

McElroy Deutsch Beats Former Exec's Malicious Claim

By **Jake Maher**

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McElroy Deutsch Mulvaney & Carpenter LLP got a claim for malicious prosecution against it dismissed without prejudice in litigation against its former business development director, who the firm accused of embezzling millions from it.

McElroy Deutsch had previously **told** the Union County Superior Court that the claim was premature because a party cannot file a malicious use of prosecution claim until the matter is resolved in their favor. In an order signed on Dec. 20, Judge Daniel Lindemann agreed.

"Here, the record supports MDMC's motion to dismiss — a claim for malicious use prosecution cannot be brought 'until the litigation has been terminated in favor of the party who brought it,'" he wrote, citing case law on the issue.

Nicole Alexander **requested** permission in July to amend a countersuit against her old employer to include the malicious prosecution claim. She told the court McElroy Deutsch had sued her and put a pending litigation notice on her home without clear evidence that she had stolen any money from the firm, accusing the firm of mounting a "vendetta campaign" against her.

Alexander's husband, former McElroy Deutsch Chief Financial Officer John Dunlea, pled guilty and was **sentenced** to five years in prison for stealing over \$1 million from the firm through fraudulent bonuses.

In the related civil litigation, McElroy Deutsch accused Alexander of taking part in the scheme. Alexander accused the firm in her countersuit of unfairly firing her in retaliation for her husband's actions, which she has claimed she had no involvement with.

Judge Lindemann **allowed** Alexander to add the malicious prosecution claim to the countersuit in October, amended pleadings should be "liberally granted and without consideration of the ultimate merits of the amendment," but ultimately rejected her arguments in last week's ruling.

Alexander cited previous cases to argue that dismissing the pending litigation notice on her home would qualify as a "favorable termination," enabling her to pursue the malicious prosecution claim, but Judge Lindemann noted that even though that point is true, the pending litigation notice has not been dismissed yet.

"To be sure, the case law relied upon by Alexander does not save her position," Judge Lindemann wrote.

Judge Lindemann dismissed Alexander's without prejudice, noting that the ultimate ruling would be subject to the court's decision on whether to remove the pending litigation notice on her house.

Jeffrey Pollock, counsel for Alexander, told Law360 Pulse in an email that he respects the court's decision and hopes to pursue the malicious prosecution claim later in the litigation.

"We will refile Nicole's claims immediately once it is determined that McElroy — and never had a claim — against Nicole," Pollock said. "There is no evidence warranting either a lis pendens nor a constructive trust."

Counsel for McElroy Deutsch did not respond to a request for comment Monday.

Alexander is represented by Jeffrey Pollock of Pollock Law LLC.

McElroy Deutsch is represented by Kevin H. Marino, John D. Tortorella and Erez J. Davy of Marino Tortorella & Boyle PC.

Dunlea is represented by Anthony M. Gruppuso of Gruppuso Legal.

The case is McElroy Deutsch Mulvaney & Carpenter LLP v. Dunlea et al., case number UNN-L-002073-23, in the Superior Court of the State of New Jersey, County of Union.

--Editing by Drashti Mehta.