

## YOU AND THE LAW

**Class Certification in Fraud**

*Ryan Benner, Mike Stocz, Min Hyun Kim*

*Mullen v. GLV, Inc.*, No. 18 C 1465 (N.D. Ill. Jan. 23, 2019).

An Illinois mother filed a class action suit against a local volleyball club and its two co-owners for allegedly committing fraud when owners failed to disclose that one of the co-owners raped and sexually assaulted at least six underage women in the 1980s.

**Facts of the Case**

Robert Butler was a coach of a Chicago volleyball club. Further, Butler co-owned GLV Incorporated (GLV), a prestigious club that placed its members with top-level collegiate volleyball programs. While GLV showed consistent success with their member athletes, Butler was accused of raping and sexually assaulting underage female club members during the 1980s. The Butler family was also accused of impeding victims' testimonies. In January 2018, USA Volleyball officially banned Butler from the sport. Butler admitted to having sexual relations with some of the accusers but claims they were not underage. Butler further denied accusations of rape and sexual assault.

Lauren Mullen, whose daughters participated in volleyball programs at GLV, filed suit against Butler, his wife, and GLV. Mullen alleged that when the Butlers failed to disclose Butler's inappropriate behavior and sexual misconduct, they had committed an act of

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fraud. Mullen brought claims of common-law fraud, fraudulent concealment, and unjust enrichment, as well as unlawful deception under the Illinois Consumer Fraud Act (ICFA) and the Illinois Physical Fitness Services Act (IPFSA). Mullen also alleged that GLV's physical fitness contracts failed to comply with requirements of the IPFSA, thus rendering said contracts void and entitling Mullen to damages. Mullen proposed representing a class of individuals who, between February 27, 2013, and January 20, 2018, paid the defendants for youth volleyball instructions. Mullen proposed as an alternative a smaller class of only individuals who paid for volleyball activities through the sports performance program, which was supervised by Butler. The crux of this case revolved around defining class before moving forward with fraud charges.

### Case Outcome

A class action lawsuit is where one of the parties consists of individuals who are collectively represented by a single person. In *Mullen v. GLV Inc.*, Mullen was identified as the class representative for the primary and alternative classes. The primary class represented GLV members from 2013 to 2018 who paid for youth volleyball instructions, whereas the alternative class included members who took part in the sports performance program hosted by Butler. For a party to gain a class certification, the class must be ascertainable and meet the requirements of the Federal Rule of Civil Procedures 23(a) and 23(b). First, for 23(a), an ascertainable class must be clearly defined and based on objective criteria, which the court confirmed. Next, Mullen had to meet the numerosity standard, typicality standard, commonality standard, and adequacy of representation. The court ruled that both classes met the requirements of 23(a).

Rule 23(b) required Mullen to show that questions of law or fact, common to the class members, predominate over individual issues, to confirm the class as suitable. Many aspects of Mullen's claims were common among class members and could be solved on a class-wide basis. However, the court concluded that common issues did not predominate for the primary class because of differences among GLV's programs. This did not stop Mullen's class action case, as the court ruled that the alternative class satisfied the predominance requirement. With the class being ascertainable and meeting the requirements of 23(a) and 23(b), the court ruled that the alterna-

tive class action suit was a suitable method of adjudicating this case. The alternative class represents club members who paid money to the sports performance program hosted by Butler. This alternative group sought damages for fraud from Butler.

## Practical Implications

This case illustrates a practical defense for organizations on surviving a class action lawsuit. One way to defeat a class action formation is by portraying conflicting interests among potential class members. In *Mullen v. GLV Inc.*, the defense had evidence that parents continued to enroll their children in programs at GLV despite being aware of Butler's past. The defense also had evidence of parents signing waivers, which allowed their children to work with Butler, even given his past legal issues. The defense then argued that the members of Mullen's class proposals were not truly concerned about the accusations against Butler.

Butler's case alludes to the "pass-the-buck" mentality, wherein an organization may impose small or inconsequential punishments against a coach or administrator, but said coach or administrator may go elsewhere to work in a similar environment. Butler was banned for life from coaching volleyball from the Amateur Athletic Union (AAU) in 1995 because of his previous sexual assault allegations, yet USA Volleyball did not suspend Butler for life until 2018 (Assael, 2015; *Mullen v. GLV, Inc.*, 2019). A simple act of reporting suspensions across agencies may have stopped this case from ever occurring. One positive was that the AAU suspended Butler indefinitely instead of granting him a true pass-the-buck action by concealing his alleged acts. The pass-the-buck mentality for sexually deviant coaches is dangerous for children, and school administrators must be aware of this action. For example, Stephen Calton was a basketball coach at Foothill High School in Sacramento (CBS Sacramento, 2018). Calton was arrested for oral copulation with a minor in 2018. Previously, and while employed at Foothill High School, Calton was charged with misdemeanor battery, felony vandalism, and felony burglary. The Calton case emphasized the need for continuing background checks on employees, which may fall under a duty to hire a fit and competent staff (Cotton & Wolohan, 2017).

Schools and administrators can take a number of steps to minimize sexual deviancy. While background checks are important,

students should be informed of sexual deviancy and how to report these instances. Creating a safe reporting environment for students is a necessity. Schools should also build a strong community with parents and/or guardians to enhance communications surrounding sexual deviancy, including prevention. This open line of communication will allow for further education about sexual deviancy for parents and their children. Thus, creating an environment for parents to report potential sexually deviant activities will aid school administrators in combatting sexual deviancy.

## Conclusion

This case portrays a number of ripple effects stemming from sexual deviancy with a minor. Butler was able to work with young athletes for decades, although it could have been prevented. Schools and youth programs need to take every practical step in preventing harm to children, which could be done via extensive background checks, communication across organizations, and multifaceted sexual deviancy awareness campaigns. Class action suits may provide relief should a number of victims stem from one individual. This case shows the possibility of victims seeking relief from one person and gives a blueprint for defense should a class action suit arise against an organization.

## References

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