at 9–10, and, moreover as plaintiffs, they had chosen that forum to litigate that issue. Moreover, Redgrave and Clark had a fair and full opportunity to present their claim of attorney negligence since they had retained new counsel⁵ to present their claim of attorney negligence on the motion for a new trial before the California trial court and on the appeal before the California Court of Appeal. Accordingly, Redgrave and Clark are collaterally estopped from relitigating the issue of Finley, Kumble's negligence which was resolved against them in their action against MCA.⁶

II. The Bankruptcy Court's Adversary Proceeding on the Legal Fees Due

^[3] ^[4] Although Finley, Kumble's alleged negligence during the settlement trial caused Redgrave no legal damage, it does not necessarily follow, as the Bankruptcy Court apparently concluded, that Redgrave's allegations of professional negligence during the entire term of Finley, Kumble's representation were irrelevant to *5 a determination of what amount of legal fees, if any, were owing to Finley, Kumble. In a suit for recovery of legal fees, a client may raise unreasonableness as a defense. *Petition of Rosenman Colin Freund Lewis & Cohen*, 600 F.Supp. 527, 534 (S.D.N.Y.1984). Alleged acts of professional negligence can and do affect the reasonable value of the legal services performed, *see, e.g., Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150–51 (7th Cir.1993), even where the alleged malpractice was not the legal cause of any damages to Redgrave. However, since the issue of the quality of Finley, Kumble's representation was expressly ruled on by the California Court, as noted

above, it could not be properly raised as a defense here.

In any event, even assuming *arguendo* that that is not the case, the Bankruptcy Court made an implicit finding that the alleged acts of negligence during the settlement trial did not impact the amount of the legal fees due because Finley, Kumble subsequently "made substantial efforts in order to overturn that decision." Bankr.Trial Tr. 325. Moreover, without specifically addressing each of Redgrave's allegations of negligence, the Bankruptcy Court also found that Finley, Kumble's management of the MCA action was reasonable because "there is no doubt from the time records that they acted with proper due diligence." *Id.* at 331. It follows that Redgrave has failed to demonstrate on this record that the Bankruptcy Court's finding as to the amount of reasonable attorneys fees is "clearly erroneous." [Fed.R.Bankr.Proc. 8013](#).⁷

CONCLUSION

Accordingly, for the reasons given above, the decisions of the bankruptcy court shall be and hereby are affirmed. The Clerk of the Court is directed to enter appropriate judgments and close the above-captioned actions.

It is SO ORDERED.

All Citations

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Footnotes

¹ Although on December 15, 1992, Redgrave and Clark filed a document entitled "Redgrave Party's Brief," it is in fact not a memorandum of law but rather the declarations of Redgrave and Clark, dated December 27, 1992, and their attached exhibits. On the same date, Redgrave and Clark submitted a memorandum of law written by their former attorney DiDonato and previously submitted to the bankruptcy court on Finley, Kumble's motion for summary judgment. This Court has considered both documents.

² On June 25, 1992, Redgrave's and Clark's attorney filed a notice of disqualification. Redgrave and Clark have proceeded *pro se* since that date. Clark has submitted a letter purporting to memorialize Kellybee's transfer of its claim against Finley, Kumble, but it is unclear from the text of the letter to whom the transfer was made. Unsworn Aff. of Redgrave and Clark filed December 11, 1992, Ex. A. In any event, the transfer was invalid because under California law, legal malpractice claims sounding in negligence or breach of contract are not assignable. *See Goodley v. Wank & Wank, Inc.*, 62 Cal.App.3d 389, 133 Cal.Rptr. 83 (1976); *Jackson v. Rogers & Wells*, 210 Cal.App.3d 336, 258 Cal.Rptr. 454 (1989).

³ By order dated January 17, 1992, this Court dismissed this appeal for failure to prosecute. This Court later vacated this order of dismissal on December 21, 1992.

- 4 By order dated February 4, 1992, Judge Kimba M. Wood dismissed this appeal for failure to prosecute. Toes Aff.Ex. 7. On August 20, 1992, Redgrave moved to vacate Judge Wood's order. On September 18, 1992, this case was transferred to this Court as related to Redgrave, Clark and Kellybee's appeal from summary judgment on the malpractice claim. This Court vacated Judge Wood's order of dismissal on December 21, 1992, so that both appeals could be heard on the merits.
- 5 [*Ruffalo v. Patterson*, 234 Cal.App.3d 341, 285 Cal.Rptr. 647 \(1991\)](#), is inapposite. In that case, the California Court of Appeal refused to accept as binding a prior adjudication of certain property as community property on the ground that the plaintiff's lawyer's negligence in characterizing the property might have affected that court's finding. That case is distinguishable because the issue of attorney negligence was never raised in the underlying action, whereas Redgrave, Clark and Kellybee did petition both the California trial court and the California Court of Appeal to reconsider or review the finding of a binding settlement contract in light of their allegations of attorney negligence. Moreover, whereas the issue at stake in *Ruffalo*, the characterization of certain property in a marriage dissolution, required legal judgment, Judge Ryburn's fact finding in the MCA action, as discussed above, turned on the existence of indisputable documentary evidence.
- 6 At oral argument, Redgrave and Clark asserted that they were denied a fair and full opportunity to litigate the motion for a new trial and the appeal because their new counsel, Peter DiDonato, Esq., represented them negligently. If Redgrave and Clark were ill-served by that lawyer, however, their recourse is a suit for malpractice against him. See [*Kensington Rock Island Ltd. Partnership v. American Eagle Historic Partners*, 921 F.2d 122, 126 \(7th Cir.1990\)](#). Indeed, if successive claims of attorney malpractice were themselves sufficient to avoid collateral estoppel, no fact finding or judgment would be subject to collateral estoppel or res judicata.
- 7 Redgrave did not file a brief in support of her appeal of the adversary proceeding order. At the December 11, 1992 Oral Argument on Redgrave's motion to vacate this Court's order of dismissal of appeal, the Court ruled that the motion would be granted on the condition that Redgrave file a brief in support of her appeal on or before December 28, 1992. The Trustee contends that Redgrave has waived her appeal of the adversary proceeding by failing to file a brief. Because Redgrave is *pro se*, and in the interest of judicial economy, the Court declines to decide the case on that basis.