2024 IL App (1st) 230091-U

No. 1-23-0091

Order filed June 28, 2024

Second Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CAFÉ HOLDINGS, INC.,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellant,	)	County Department, Law Division
v.	)	No. 2022 L 002430
BURKE, WARREN, MACKAY, & SERRITELLA, P.C., DAVID SILVER, and SILVER LAW FIRM, LLC,	)	Honorable Daniel J. Kubasiak, Judge Presiding
Defendants-Appellees.	)	

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Howse and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Trial court properly dismissed lawsuit. Former shareholder of LLC had no independent right to sue LLC's lawyers for legal malpractice, nor did it obtain that right via assignment.

¶ 2 Plaintiff Café Holdings, Inc. (CHI) held a majority interest in a coffee company when the minority shareholder, along with the company's lawyers, allegedly took steps to dramatically and improperly minimize CHI's role, injuring the company financially as well. After a lawsuit was filed, CHI settled with the minority shareholder, in the process selling all its shares in the

company. CHI then attempted to file this legal malpractice action against the lawyers who assisted the minority shareholder in his efforts, claiming that the settlement agreement between the parties included an assignment to CHI of the right to sue the lawyers for malpractice.

¶ 3 The circuit court dismissed the action, finding that CHI had no freestanding right to sue for legal malpractice, as CHI never had an attorney-client relationship with the company's lawyers. The court further ruled that the purported assignment of the legal malpractice claim to CHI was prohibited by Illinois law.

¶ 4 We affirm on slightly different grounds. We agree that CHI had no independent right to sue the company's lawyers, because CHI was never the client. But we further find that CHI was never assigned the malpractice claim in the first instance. Having no right independently or via assignment, CHI had no legal right to sue the company's lawyers for malpractice.

¶ 5 BACKGROUND

¶ 6 As we are at the pleading stage, we draw our facts from the amended complaint, whose allegations we accept as true. *Sullivan v. Village of Glenview*, 2020 IL App (1st) 200142, ¶ 5. Our lawsuit here is one for legal malpractice, so it should be no surprise that there is a story behind the story. We will recite only what we must of that backstory to understand the issues in this malpractice action.

¶ 7 In 2018, plaintiff CHI, a company that invests in specialty coffee markets, bought a 51% interest in Dollop Coffee, LLC (Dollop Coffee), which itself is a holding company whose subsidiaries sell specialty coffee. CHI paid a million dollars for its 51% interest and agreed to invest another $1.9 million in Dollop Coffee in operating capital over time.

¶ 8 Before this transaction, the majority owner of Dollop Coffee was Daniel Weiss, through his company, Dollop Brand, LLC. Weiss had been the sole manager of Dollop Coffee.

¶ 9 The parties drafted an amended operating agreement to consummate this transaction. Four aspects are relevant here. First, Dollop Coffee would have three managers, two of whom would be appointed by CHI, now the majority shareholder. Weiss would be the third manager. Second, a manager could only be removed for "cause" as defined in the agreement.

¶ 10 Third, the operating agreement contained procedures when disagreements emerged, with different protocols for smaller disputes versus larger ones (based on the financial impact of the disagreement, with $100,000 being the dividing line between big and small). And fourth, the amended operating agreement could only itself be amended by majority vote of the members.

¶ 11 A dispute arose between Weiss and CHI about certain management issues. The amended complaint alleges that, rather than follow the procedures for disagreements among managers, Weiss and his lawyers devised a plan to strip CHI and its appointed managers of their rights.

¶ 12 One of those lawyers was David Silver, a defendant here. He had his own incorporated law firm and also served as "of counsel" to the firm of Burke Warren McKay & Serritella, PC. Silver and both law firms are defendants in the malpractice action before us, three substantively identical counts based on Silver's actions and the actions of another attorney at Burke Warren named Frederic Mendelsohn. When referred to collectively, they will be the "Silver defendants."

¶ 13 The amended complaint alleges that in March 2020, Weiss, unilaterally and without notice, decreed that CHI's membership in Dollop Coffee was subordinated to Weiss's interest. Specifically, through his attorney Silver and without the knowledge or consent of the CHI-appointed managers, Weiss executed a new operating agreement.

¶ 14 That new operating agreement gave Weiss all managerial power and the sole authority and discretion to kick out any members (like CHI) who breached the new agreement or the

previous one. It relegated CHI to the status of "economic interest holder" instead of the Class A Member status that CHI previously enjoyed.

¶ 15 Weiss then delivered a letter to the CHI-appointed managers, informing them that the obligations of any party to the earlier operating agreement were "suspended" and "discharged" in favor of this new operating agreement.

¶ 16 And then Weiss sued, with the Silver defendants as counsel, naming Dollop Coffee and CHI as defendants. Call it the "*Weiss* lawsuit" for ease. CHI argued that the Silver defendants had a conflict of interest in that they previously represented Dollop Coffee and drafted the relevant corporate governance documents when CHI bought its 51% membership interest. Ultimately, new attorneys entered their appearances on behalf of Weiss.

¶ 17 The parties settled the *Weiss* lawsuit. The terms of that settlement are very much at issue here, and we will have more to say later. Suffice it for now to note two things. First, Dollop Coffee bought out CHI, purchasing CHI's 51% membership interest, albeit at a "deep discount," according to CHI, allegedly reflecting the diminished value of Dollop Coffee. And second, CHI indicated that it intended to sue the Silver defendants for malpractice to recover the damages to Dollop Coffee, at least insofar as CHI was damaged as a 51% interest holder.

¶ 18 This malpractice lawsuit followed. By and large, CHI alleged that the Silver defendants failed to protect Dollop Coffee's interests in rendering advice to Weiss and preparing improper corporate documents that elevated Weiss's interests over that of other members. As a result, the complaint alleged, "a deadlock occurred preventing Dollop Coffee and its Members from operating and managing the business leading to a necessary business divorce." Dollop Coffee thus "sustained damages in lost business, lost financing, and Membership deadlock." CHI also alleged that, as a 51% interest holder, it suffered 51% of that diminution in value.

¶ 19 The Silver defendants moved to dismiss for failure to state a claim. They argued first that CHI was not their client—CHI was never more than a shareholder, and now a former shareholder, at that. The client, they said, was Dollop Coffee. Second, one of the Silver defendants (the Burke Warren defendant) argued that CHI was never assigned this legal malpractice claim, either. And third, the Silver defendants argued that Illinois law did not allow the assignment of a legal malpractice claim, so the assignment to CHI was null and void if it occurred at all.

¶ 20 CHI responded that, in the *Weiss* settlement agreement, CHI was assigned the right to sue the Silver defendants for legal malpractice. CHI further argued that this assignment was not invalid under Illinois law because it fit within the lone recognized exception to this prohibition stated in *Learning Curve International, Inc. v. Seyfarth Shaw, LLP*, 392 Ill. App. 3d 1068 (2009).

¶ 21 The circuit court dismissed the action with prejudice. The court found that CHI held no attorney-client relationship with the Silver defendants and thus could not sue them for malpractice without more. The court ruled that any assignment of the malpractice claim to CHI was prohibited under Illinois law, and the exception recognized in *Learning Curve* was inapplicable. This appeal followed.

¶ 22 ANALYSIS

¶ 23 We review *de novo* the dismissal of a complaint under section 2-615 of the Code of Civil Procedure. *Doe v. Burke Wise Morrissey & Kaveny, LLC*, 2023 IL 129097, ¶ 20; 735 ILCS 5/2-615 (West 2022). We take the allegations as true, drawing all reasonable inferences in the plaintiff's favor, and ask whether any set of facts could entitle the plaintiff to relief. *Doe*, 2023 IL 129097, ¶ 20. We may consider contracts and other documents attached to the complaint, such as the operating agreements at issue here and the written settlement agreement in the *Weiss* lawsuit.

Gagnon v. Schickel, 2012 IL App (1st) 120645, ¶ 18. We may affirm on any basis in the record, even if it was not the basis on which the trial court relied. *State ex rel. Pusateri v. Peoples Gas Light & Coke Co.*, 2014 IL 116844, ¶ 8.

¶ 24 I

¶ 25 Because it provides context for our discussion, we begin with the general rule in Illinois, recognized for decades now, that a client cannot assign its legal malpractice claim to another party. *Learning Curve*, 392 Ill. App. 3d at 1074; *Brandon Apparel Group v. Kirkland & Ellis*, 382 Ill. App. 3d 273, 285-86 (2008); *Gonzalez v. Profile Sanding Equipment, Inc.*, 333 Ill. App. 3d 680, 695-696 (2002); *Brocato v. Prairie State Farmers Insurance Ass'n*, 166 Ill. App. 3d 986, 988-89 (1988); *Clement v. Prestwich*, 114 Ill. App. 3d 479, 481 (1983); *Christison v. Jones*, 83 Ill. App. 3d 334, 339 (1980); see *Kroll v. Cozen O'Connor*, 19 C 3919, 2020 WL 919005, at ** 3-4 (N.D. Ill. Feb. 26, 2020) (applying Illinois law).

¶ 26 The rule is grounded in public policy, given the personal nature of an attorney-client relationship and the concern that allowing these claims to be assigned would turn them into marketable commodities to be exploited, sold to the highest bidder and even manufactured improperly as a means of commercial gain. See *Learning Curve*, 392 Ill. App. 3d at 1074-75; *Clement*, 114 Ill. App. 3d at 481; *Gonzalez*, 333 Ill. App. 3d at 696 (allowing assignments would "commercialize legal malpractice suits" and "debase the legal profession.").

¶ 27 That said, the proper analysis for this appeal should proceed as follows. First, if CHI has the right, as a former shareholder, to sue the Silver defendants for legal negligence, then dismissal of the complaint was inappropriate. But if CHI does *not* have the right to file this malpractice action, because CHI was not the Silver defendants' client, we proceed to the second question: did CHI *acquire* the right to sue via an assignment contained in the *Weiss* settlement

agreement? And of course, if CHI did acquire that right via assignment, the third question is whether Illinois law permits that assignment. The decision in *Learning Curve*, 392 Ill.App.3d 1068, recognizing an exception to the general prohibition on the assignment of legal malpractice actions, would loom large over that last question.

¶ 28 From what we can discern, on appeal, CHI does not address the first issue. CHI raises two arguments in its appellate brief. The first is that dismissal was premature in that questions of fact remain regarding the circumstances surrounding the settlement agreement and the assignment of the legal malpractice claim. Its second argument is that public policy, under the *Learning Curve* test, favors assignability here. In neither argument does CHI claim to have an attorney-client relationship with the Silver defendants. And as we review the pleadings below, CHI did not assert an attorney-client relationship between itself and the Sliver defendants before the circuit court, either.

¶ 29 CHI, in other words, does not challenge the trial court's first ruling that the Silver defendants did not owe a legal duty to CHI, as CHI was not their client, and thus a legal malpractice brought cannot ordinarily lie. See *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306 (2005) (among other things, claim for legal malpractice must establish duty arising from attorney-client relationship). And CHI did not raise that argument below, either. So any such argument is forfeited twice over. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (arguments not raised in appellate brief are forfeited); *Hebert v. Cunningham*, 2018 IL App (1st) 172135, ¶ 37 (argument not raised by appellant in circuit court is forfeited on appeal).

¶ 30 In any event, it is not a controversial question, and the principle is helpful for our analysis, so it is worth addressing. As the circuit court correctly recognized, a limited liability

company (LLC) is a legal entity separate and distinct from its members. *Peabody-Waterside Development, LLC v. Islands of Waterside, LLC*, 2013 IL App (5th) 120490, ¶ 9. The attorney for an LLC does not enjoy an attorney-client relationship with the LLC's members. *Blue Waters Partners, Inc. v. Edwin, Mason, Foley & Lardner*, 2012 IL App (1st) 102165, ¶ 38. The Silver defendants' client was Dollop Coffee, not any of its members. *Id.* So without more, such as the purported assignment at issue here, CHI would have no legal basis to assert a legal negligence action against the Silver defendants. *Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d at 306.

¶ 31 II

¶ 32 The second question, as noted, is whether CHI obtained the right via assignment to file this legal malpractice action against the Silver defendants. One of our defendants, Burke Warren, argues on appeal that no such assignment occurred in the *Weiss* settlement agreement.

¶ 33 There is merit to that argument. An assignment is the transfer of a claim to another individual, the assignee, who then steps into the shoes of the assignor and sues in its own name. *Brandon Apparel*, 382 Ill. App. 3d at 285-86. The amended complaint does not allege an assignment or anything approaching it, as the pleading rules require. See 735 ILCS 5/2-403(a) (West 2022) (plaintiff claiming assignee status "shall in his or her pleading on oath allege that he or she is the actual bona fide owner [of claim], and set forth how and when he or she acquired title."); *Themas v. Green's Tap, Inc.*, 2014 IL App (2d) 140023, ¶ 10. The closest the amended complaint comes to alleging CHI's right to bring this action is in paragraph 45 of the common allegations: "[A]s part of the Settlement Agreement, CHI *preserved its rights to pursue damages on behalf of Dollop Coffee LLC*." (Emphasis added.)

¶ 34 That language does not in any way describe an assignment. As noted, by definition, an assignment is the transfer of a right that the assignee did not previously possess. *Brandon*

Apparel, 382 Ill. App. 3d at 285-86. CHI *never* had the right to sue the Silver defendants for legal malpractice, as CHI was not their client. It *obtained* that right, if at all, via an assignment.

¶ 35 So what right was CHI preserving? One might think of a derivative action, which allows an LLC shareholder to sue on behalf of the company if the managing board refuses to take action. See 805 ILCS 180/40-1 (West 2020). But that is not what CHI meant. We know that for several reasons. One, CHI repeatedly assured the trial court here that it was "not pursuing a derivative action." For another, it is undisputed that CHI promised in the *Weiss* settlement agreement *not* to file a derivative action. So under no circumstances was CHI claiming to preserve its right to pursue a derivative action. What, then, was it "preserving" with regard to an action against the Silver defendants? We can think of nothing, and CHI has given us nothing.

¶ 36 In any event, the *Weiss* settlement agreement was attached to the amended complaint, and the agreement controls over allegations in the complaint about the content of the agreement. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 18. So we next consider that settlement agreement and whether it contained an assignment.

¶ 37 An assignment is a contract and is interpreted under the rules of contract construction. *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 48; *1030 West North Avenue Building, LLC v. The Firm, LLC*, 2022 IL App (1st) 200588-U, ¶ 35. Unambiguous language should be given its plain and ordinary meaning. *Baer*, 2012 IL App (1st) 112174, ¶ 48; *1030 West North Avenue*, 2022 IL App (1st) 200588-U, ¶ 35.

¶ 38 The *Weiss* settlement agreement begins with a series of "whereas" recitals. Among them is the recital describing the *Weiss* lawsuit, including that "CHI filed certain direct and derivative Counterclaims" in the lawsuit. Another recital details that Dollop Coffee will buy back CHI's

membership interest in Dollop Coffee under an agreement called the "New Purchase Agreement."

¶ 39 After the "whereas" recitals, the settlement agreement begins with the consideration for the agreement. It reads in full as follows:

> "1. Consideration: The Company shall redeem CHI's Interest in accordance with the terms and conditions set forth in the New Purchase Agreement and its exhibits. The New Purchase Agreement, including its exhibits, are expressly incorporated herein and shall be construed together as a part of a single transaction. To the extent that the terms of the New Purchase Agreement or its exhibits are inconsistent with the terms herein, the terms of this Agreement shall control."

¶ 40 Nowhere in this discussion of consideration is there any mention that Dollop Coffee is assigning a potential malpractice claim to CHI. This section would be the most obvious place to say so. It explains what the "company," Dollop Coffee, is giving up to resolve the lawsuit: it is paying money to buy out CHI's shares. Why not say, as well, that it is assigning a potential malpractice claim against the Silver defendants to CHI? It would be incredibly simple to do so.

¶ 41 The next section of the *Weiss* settlement agreement, section 2, is entitled "Professional Claims." Here, CHI openly proclaims, up front, that it intends to sue the Silver defendants for professional malpractice for harming Dollop Coffee and, by extension, CHI's 51% interest in Dollop. The remainder of that lengthy section is devoted to the rights and obligations of the parties with regard to the malpractice lawsuit CHI intends to file. For the sake of completeness, we quote the entirety of subsection (a) of section 2 here before isolating various language later:

> "a. Nature of Professional Claims. CHI intends to pursue a professional malpractice claim against Burke Warren McKay & Serritella, P.C. and Silver Law Firm, LLC ("Company's

> Counsel") generally alleging that certain matters involving Company's Counsel harmed the Company and, resultingly, the value of CHI's 51% Interest therein (the "Professional Claims"). This section addresses the obligations of the Parties with respect to the Professional Claims. For the avoidance of doubt, nothing herein shall be construed as assigning to the CHI Parties any right or interest to pursue claims against Company's Counsel associated with any devaluation of the other 49% interest in the Company, but, instead, reflects the Parties' agreement that, if there were any damage to the Company as a result of the creation/adoption of [the new operating agreement Weiss adopted] and/or the filing of the Lawsuit, CHI would be the party that suffered the loss of value to its Interest in the Company (a 51% Class A membership interest) and CHI is not selling, i.e. assigning, that lost value to the Company in exchange for the consideration paid to the CHI Parties in accordance with the New Purchase Agreement and its exhibits; however, the Dollop Parties make no representations or warranties regarding how a court or arbitrator may construe this Agreement. CHI is also not waiving or selling any other direct claims for damages it may have against Company's Counsel, nothing in this Agreement shall be construed as CHI waiving or releasing those claims, and CHI is free to pursue those direct claims."

¶ 42 Nothing in this language states that Dollop Coffee is assigning all or part of a malpractice claim against the Silver defendants to CHI. The section begins with CHI stating its intent to file a malpractice claim. Nothing wrong with that, but CHI does not claim to have acquired any such right to sue. The second sentence states that the purpose of section 2 is to "address[ ] the obligations of the Parties with respect to" the filing of that lawsuit. And indeed, elsewhere throughout section 2, subsections (b) through (g), the parties detail their various rights and

responsibilities vis-à-vis CHI's future malpractice lawsuit—for example, the company and Weiss agree to cooperate to a limited extent with CHI in terms of document production and the like; the company agrees to waive the attorney-client privilege and not to release any claims against the Silver defendants; and CHI agrees not to sue in the name of the company, Dollop Coffee.

¶ 43 The third sentence is the most relevant for our consideration, so we reprint just that sentence:

> "For the avoidance of doubt, nothing herein shall be construed as assigning to the CHI Parties any right or interest to pursue claims against Company's Counsel associated with any devaluation of the other 49% interest in the Company, but, instead, reflects the Parties' agreement that, if there were any damage to the Company as a result of the creation/adoption of [the new operating agreement Weiss adopted] and/or the filing of the Lawsuit, CHI would be the party that suffered the loss of value to its Interest in the Company (a 51% Class A membership interest) and CHI is not selling, i.e. assigning, that lost value to the Company in exchange for the consideration paid to the CHI Parties in accordance with the New Purchase Agreement and its exhibits; however, the Dollop Parties make no representations or warranties regarding how a court or arbitrator may construe this Agreement."

¶ 44 This sentence contains a lot. The first thing it says is that the company is *not* assigning to CHI the right to pursue a legal malpractice claim insofar as the 49% shareholders (those besides CHI) were injured by a drop in the company's value. If we stopped there, we might ask, why would the company go to the trouble of saying it is *not* assigning part of the malpractice claim unless it *was* assigning the other part? But the language immediately follows up by explaining that the parties were merely agreeing that, if the company was injured by the actions of Weiss

and the Silver defendants, "CHI would be the party that suffered the loss of value to its Interest in the Company (a 51% Class A membership interest)."

¶ 45 That sounds nothing like an assignment. That is the company saying, do what you want with your lawsuit for 51% of the damages—the damages you claim to have personally suffered, CHI—but insofar as the remaining 49% of the claim is concerned, it is staying with the company; we are not assigning it to you. As the circuit court aptly put it, "[t]he Settlement Agreement is simply an agreement between members that one member, CHI, may pursue a claim for its damages, and not damages to Dollop Coffee LLC."

¶ 46 And if there were any lingering doubt, consider what immediately follows: "CHI is not selling, i.e. assigning, that lost value to the Company in exchange for the consideration paid to the CHI Parties in accordance with the New Purchase Agreement." CHI wanted to make clear that it was not giving up (not "selling" or "assigning") its right to sue the Silver defendants (for 51% of the injury to the company) as part of the consideration for the *Weiss* settlement. Fair enough, but now we have strayed miles away from an assignment. Far from providing that *the company* was assigning to *CHI* the right to sue the Silver defendants for malpractice, the passage we just recited says that *CHI* is not assigning its right to sue the Silver defendants to *the company*. CHI is presupposing, in other words, that it already has a right to sue the Silver defendants for malpractice and is clarifying here that it is not giving up that right in settling the *Weiss* lawsuit.

¶ 47 And the final sentence in subsection (a) of section 2 only doubles down on that premise: "CHI is also not waiving or selling any other direct claims for damages it may have against [the Silver defendants], nothing in this Agreement shall be construed as CHI waiving or releasing those claims, and CHI is free to pursue those direct claims." Again, CHI is starting with the

premise that it already *has* the right to assert these claims and is not surrendering them—nearly the antithesis of *obtaining* those claims via assignment.

¶ 48 Simply put, throughout section 2 read as a whole, CHI consistently treats its right to sue the Silver defendants for malpractice (at least insofar as CHI incurred 51% of the injury to the company) as a pre-existing claim that it is not assigning or waiving. The company merely clarifies that the other 49% of the claim remains with the company—it is not assigning it. The company likewise agrees to cooperate with that lawsuit in terms of document production, waiving the attorney-client privilege, agreeing not to release the Silver defendants from liability, etc. Not standing in the way of a lawsuit, even cooperating to some extent, is not the same as assigning the legal right to pursue that claim. It would have been the simplest thing to state that the company was assigning 51% of its malpractice claim to CHI. Section 2(a) uses some form of the word "assignment" multiple times, but never that way. That omission is deafening.

¶ 49 This language was obviously carefully crafted to avoid directly stating that the company, Dollop Coffee, was assigning its malpractice claim to CHI. We might presume it was so drafted because CHI was aware of the general prohibition in Illinois on the assignment of legal malpractice claims. But it makes no difference why it was written this way; the plain, unambiguous language says what it says. If CHI was trying to avoid having section 2 interpreted as the company assigning part of a malpractice claim to CHI, it succeeded. There is no reasonable way we could so interpret it.

¶ 50 And circling back, that explains why CHI drafted the amended complaint as it did, characterizing the *Weiss* settlement agreement as "preserv[ing] its rights to pursue damages on behalf of Dollop Coffee LLC." Both in the amended complaint and in the *Weiss* settlement

agreement, CHI took the position that it *already possessed* a right to sue the Silver defendants for malpractice, and it did not waive or assign that right—to the contrary, it "preserved" that right.

¶ 51 The problem, unfortunately, is that CHI never had that right. Only the client, Dollop Coffee, could sue its lawyers for malpractice unless it assigned that right to someone else (and if that assignment were upheld as a matter of public policy). Because no such assignment occurred within the *Weiss* settlement agreement, CHI had no right or claim to preserve.

¶ 52 We are sympathetic to CHI, but we would also note that CHI was not without options here. It could have demanded express language in the *Weiss* settlement language whereby the company assigned all or merely 51% of its legal malpractice claim to CHI.

¶ 53 Or it could have continued to litigate the *Weiss* lawsuit. When Weiss sued CHI, CHI was fully entitled to challenge Weiss's actions in (allegedly) ripping up the operating agreement and improperly creating a new one that injured CHI's interests. Indeed, the recitals in the *Weiss* settlement agreement indicate that CHI filed counterclaims in that action, including derivative ones. Under the operating agreement that CHI claimed was still in place, CHI held the majority interest in Dollop Coffee; it still had two of the three appointed managers. The managers could have forced a vote on suing the Silver defendants in the name of Dollop Coffee for legal malpractice, not to mention trying to counter the steps Weiss had taken.

¶ 54 True, Weiss (and perhaps the Silver defendants) might have tried to stop CHI, but then CHI could have attempted to file a derivative action in the company's name. See 805 ILCS 180/40-1 (West 2020). (Which, again, according to the recitals appears to be exactly what CHI did in its counterclaim in the *Weiss* lawsuit.) And more to the point, all of this would have played out before the eyes of the circuit judge presiding over the *Weiss* lawsuit. If CHI's legal positions

were correct, it could have fully protected itself in court and, one way or the other—via a board-authorized lawsuit or a derivative action—sued the Silver defendants for malpractice.

¶ 55 Instead, CHI settled. CHI agreed to sell its shares in Dollop Coffee—not most of them but all of them. It gave up any right to file a derivative action in the company's name or to exercise any amount of control over the company's claims. No doubt, CHI had its reasons for settling, and by no means are we critical of that decision; parties settle for all sorts of reasons, obvious and not obvious, and surely CHI had valid reasons.

¶ 56 But those decisions have consequences. When CHI gave up its (majority) shareholder status, it gave up a lot of rights. It did so with eyes open. It lost any right to sue the Silver defendants for legal malpractice and did not include language in the *Weiss* settlement agreement by which it *obtained* that right to sue via assignment.

¶ 57 In light of our conclusion, we need not consider whether any assignment of the legal malpractice claim would have been consistent with public policy, as in *Learning Curve*, or whether the general prohibition on such assignments would apply here.

¶ 58 CONCLUSION

¶ 59 Because CHI has no independent right to sue the Silver defendants for legal malpractice, as CHI was not their client, and because CHI never obtained that right via assignment, the circuit court did not err in dismissing this action.

¶ 60 The judgment of the circuit court is affirmed.

¶ 61 Affirmed.