



## Alerts

### Litigation Funding Company Loses Effort to Recoup Proceeds from Attorney after Client Fails to Repay

March 23, 2018

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*Prospect Funding Holdings, LLC v. Saulter*, 2018 IL App (1st) 171277 (March 13, 2018) (Court opinion corrected 3/20/18)

#### Brief Summary

An Illinois appellate court recently ruled against a litigation funding company that had sought to enforce terms of a loan funding agreement against the debtor's attorney. The attorney's client had failed to repay the loan, and the litigation funding company then sought to pursue claims against the attorney.

The First District Appellate Court of Illinois affirmed the dismissal of a claim against the attorney based on his client's agreement with the funding company, the terms of which the attorney had agreed to comply with as they related to his handling of the settlement proceeds and payment of the funding company. The court held that the client's agreement for Minnesota to serve as the forum for settling any disputes under the contract was not binding on the attorney. It also held that the agreement represented champerty in violation of Minnesota law, and since the attorney's agreement was closely intertwined with the champertous agreement, the attorney's agreement to fulfill terms of the agreement was not enforceable. Finally, the court rejected the funding company's claim that the attorney's alleged violation of the Illinois Rules of Professional Conduct requiring the attorney to hold disputed funds in his trust account did not give rise to a cause of action against the attorney.

#### Complete Summary

An Illinois appellate court recently ruled against a litigation funding company that had sought to enforce terms of a loan funding agreement against the debtor's attorney. The attorney's client had failed to repay the loan, and the litigation funding company then sought pursue claims against the attorney.

The attorney had arranged for his client, a plaintiff in a wrongful-death suit, to borrow \$25,000 from a litigation funding company under a purchase agreement, which provided that any contract disputes were to be heard in and governed by Minnesota law. The client also signed an irrevocable letter of direction instructing her lawyer to hold settlement funds in his trust account and to pay the funder before disbursing funds to her. The purchase agreement contained a certification by the attorney, which he signed, acknowledging that all proceeds

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of the legal claim would be disbursed via the attorney's trust account and that he would abide by his client's written instructions regarding the purchase agreement with the funder. The client also signed an irrevocable letter of direction that the attorney disburse all proceeds of the case through his trust account and that no funds would be released to the client until after the funder was paid in full and the attorney's fees and costs were paid in full. The attorney signed an acknowledgement that he would honor the letter of direction.

The wrongful death case settled. Neither the client nor her attorney repaid the funder, which then sued them both in Minnesota. The court dismissed the attorney on jurisdictional grounds, finding that he was not a party to the purchase agreement and the forum selection clause. The client did not appear, and so the court entered a default judgment against her.

When the client failed to pay the default judgment, the funder sued the attorney in Illinois for breach of contract and professional negligence. The trial court granted the attorney's motion to dismiss, finding that the attorney was not bound by the purchase agreement, including the forum selection clause. Because the funder's agreement with the client was possibly barred by the doctrine of champerty, which was still the law in Minnesota, it would not bind an Illinois court.

The appellate court affirmed the dismissal of the claims against the attorney. The court held that the trial court was not obligated to give full faith and credit to a Minnesota default judgment that was not on the merits and was not directed against the attorney. It also found that the attorney's letter of direction and the purchase agreement were interdependent, and because the purchase agreement was unenforceable under Minnesota law, the letter of direction was similarly not enforceable.

The court also rejected the funder's argument that because the Rules of Professional Conduct required lawyers to hold disputed funds in their trust accounts until the dispute was resolved, he owed the funder a duty to hold the funds it claimed in his trust account and not disburse them until the dispute was resolved. The court noted that an alleged violation of the Illinois Rules of Professional Conduct does not give rise to a private cause of action. In affirming the dismissal of the claims against the attorney, the court directed the clerk to send a copy of the opinion to the Attorney Registration and Disciplinary Commission (ARDC) for further investigation.

### **Significance of the Case**

This case is significant because it clarified the lack of jurisdiction that a court would have over a lawyer with no ties to the state other than that he represented a client who had entered into an agreement with a funding company and had agreed to Minnesota as the forum for settling disputes, when the lawyer was not a party to that agreement. It also clarified that certain kinds of contracts, such as those that constitute champerty, which is illegal in some states, will not be enforceable in other states. Finally, it reaffirms the longstanding principle that a violation of the Rules of Professional Conduct does not form the basis for a civil claim against a lawyer.

For more information, please contact Terry McAvoy.

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