

## Legal-mal suit against Boston firm picks up steam

*Trustee claims conflicts paved way for bankruptcy*

By: Pat Murphy January 17, 2019



Goodwin attorneys had begun handling Blast Fitness Group's legal work in 2011.

A U.S. Bankruptcy Court judge is allowing a Chapter 7 trustee to go forward with malpractice and fraud claims alleging that two Goodwin attorneys operated under a conflict of interest when the firm represented a fitness chain in transactions that resulted in the company's insolvency.

Asserting certain claims were time-barred, the firm, Goodwin partner John R. LeClaire, and former Goodwin lawyer Jeremiah J. Sullivan moved to dismiss the suit filed in January 2018 by trustee Gary W. Cruickshank as an adversary proceeding in the bankruptcy of Blast Fitness Group LLC.

Judge Melvin S. Hoffman agreed with Goodwin that the continuing representation doctrine did not toll the three-year statute of limitations with respect to the Boston law firm's representation of BFG in the corporate transactions at issue, which occurred in 2012 and 2013.

But because the trustee's complaint alleged the law firm acted at the behest of the manager of the LLC that controlled the debtor, co-defendant Harold R. Dixon, Hoffman concluded that the limitations period was tolled by operation of Massachusetts' "adverse domination" doctrine. The doctrine provides for the tolling of the statute of limitations during the period a corporate plaintiff operates under the domination of alleged wrongdoers.

In concluding that the trustee adequately pleaded claims for malpractice, breach of fiduciary duty, and breach of contract, the judge pointed to the allegation that Goodwin breached a duty of loyalty to BFG when it represented multiple parties in certain transactions that benefited Dixon and harmed the debtor.

"Clearly Goodwin and [partner] LeClaire owed a duty of undivided loyalty to BFG, and the conflict presented by their simultaneous representations of other potentially adverse parties may have breached that duty," Hoffman wrote, denying in part the Goodwin defendants' motion to dismiss.

The 23-page decision in *In Re: Blast Fitness Group*, Lawyers Weekly No. 04-001-19, can be found here.

### Extending 'Demoulas'

Boston's Ilyas J. Rona, counsel for trustee Cruickshank, acknowledged that a lawyer's job in matters such as those at issue in *Blast Fitness Group* can be "complicated."

"But the obligation to identify a conflict is true for every representation," Rona said. "Nothing about a particular case eliminates that need."

P. Sabin Willett of Boston, who represents the Goodwin defendants, said the ruling was based only on the pleadings and not on any factual evidence. He added that his clients are confident the claims will fail on the merits.

The case is an object lesson for transactional attorneys, according to Charles P. Kazarian, who represents victims of legal malpractice.

"Transactional lawyers especially need to be careful that their duties of loyalty to existing clients do not migrate to the client's interactions with new business entities that the lawyer intends to represent, absent all the appropriate disclosures and waivers for the continuing representation," the Boston attorney said.

Neil Burns of Boston, who handles legal-malpractice cases as part of his practice, said he also sees the case as a cautionary tale in which, if the allegations are true, the lawyers faced a “clear” potential conflict.

“Lawyers often believe they are wise enough and clever enough not to be seduced into conflicting representation,” Burns said. “But what I’ve found is that you can’t zealously represent your client if there is any potential for a conflict.”

Legal-mal lawyer Keith L. Miller said what makes the case significant is that it extends the adverse domination doctrine recognized in the Supreme Judicial Court’s 1997 decision in *Demoulas v. Demoulas Super Markets, Inc.*

“Adverse domination generally is commonly accepted to be applied against the individual who is involved in the wrongdoing,” he said. “Here, a bankruptcy judge has basically said that these attorneys aided and abetted a fraud. They were acting as the agent of [Dixon,] the wrongdoer.”

The Boston lawyer added that he will be interested to see if the court or a party reports the Goodwin attorneys involved to the Board of Bar Overseers for alleged ethical violations.



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— Neil Burns, Boston



## Transactional grief

According to the trustee’s complaint, Dixon and a business partner began operating a number of health clubs in New England in 2010. CapeCapital, a Massachusetts LLC, formed BFG in 2011. Dixon was the sole manager of CapeCapital, which managed BFG. The BFG chain eventually grew to more than 60 clubs throughout the U.S.

Meanwhile, Dixon and his business partner became involved in a trade name dispute with another health club chain in 2012. LeClaire was Dixon’s lawyer, so Goodwin represented Dixon, his partner and BFG as defendants in the trade name dispute.

In January 2015, a Superior Court judge entered a \$4.5 million final judgment against the defendants.

Goodwin attorneys had begun performing BFG’s legal work in 2011. A year later, Goodwin represented BFG in negotiations with Bally Total Fitness to purchase 39 fitness centers along with certain real estate.

In particular, Goodwin represented BFG in drafting an asset purchase agreement for the acquisition of three commercial parcels in Connecticut, Missouri and Texas for \$1 million. Bally clubs involved in the purchase transaction were located on each of the three commercial properties.

The trustee alleged that, during those negotiations, the Goodwin defendants became aware that Dixon wanted the Bally properties transferred to LLCs effectively owned by Dixon. Dixon allegedly used BFG funds to subsidize the purchase of the Bally real property by his own LLCs. Further, Dixon allegedly inflated the rent for the clubs acquired by BFG that were located on those properties.

Over the next two years, Dixon sold the properties to third parties in excess of their purchase prices.

In addition to the Bally transaction, the trustee sought damages from Goodwin for a series of transactions in 2012 and early 2013 in which a number of BFG’s more profitable fitness clubs were transferred to two LLCs controlled by Dixon: Lexfit and Newfit. According to the trustee’s complaint, in late 2012 Dixon had begun transferring assets to shield them from BFG’s various creditors, including the judgment creditor in the trade name case.

The trustee alleged that, in March 2013, Goodwin partner LeClaire provided Dixon with advice on how to protect his assets; that in December 2014 Goodwin had agreed to “move assets the right way out of BFG”; and that Goodwin



was involved in the drafting some of the agreements involving the conveyance of profitable BFG clubs for less than fair value to Lexfit and Newfit.

On Jan. 26, 2016, BFG filed for Chapter 7 protection. The trustee commenced the adversary proceeding two years later. The 30-count complaint sought damages and injunctive relief against 47 named defendants, including Dixon, the Goodwin firm, and Goodwin lawyers LeClaire and Sullivan.

"Aided by attorneys willing to represent adverse parties in transactions, Harold Dixon and his cohorts shielded themselves from Blast Fitness Group LLC's creditors and siphoned off the valuable real estate and other assets that would have been otherwise available to support the Blast Fitness organization and repay the debts owed to its creditors," the trustee's amended complaint states.

More specifically, the trustee alleged Goodwin had a material, undisclosed and unwaivable conflict of interest in its dual representation of Dixon and BFG in the Bally transaction. Likewise, the trustee claimed Goodwin and LeClaire had a conflict of interest and violated their duty of loyalty to BFG when they represented multiple parties in the Lexfit and Newfit deals.

The claims against the Goodwin defendants included legal malpractice, breach of fiduciary duty, breach of contract, unfair trade practices in violation of G.L.c. 93A, and unjust enrichment. The unjust enrichment claim targeted legal fees paid by BFG to Goodwin in 2013.

### **Motion denied**

After dismissing several claims against the Goodwin defendants that the trustee had conceded or were patently deficient, Judge Hoffman addressed the defendants' contention that claims relating to their representation of BFG in the Bally matter were time-barred.

According to the defendants, Massachusetts' three-year statute of limitations for malpractice began to run on April 30, 2012, when the Bally transaction closed and BFG should have realized it suffered harm by not acquiring the Bally real estate.

The judge rejected the trustee's argument that the statute of limitations was tolled under the continuing representation doctrine. Hoffman pointed out that the continuing representation doctrine applies only so long as the continuing representation occurs with respect to the same matter.

"While the trustee points to Goodwin and Mr. LeClaire's representation of BFG in the Lexfit and Newfit transactions and in the [trade name] litigation which continued into 2014, these matters were separate and distinct from the Bally transaction, and they did not arise out of or relate in any way to the Bally transaction," the judge wrote.

However, Hoffman found merit in the trustee's argument that the limitations period was tolled under the adverse domination doctrine enunciated in *Demoulas*. On that issue, the judge concluded Dixon's knowledge of the real state of affairs could not be imputed to BFG.

"Although Mr. Dixon, the sole manager of CapeCapital, which, in turn, was the sole manager of BFG, knew BFG was not acquiring the Bally real estate, that knowledge is not enough to prevent the tolling of the statute of limitations," he wrote.

With respect to the Lexfit and Newfit deals, the judge found the complaint adequately alleged that Goodwin and LeClaire were in a conflict of interest in violation of their duty of loyalty to BFG.

The Goodwin defendants argued that the trustee could not show BFG suffered harm as a direct result of their alleged malpractice, but Hoffman disagreed.

"The complaint ... alleges that other unconflicted attorneys would not have let the transactions occur and without the transfers of its more profitable clubs, BFG would have been in a stronger financial position," Hoffman wrote.

Hoffman next found that the trustee stated a claim for unfair or deceptive acts in violation of 93A.

"By Goodwin's representation of both Mr. Dixon and BFG in transactions to the detriment of BFG, the trustee's complaint alleges sufficient facts to plausibly support the conclusion that the Goodwin Defendants had a conflict of

interest that was unethical under Massachusetts law, coupled with an intent to deceive its client, BFG,” the judge wrote.

**In Re: Blast Fitness Group**

**THE ISSUE:** Does the statute of limitations bar legal malpractice and fraud claims alleging that two attorneys operated under a conflict of interest when their law firm represented a fitness chain in transactions that resulted in the company’s insolvency?

**DECISION:** No (U.S. Bankruptcy Court)

**LAWYERS:** Ilyas J. Rona of Milligan, Rona, Duran & King, Boston (for bankruptcy trustee)

P. Sabin Willett and Caitlin Snyder, of Morgan, Lewis & Bockius, Boston (for Goodwin defendants)

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