



## Alerts

### Seventh Circuit Affirms Dismissal of Legal Malpractice Action For Lack of Proximate Cause

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*UFT Commercial Finance, LLC v. Fisher*, No. 20-2012 (7th Cir., March 23, 2021)

#### Brief Summary

The Seventh Circuit affirmed the dismissal of a legal malpractice action filed by UFT Commercial Finance, LLC against the company's former chief legal officer because the company failed to show that the attorney had proximately caused the damages alleged.

#### Complete Summary

Plaintiff, UFT Commercial Finance, LLC (UFT), filed a legal malpractice action against the defendant, its former chief legal officer. The action followed an arbitration between UFT and the defendant wherein the defendant was awarded \$864,976 in unpaid wages and statutory penalties, along with an additional \$366,460, because defendant did not receive written notice when his employment contract was not renewed.

UFT, a commercial finance start-up company, alleged that its revenues were "inconsistent." As a result, the defendant (and other employees) were not always timely compensated for their work. As a result, defendant recommended and drafted "supplemental agreements" between UFT employees, including one for himself, allowing for accrual of unpaid wages, which would be paid upon receipt of additional revenues.

Following the breakdown of the relationship between defendant and UFT, he sought reimbursement of unpaid wages from UFT. Defendant demanded arbitration through his employment contract's mandatory arbitration provision, which he had drafted. The arbitrator found that UFT illegally withheld defendant's wages because the Illinois Wage Payment and Collection Act "imposes strict time limits on when wages...must be paid."

UFT then filed this legal malpractice action alleging that defendant's alleged negligence caused UFT to take the steps that triggered its liability relating to the arbitration award. According to UFT:

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defendant negligently failed to advise UFT on (1) the legality and consequences of the employment and supplemental agreements, and the mandatory arbitration clauses therein; (2) defendant's conflict of interest in executing his own supplemental agreement; (3) the benefits of independent counsel when negotiating defendant's own agreements; and (4) the benefits of purchasing D&O insurance.

Defendant filed a motion to dismiss, arguing, *inter alia*, that UFT failed to plead that defendant was the proximate cause of the damages relating to the supplemental agreement. The district court granted the motion and dismissed the case. In doing so, the court found that proximate causation was not pleaded because UFT did not allege facts showing that they would have opted against using the supplemental agreements had defendant fully advised them. On appeal, UFT argued that it did not need to plead causation as to the supplementary agreements because, under Illinois law, "causation is assumed if the attorney's recommended conduct is itself illegal." However, the Seventh Circuit rejected UFT's argument, stating that while UFT's conduct in not timely compensating defendant violated Illinois law, the supplemental agreement "did not aggravate or add to those violations." Instead, the Seventh Circuit noted that the supplemental agreements "merely memorialized the parties' agreement as to how much the company owed" defendant. The court stated that UFT needed to show that they would have taken a different course of action that would have avoided their liability to defendant to survive a motion to dismiss. Because UFT failed to adequately plead the necessary "but for" causation, the Seventh Circuit affirmed the dismissal.

## Significance of Decision

This case demonstrates the need for early analysis regarding the but for causation element of legal malpractice actions. Because plaintiff failed to properly plead the proximate cause of its claimed damages, its malpractice claim was dismissed.