



Alerts

Illinois Appellate Court Reaffirms Necessity of Proving "But For" Causation in Transactional Malpractice Claim

January 8, 2019

Lawyers for the Profession®

Northern League v. Gozdecki, Del Guidice, Americus & Farkas, LLP, 2018 IL App (1st) 172407

Brief Summary

Plaintiff sued its former lawyers for legal malpractice due to their alleged failure to include an exit fee provision in a baseball league agreement after plaintiff entered a non-monetary settlement with four teams who left the league. The Illinois Appellate Court affirmed the trial court's entry of judgment in favor of defendants after a jury trial. Hinshaw [represented the law firm](#) in the trial and appeal.

Complete Summary

Plaintiff operated as an independent baseball league unaffiliated with major league baseball. In 2005, plaintiff's teams began to discuss the concept of exit fees. Later that year, two teams left the league, and plaintiff filed suit against them based on the league agreement exit fee provision. Ultimately, the case settled, but the two teams did not pay any money and did not return their stock.

In 2009, plaintiff retained defendant to draft a new league agreement. Defendants were told to keep the exit fee provision. To keep attorneys' fees low, the league's commissioner provided defendants with a first draft of the agreement, which did not contain a liquidated damages/exit fee provision. Multiple drafts of the league agreement were circulated, including one with a \$2 million liquidated damages provision. Defendants subsequently spoke with one of the owners who indicated that he did not want to sign with that provision. The final draft was substantially the same as the first draft circulated in March, except that the liquidated damages provision for expulsion was reduced from \$2 million to \$1 million, and the draft did not contain an exit fee provision. The league commissioner reviewed the agreement, approved the draft and representatives from the remaining six teams executed the league agreement.

Four of the teams gave notice that they would depart the league after the 2011 season to join a rival association. Ultimately, plaintiff and the departing teams entered into a mutual release and settlement in which no money was paid. Plaintiff claimed that if they had an exit fee, they would have filed a lawsuit

Attorneys

Terrence P. McAvoy

Katherine G. Schnake

Service Areas

Lawyers for the Profession®



against the departing teams and made a legal attempt to collect the exit fee. The departure ultimately caused the league to cease operations.

Plaintiff subsequently filed a legal malpractice claim against defendants alleging they failed to include a damages provision in the league agreement that would impose \$1 million in liquidated damages on teams that voluntarily withdrew from the league. Plaintiff sought as compensatory damages the \$4 million that it should have been able to collect from the departing teams, but for defendants' alleged malpractice. The case proceeded to trial, and the jury rendered a verdict in favor of defendants. Plaintiffs subsequently appealed.

On appeal, plaintiff argued, among other things, that it was error for the trial court to allow testimony from two owners of the league, who stated they would not have signed an agreement containing an exit fee provision. Relying on *King Koil v. Harris*, 2017 IL App (1st) 161019, ¶64, Illinois' First District Appellate Court held that in order to establish its case within a case, plaintiff was required to show that it would have prevailed against the departing teams on an agreement containing an automatic exit fee provision. Accordingly, plaintiff was required to establish that the owners in the league would have agreed to such a provision in the league agreement. The court found that it was proper to include the owners' testimony because the jury had to consider the parties' intent regarding exit fees.

Significance of Opinion

This case reaffirms the principle that in a transactional malpractice claim a plaintiff must prove that "but for" the attorney's negligence, the outcome of the underlying transaction would have been different and more favorable for plaintiff. Also, it shows that testimony from a witness—who was a party to the contract at issue and concerning their intent as regards the terms of the contract—is an excellent source of evidence to prove or refute the causation element of a legal malpractice claim in a transactional setting.

For more information, please contact Terrence P. McAvoy or Katherine G. Schnake