AFFIRM; and Opinion Filed January 14, 2016.

In The

Court of Appeals

Fifth District of Texas at Dallas

No. 05-15-00055-CV

HIGHLAND CAPITAL MANAGEMENT, LP, Appellant

V.

LOOPER REED & MCGRAW, P.C., N/K/A GRAY REED & MCGRAW, P.C., Appellee

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On Appeal from the 68th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-13-13352

MEMORANDUM OPINION

Before Justices Lang, Brown, and O'Neill[1]
Opinion by Justice O'Neill

This is a suit by a litigant against opposing counsel. The trial court granted the law firm's motions to dismiss and for summary judgment and rendered judgment for the law firm. In three issues, appellant Highland Capital Management, LP ("Highland") contends the trial court erred by dismissing its claims, denying a continuance, and granting summary judgment for appellee Looper Reed & McGraw, P.C., now known as Gray Reed & McGraw, P.C. ("Looper Reed"). Because we conclude that judgment was proper for Looper Reed on its affirmative defense of attorney immunity, we affirm the trial court's judgment.

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[1] The Hon. Michael J. O'Neill, Justice, Court of Appeals, Fifth District of Texas at Dallas, Retired, sitting by assignment.

BACKGROUND

Highland sued its former employee Patrick Daugherty in 2012 for breach of his employment agreement, misuse of confidential information, and other causes of action. Looper Reed represented Daugherty in that lawsuit (the "Daugherty Action"). In November 2013, while the Daugherty Action was still pending, Highland brought this suit against Looper Reed for its alleged wrongful actions during its representation of Daugherty. Highland asserted claims for theft, breach of the duty of confidentiality, conversion, aiding and abetting breach of fiduciary duty, tortious interference with contract, and civil conspiracy to commit theft, extortion, slander, and disparagement.

In its operative petition against Looper Reed, Highland alleged that Daugherty stole "60,000 documents containing more than 100,000 pages of confidential and privileged information" from Highland. Highland alleged that Looper Reed "attempt[ed] to extort Highland" through a "series of criminal acts" with respect to these documents. Highland asserts that Looper Reed's "criminal, malicious, and fraudulent conduct"[2] included:

> (i) reviewing, copying, and analyzing information it knew to be stolen and proprietary in furtherance of its scheme to extort, slander, and disparage Highland;
>
> (ii) threatening Highland that it would disclose Confidential, Proprietary, and Privileged Information, and disparage Highland if a monetary sum was not paid;
>
> (iii) refusing to return and cease use of Highland's Proprietary Information after receiving written notice of the nature of the stolen materials;
>
> (iv) lying to counsel for Highland regarding the scope of the theft and the stolen materials Looper Reed and Daugherty continued to maintain in their possession; and

[2] Highland summarized Looper Reed's alleged wrongful conduct in its appellate brief.

> (v) knowingly and actively facilitating Daugherty's wrongful disclosure of Highland's Privileged and Confidential Information, and then lying to Highland and the court in the Daugherty Action regarding the extent of counsel's involvement.

Highland also alleged Looper Reed knew of Daugherty's fiduciary duty to Highland, but aided and abetted Daugherty's breach of that duty:

> Looper Reed substantially assisted and otherwise induced Daugherty to breach his fiduciary duties to Highland by instructing him to provide over 60,000 documents containing more than 100,000 pages of Proprietary Information to it . . . advised Daugherty not to return all of the Proprietary Information he had stolen, and lied to counsel regarding the scope of the theft and stolen materials Looper Reed and Daugherty continued to maintain in their possession.

Highland also alleged Looper Reed aided and abetted Daugherty's breach of fiduciary duty "when it instructed and assisted Daugherty to reveal Proprietary Information to third parties including 'the Crusader Committee [identified as "a committee comprised of investors in the Highland Crusader L.P."], Grosvenor [Capital Management, L.P.], and the [Wall Street Journal],' and 'then lied to Highland and the Court regarding the extent of Looper Reed's involvement.'"

Looper Reed filed a motion to dismiss Highland's suit under rule 91a, Texas Rules of Civil Procedure, on the ground that the attorney immunity doctrine barred Highland's claims as a matter of law. The trial court granted the motion in part and dismissed Highland's claims for theft, breach of the duty of confidentiality, conversion, tortious interference with contract, and civil conspiracy to commit theft, extortion, slander, and disparagement. The trial court denied the motion as to Highland's claim for aiding and abetting breach of fiduciary duty.

Looper Reed then filed a traditional motion for summary judgment on Highland's remaining cause of action. Looper Reed asserted two grounds in its motion, that (1) Highland's claim was barred by the attorney immunity doctrine, and (2) Highland's claim was barred by collateral estoppel arising from the jury's findings in the Daugherty Action. Highland filed its

first amended original petition and responded to the motion for summary judgment. In its response, Highland addressed the two grounds raised by Looper Reed as well as requesting a continuance to conduct discovery on the attorney immunity defense.

In its final judgment, the trial court granted Looper Reed's motion for summary judgment on the "sole remaining claim" of aiding and abetting breach of fiduciary duty without stating the grounds for its ruling. In this appeal, Highland alleges the trial court erred by (1) granting Looper Reed's motions to dismiss and for summary judgment based on Looper Reed's assertion of attorney immunity; (2) denying Highland's motion for continuance to conduct discovery on Looper Reed's attorney immunity defense; and (3) in the alternative, granting Looper Reed's motion for summary judgment on the ground of collateral estoppel.

STANDARDS OF REVIEW

We review the grant of a rule 91a motion to dismiss de novo. *City of Dallas v. Sanchez*, 449 S.W.3d 645, 649–50 & n. 3 (Tex. App.—Dallas 2014, pet. pending); *see also Weizhong Zheng v. Vacation Network, Inc.*, 468 S.W.3d 180, 183 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) ("Determinations of whether a cause of action has any basis in law and in fact are both legal questions which we review *de novo*, based on the allegations of the live petition and any attachments thereto.").

We review the grant of summary judgment de novo. *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015). "'When reviewing a summary judgment, we take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor.'" *Id.* (quoting *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005)). "When a trial court's order granting summary judgment does not specify the ground or grounds relied on for its ruling, summary judgment will be affirmed on appeal if

any of the theories advanced are meritorious." *Carr v. Brasher*, 776 S.W.2d 567, 569 (Tex. 1989).

We review the denial of a motion for continuance for abuse of discretion. *Wal-Mart Stores Texas, LP v. Crosby*, 295 S.W.3d 346, 356 (Tex. App.—Dallas 2009, pet. denied). A trial court abuses its discretion "when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law." *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 800 (Tex. 2002) (citation omitted).

APPLICABLE LAW

The supreme court recently considered "the scope of attorneys' immunity from civil liability to non-clients." *Byrd*, 467 S.W.3d at 479. In *Byrd*, the husband in a divorce proceeding alleged that after the divorce decree was rendered, opposing counsel intentionally and knowingly included false information on a bill of sale for an aircraft to assist the wife in avoiding tax liability. *Id*. at 479. The husband asserted claims against the law firm for fraud, aiding and abetting, and conspiracy. *Id.* at 479–80. The trial court granted summary judgment for the law firm on the ground that the law firm was immune from liability to a non-client for actions taken in the course and scope of its representation of the wife in the divorce proceedings. *Id.* at 480. The court of appeals reversed, concluding that the law firm's allegedly fraudulent conduct had "nothing to do" with the divorce decree and was outside the scope of the law firm's representation of its client. *See id.* at 480–81.

The supreme court disagreed with the court of appeals and reinstated the trial court's judgment. *See id.* at 486. The court explained, "Byrd [the husband] essentially complains that the manner in which Cantey Hanger carried out a specific responsibility assigned to it by the divorce decree—transferring ownership of the plane awarded to Simenstad [the wife]—caused tax liabilities to be imposed on the parties to the divorce in a way that violated the decree." *Id.* at

485. The court concluded, "[m]eritorious or not, the *type* of conduct alleged falls squarely within the scope of Cantey Hanger's representation of Simenstad in the divorce proceedings." *Id.* (citing *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 406 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). Therefore, Cantey Hanger conclusively established that its alleged conduct was within the scope of its legal representation of Simenstad in the divorce proceedings, and summary judgment was proper. *Id.* at 485.

The court held that attorneys are immune from civil liability to non-clients if they conclusively establish that their alleged conduct was within the scope of their legal representation of a client. *Id.* at 484. The court discussed the purpose of the defense: "[t]his attorney-immunity defense is intended to ensure 'loyal, faithful, and aggressive representation by attorneys employed as advocates.'" *Id.* (quoting *Mitchell v. Chapman*, 10 S.W.3d 810, 812 (Tex. App.—Dallas 2000, pet. denied)). "An attorney is given latitude to 'pursue legal rights that he deems necessary and proper' precisely to avoid the inevitable conflict that would arise if he were 'forced constantly to balance his own potential exposure against his client's best interest.'" *Id.* at 483 (quoting *Alpert*, 178 S.W.3d at 405). If an attorney proves that his conduct is "part of the discharge of his duties to his client," immunity applies. *Id.* at 484.

The court explained that even wrongful or fraudulent conduct may fall within the scope of client representation. *Id.* at 483–85 (rejecting statement in *Toles v. Toles*, 113 S.W.3d 899, 911 (Tex. App.—Dallas 2003, no pet.), that attorney immunity does not extend to attorney's knowing participation in fraudulent activities on client's behalf). "[T]he focus in evaluating attorney liability to a non-client is 'on the kind—not the nature—of the attorney's conduct.'" *Id.* at 483 (quoting *Dixon Fin. Servs., Ltd. v. Greenberg, Peden, Siegmyer & Oshman, P.C.*, No. 01-06-00696-CV, 2008 WL 746548, at *8 (Tex. App.—Houston [1st Dist.] Mar. 20, 2008, pet. denied) (mem. op. on reh'g)). "Merely labeling an attorney's conduct 'fraudulent' does not and

should not remove it from the scope of client representation or render it 'foreign to the duties of an attorney.'" *Id.* at 483 (citing *Alpert*, 178 S.W.3d at 406).

But attorneys "are not protected from liability to non-clients for their actions when they do not qualify as 'the kind of conduct in which an attorney engages when discharging his duties to his client.'" *Id.* (quoting *Dixon Fin. Servs.*, 2008 WL 746548, at *9). The *Byrd* court cited examples of an attorney who participates in a fraudulent business scheme with his client or assaults opposing counsel during a trial. *See id.* Because such acts are "entirely foreign to the duties of an attorney" and "not part of the discharge of an attorney's duties in representing a party," they are actionable. *Id.* (citing *Poole v. Houston & T.C. Ry. Co.*, 58 Tex. 134, 137 (1882), and *Bradt v. West*, 892 S.W.2d 56, 72 (Tex. App.—Houston [1st Dist.] 1994, writ denied)).

Under *Byrd*, we focus on "the kind—not the nature" of Looper Reed's conduct to determine if Looper Reed met its burden to prove that its acts were within the scope of its representation of Daugherty. *See id.*

ANALYSIS

1. Dismissal Under Rule 91a

Under rule 91a, Texas Rules of Civil Procedure, "a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact." TEX. R. CIV. P. 91a.1. The rule further provides that "[a] cause of action has no basis in law if the allegations, taken as true, together with the inferences reasonably drawn from them, do not entitle the claimant to the relief sought." *Id.* In ruling on a rule 91a motion, "the court may not consider evidence," and "must decide the motion based solely on the pleading of the cause of action." TEX. R. CIV. P. 91a.6; *see also Guzder v. Haynes & Boone, LLP*, No. 01-13-00985-CV, 2015 WL 3423731, at *7 (Tex. App.—Houston [1st Dist.] May 28, 2015, no pet.) (mem. op.) (to review rule 91a motion granted on

affirmative defense of attorney immunity, court of appeals will "limit our analysis to the allegations in the live pleadings").

In its rule 91a motion to dismiss, Looper Reed contended that all of Highland's claims were barred by the attorney immunity doctrine. Looper Reed argued that all of the wrongful conduct alleged by Highland "are the *kinds* of things inherent to discharging duties to the client and thus remain protected by the attorney immunity doctrine even if characterized as wrongful." Highland responded that its allegations "went well beyond Looper Reed's discharge of its duties in representing Daugherty." It argued:

> Each of Highland's causes of action relate to Looper Reed's malicious conduct with respect to its illegal acquisition, retention, use, and threatened disclosure of Highland's proprietary and confidential information. . . . As alleged in the Petition, this malicious conduct included reviewing, copying, and analyzing information it knew to be stolen and proprietary in furtherance of its scheme to extort, slander, and disparage Highland, threatening Highland that it would disclose proprietary information and disparage Highland if a monetary sum was not paid, and refusing to return and cease use of Highland's proprietary information after receiving written notice of the proprietary and confidential nature of these documents and Highland's demand that the stolen materials be returned.

In *Alpert*, cited with approval by the supreme court in *Byrd*, the plaintiff made allegations similar to Highland's. *See Alpert*, 178 S.W.3d at 402; *Byrd*, 467 S.W.3d at 483. Robert Alpert, the plaintiff, sued the law firm of Crain, Caton & James, P.C. ("Crain Caton"), which was opposing counsel in a previous lawsuit Alpert brought against his former lawyer Mark Riley. *Alpert*, 178 S.W.3d at 402. Alpert alleged "Crain Caton conspired with Riley to defraud Alpert, and both aided and abetted, and tortiously interfered with, Riley's fiduciary duty to Alpert by (1) concealing Riley's malpractices and breaches of fiduciary duty . . . and (3) disparaging Alpert's reputation in the business community." *Id.* Alpert did not name Riley as a defendant. *Id.*

Crain Caton filed special exceptions to Alpert's petition, asserting attorney immunity. Alpert then amended his pleadings to allege that Riley appropriated proprietary and confidential information and used it "to make scandalous representations to the Internal Revenue Service and perhaps to other governmental entities." *Id.* at 403. Alpert alleged Crain Caton aided and abetted Riley's breach of fiduciary duty by failing to advise Alpert of Riley's actions, "attempting to blackmail" Alpert, allowing Riley to use confidential and proprietary information in Alpert's lawsuit, and failing to disclose that Riley "was turning Alpert over to government entities in order to obtain monies for himself and [Crain Caton]." *Id.* Thus in *Alpert*, as here, the plaintiff asserted claims against opposing counsel arising out of the misuse of proprietary or confidential information obtained through a breach of fiduciary duty by the opposing counsel's client. The trial court granted Crain Caton's special exceptions and dismissed the case. *Id.*

On appeal, the court discussed the rationale for an attorney's "qualified immunity" from civil liability to non-clients "for actions taken in connection with representing a client in litigation." *See id.* at 405–06. The court explained that "[t]his qualified immunity generally applies even if conduct is wrongful in the context of the underlying lawsuit," but cautioned:

> If a lawyer participates in independently fraudulent activities, his action is "foreign to the duties of an attorney." A lawyer thus cannot shield his own willful and premeditated fraudulent actions from liability simply on the ground that he is an agent of the client.

Id. at 406 (citations omitted).

Alpert contended that he asserted a valid cause of action against Crain Caton because his petition alleged that Crain Caton "committed wrongful acts outside of litigation" that "constitute[d] fraud or a conspiracy to commit fraud or breach of fiduciary duty." *Id.* The court disagreed, explaining, "Alpert does not allege that Crain Caton committed any acts or misrepresentations, independent of its representation of Riley, upon which he justifiably relied." The court concluded, "[a]bsent any allegation that Crain Caton committed an independent

tortious act or misrepresentation, we decline Alpert's invitation to expand Texas law to allow a non-client to bring a cause of action for 'aiding and abetting' a breach of fiduciary duty, based upon the rendition of legal advice to an alleged tortfeasor client." *Id.* at 407. Therefore, the trial court correctly dismissed the claim. *Id.*

The court also rejected Alpert's conspiracy to defraud claim. Alpert's allegations supporting this claim included complaints that "Riley, while represented by Crain Caton, alleged that Alpert committed bad acts in order to force Alpert to accede to demands for money," and "Crain Caton aided Riley in concealing the fact that he had reported Alpert to the IRS." *See id.* at 408. The court concluded:

> We hold that none of these alleged acts constitutes conduct "foreign to the duties of an attorney" in the representation of a client. Instead, the complained-of actions involve the filing of lawsuits and pleadings, the providing of legal advice upon which the client acted, and awareness of settlement negotiations—in sum, acts taken and communications made to facilitate the rendition of legal services to Riley. Such acts fall within the context of Crain Caton discharging its duty to represent Riley and are not the basis for an actionable fraud claim against attorneys for whom Alpert alleges neither (1) any legal privity, nor (2) any independent duty to Alpert, together with justifiable reliance upon any representation or act made by Crain Caton.

Id.

In this case, Highland characterized Looper Reed's actions as "criminal, tortious, and malicious." Nonetheless, the actions themselves—acquiring documents from a client that are the subject of litigation against the client, reviewing the documents, copying the documents, retaining custody of the documents, analyzing the documents, making demands on the client's behalf, advising a client to reject counter-demands, speaking about an opposing party in a negative light, advising a client on a course of action, and even threatening particular consequences such as disclosure of confidential information if demands are not met—are the kinds of actions that are part of the discharge of an attorney's duties in representing a party in

hard-fought litigation. *See id.* This is not to say, as the court recognized in *Byrd*, that attorneys are not otherwise answerable for misconduct in the course of representing a client in litigation. "[O]ther mechanisms are in place to discourage and remedy such conduct, such as sanctions, contempt, and attorney disciplinary proceedings." *Byrd*, 467 S.W.3d at 482. But "the remedy is public, not private." *Id.* (quoting *Renfroe v. Jones & Assocs.*, 947 S.W.2d 285, 287 (Tex. App.—Fort Worth 1997, writ denied)).

We conclude that "[m]eritorious or not, the *type* of conduct alleged falls squarely within the scope" of Looper Reed's representation of Daugherty in the Daugherty Action.[3] *See id.* at 485 (citing *Alpert*, 178 S.W.3d at 406). Accepting Highland's factual allegations as true, Looper Reed's conduct "involves acts or omissions undertaken as part of the discharge of the attorney's duties as counsel to an opposing party." *See Guzder*, 2015 WL 3423731, at *8. The trial court properly granted Looper Reed's rule 91a motion to dismiss Highland's claims for theft, breach of the duty of confidentiality, conversion, tortious interference with contract, and civil conspiracy to commit theft, extortion, slander, and disparagement. *See id.*

2. Summary judgment

Looper Reed moved for summary judgment on Highland's remaining claim of aiding and abetting a breach of fiduciary duty. A party moving for traditional summary judgment has the burden to prove that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Byrd*, 467 S.W.3d 481; *see also* TEX. R. CIV. P. 166a(c). Attorney immunity

[3] Highland also argues that *Byrd* is limited to an attorney's conduct occurring "in litigation." *See Byrd*, 467 S.W.3d at 481 ("[T]here is consensus among the courts of appeals that, as a general rule, attorneys are immune from civil liability to non-clients 'for actions taken in connection with representing a client in litigation.'") (quoting *Alpert*, 178 S.W.3d at 405). Highland contends that some of Looper Reed's conduct, such as "assist[ing] Daugherty in his efforts to extort Highland to pay him a sum in excess of $2,000,000," occurred "contemporaneous with [Daugherty's] departure" from Highland, before Highland filed suit against Daugherty. Highland argues *Byrd* does not apply to this "pre-litigation" conduct. But the court's reasoning in *Byrd* focuses on whether the conduct is "outside the scope of an attorney's representation of his client." *See id.* at 484. Even though Highland had not yet filed suit, negotiations and legal advice regarding Daugherty's departure from Highland were within the scope of Looper Reed's representation of Daugherty. We also note that the conduct at issue in *Byrd* took place after the divorce decree had been entered, arguably "post-litigation." *See id.* at 479. In any event, Highland's pleadings do not support the contention that Looper Reed's alleged actions were "outside the scope of representation" or not "part of the discharge of [Looper Reed's] duties to [its] client." *See id.*

is an affirmative defense. *Byrd*, 467 S.W.3d at 481. Therefore, to be entitled to summary judgment, Looper Reed "must have proven that there was no genuine issue of material fact as to whether its conduct was protected by the attorney-immunity doctrine and that it was entitled to judgment as a matter of law." *See id.*

Highland contends that Looper Reed's failure to offer any evidence in support of its motion for summary judgment[4] was fatal. When Looper Reed filed its motion for summary judgment, it did not present summary judgment evidence to counter the allegations in Highland's pleadings. Instead, Looper Reed relied on its argument that, taking Highland's allegations as true, its claims were barred by attorney immunity. We therefore look to Highland's operative petition to determine whether Looper Reed met its burden to prove that its conduct, as pleaded by Highland, was protected by the attorney immunity doctrine. *See, e.g., South Tex. College of Law v. KBR, Inc.*, 433 S.W.3d 86, 90 (Tex. App.—Houston [1st Dist.] 2014, pet. pending) (if pleading on its face conclusively shows moving party is entitled to summary judgment based on its affirmative defense, motion will be granted); *Uniroyal, Inc. v. Vega*, 455 S.W.2d 783, 784 (Tex. Civ. App.—San Antonio 1970, no writ) ("[a] defendant's motion for summary judgment may rest upon a clear demonstration by the pleadings alone that the cause of action is barred, as a matter of law, by affirmative defenses") *see also Trinity River Auth. v. URS Consultants, Inc.—Texas*, 889 S.W.2d 259, 261 (Tex. 1994) (affirming summary judgment "based solely on [the plaintiff's] pleadings, which indicated on their face" that statute of repose had run).

For its claim that Looper Reed aided and abetted Daugherty's breach of fiduciary duty, Highland relies on the same conduct alleged in support of its other causes of action. Highland explained in its brief that "[a]ll of Highland's claims—whether dismissed on Rule 91a or

[4] The only summary judgment evidence offered by Looper Reed pertained to the collateral estoppel ground of the motion. The affidavit of a Looper Reed attorney submitted with the motion did recite, however, that "Looper Reed has continuously represented Patrick Daugherty" in the Daugherty Action.

summary judgment—relate to and/or arise from Looper Reed's criminal, malicious, and fraudulent conduct with respect to its illegal acquisition, retention, use, lies regarding, and threatened and assisted disclosure of Highland's Proprietary Information." And as we have discussed, the conduct providing the basis for Highland's allegations is the type of conduct that falls within the scope of Looper Reed's representation of Daugherty in the Daugherty Action. *See Byrd*, 467 S.W.3d at 485. Because the facts alleged by Highland were sufficient to support the defense of immunity, Looper Reed did not need to present further evidence in support of its motion. The trial court did not err by granting summary judgment on Highland's claim for aiding and abetting a breach of fiduciary duty. We overrule Highland's first issue.

3. Continuance

In its summary judgment response, Highland sought a continuance in order to conduct discovery on Looper Reed's immunity defense. In its second issue, Highland argues the trial court abused its discretion in denying Highland's request. The trial court may order a continuance of a summary judgment hearing if it appears "from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition." TEX. R. CIV. P. 166a(g); *see also Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161 (Tex. 2004) (quoting rule). But here, as we have discussed, Looper Reed's motion was based on Highland's pleadings. It was Looper Reed's burden to establish as a matter of law that, even if all of Highland's allegations were true, attorney immunity barred Highland's claims. *See Byrd*, 467 S.W.3d at 484. Highland bore no burden of proof and was not required to present facts to "justify [its] opposition." *See* TEX. R. CIV. P. 166a(g); *see also Joe*, 145 S.W.3d at 161 (trial court did not abuse its discretion by denying motion for continuance before granting summary judgment on attorney's defense of official immunity). The trial court did not abuse its

discretion by denying Highland's motion for continuance of the summary judgment hearing. *See Crosby*, 295 S.W.3d at 356. We overrule Highland's second issue.

4. Collateral estoppel defense

In its third issue Highland challenges the trial court's summary judgment "to the extent the trial court dismissed Highland's aiding and abetting breach of fiduciary duty claim based on the affirmative defense of collateral estoppel." Because summary judgment was proper on the ground that Highland's claim for aiding and abetting a breach of fiduciary duty was barred by the defense of attorney immunity, we need not consider whether the claim was also barred by collateral estoppel, the alternative ground presented in Looper Reed's motion for summary judgment. *See Carr*, 776 S.W.2d at 569 (if order granting summary judgment does not specify grounds, summary judgment may be affirmed on appeal if any of theories advanced are meritorious). Resolution of Highland's third issue, therefore, is not "necessary to final disposition of the appeal." TEX. R. APP. P. 47.1.

CONCLUSION

We need not address Highland's third issue. Having overruled Highland's first and second issues, we affirm the trial court's judgment.

/Michael J. O'Neill/
MICHAEL J. O'NEILL
JUSTICE, ASSIGNED

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

HIGHLAND CAPITAL MANAGEMENT, LP, Appellant

No. 05-15-00055-CV V.

LOOPER REED & MCGRAW, P.C., N/K/A GRAY REED & MCGRAW, P.C., Appellee

On Appeal from the 68th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-13-13352.
Opinion delivered by Justice O'Neill; Justices Lang and Brown participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee Looper Reed & McGraw, P.C., n/k/a Gray Reed & McGraw, P.C. recover its costs of this appeal from appellant Highland Capital Management, LP.

Judgment entered this 14th day of January, 2016.