

Attorneys Johnson & Sutton Obtain Directed Verdict



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Attorneys Katie Johnson and Debra Sutton prevailed for their client with a directed verdict in a defamation and civil conspiracy trial in which the Plaintiffs were seeking approximately \$3 Million in economic losses as well as punitive damages.

The Court found that the Plaintiffs failed to meet essential elements of the defamation and civil conspiracy claims. Plaintiffs pursued both defamation *per se* and *per quod* claims against the client, regarding statements that the court had ruled pretrial concerned matters of public interest. As matters of public concern, the plaintiffs had the burden to prove that the statements caused them actual damages (*per se*) and special damages (*per quod*). At trial, the plaintiffs presented evidence of alleged economic and emotional damages resulting from a variety of alleged conduct including that of multiple co-defendants, but no evidence of any actual damage allegedly caused by the client's statements.

Under Colorado law in these circumstances, damages may not be presumed and publication of the allegedly defamatory statements is insufficient to establish damages. Without the essential element of damages, the court granted directed verdict on the defamation claims. Plaintiffs also pursued a civil conspiracy claim against the client and other co-defendants. In Colorado, a civil conspiracy claim requires proof of the following:

1. The defendant and at least one other person agreed, by words or conduct, to accomplish an unlawful goal or accomplish a goal through unlawful means
2. One or more unlawful acts were performed to accomplish the goal, or one or more acts were performed to accomplish the unlawful goal
3. The plaintiff had damages or losses, and
4. The plaintiff's damages or losses were caused by the acts performed to accomplish the goal.

Nelson v. Elway, 908 P.2d 102, 106 (Colo. 1995). Civil conspiracy is a derivative cause of action that is not independently actionable. If the acts alleged to constitute the underlying wrong provide no cause of action, then no cause of action arises for the conspiracy alone. *Colo. Cmty. Bank v. Hoffman*, 338 P.3d 390, 397 (Colo. App. 2013).

Here, the court granted directed verdict because Plaintiffs had failed to present evidence to support an agreement between the client and any other person to accomplish an unlawful goal or accomplish a goal through unlawful means. Instead, Plaintiffs presented evidence of parallel conduct which was not unlawful, and which does not establish an agreement. Because an actual agreement for an unlawful goal or unlawful means is an essential element of conspiracy, it was improper to send the case to the jury without evidence to support such an agreement.