



Alerts

Property Owners Allege Their Own Lawyers Helped Initiate Ruinous Downzoning, Case Dismissed Due to Statute of Limitations

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Scheinblum v. Schain Banks Kenny & Schwartz, Ltd., 2021 IL App (1st) 200798 (Aug. 6, 2021).

Brief Summary

An Illinois appellate court held that plaintiffs' legal malpractice claim, which accrued as soon as his business partners learned of their wrongfully caused injuries, was barred by the two-year statute of limitations.

Complete Summary

In 2015, plaintiffs, a limited liability company and its controlling member (Plaintiffs), engaged defendant law firm (Defendant) to provide legal services related to a planned hotel development project. Plaintiffs and a separate holding company (Holdings) initially retained Defendant to file a declaratory judgment action to enforce a contract against Plaintiffs' would-be business partners in the project (Business Partners).

Under the terms of the aforementioned contract, Plaintiffs and the Business Partners became members of Holdings in exchange for capital contributions. Plaintiffs contributed cash while the Business Partners contributed the real property upon which the parties intended to develop their hotel. The real property consisted of the first eight floors of a building located in the City of Chicago, already zoned for hotel use. The contract then called for Plaintiffs and the Business Partners to jointly own, develop, and operate the planned hotel as members of Holdings. The parties eventually settled, and the property was conveyed to Holdings in June of 2015. Thereafter, Plaintiffs began developing the hotel and incurring expenses.

On March 16, 2016, the Chicago City Council passed an ordinance downzoning the building. The property was no longer zoned for hotel use and development came to a halt. Plaintiffs met with the local alderman to see about "reversing the sudden change in the zoning for the [building] and resultant tremendous financial loss to [Plaintiffs], but was rebuffed."

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On March 13, 2017, the Business Partners and Holdings filed a lawsuit against the City of Chicago in the United States District Court for the Northern District of Illinois, alleging they were injured by "wrongful downzoning of real property." Plaintiffs were not parties to the District Court litigation beyond their membership in Holdings. The District Court complaint alleged that prior to the downzoning, the Business Partners and Holdings entered into contract negotiations to sell the property to a third party (Prospective Purchaser). The Prospective Purchaser sought to convert the entire building to wholly residential use, but the parties ultimately failed to close on the contract. After negotiations ended, the Prospective Purchaser met with the local alderman and, thereafter, the alderman sponsored legislation downzoning the building. The legislation only affected the building that the parties sought to develop into hotel space. The District Court complaint further alleged that because of the alleged "illegal spot zoning," it was no longer feasible to develop a hotel in the building and that one of the Business Partners was forced to file for bankruptcy. The Business Partners' interests in the building were sold in August 2017 as part of the bankruptcy proceedings, including the floors owned by Holdings.

On October 16, 2017, through discovery production in a separate lawsuit filed in the Circuit Court of Cook County, the Business Partners' obtained an email dated December 28, 2015, in which an attorney employed by the Defendant provided legal advice to the Prospective Purchaser. The Prospective Purchaser allegedly wanted to obtain the property owned by Holdings for a significantly discounted price by downzoning the building. The attorney's December 2015 email advised the Prospective Purchaser on how to get the building downzoned.

On May 29, 2019, Plaintiffs filed suit against Defendant for breach of fiduciary duty. Plaintiffs alleged that Defendant's counsel to the Prospective Purchaser caused the downzoning. Plaintiffs alleged that they did not discover Defendant's breach of duty or involvement with the Prospective Purchaser until the December 2015 email was produced on October 16, 2017.

Defendant moved to dismiss based on the two-year statute of limitations that applies to an attorney's provision of professional services, 735 ILCS 5/13-214.3. The statute incorporates the discovery rule, which "delays commencement of the statute of limitations until the plaintiff knows or reasonably should have known of the injury and that it may have been wrongfully caused." *Janousek v. Katten Muchin Rosenman, LLP*, 2015 IL App (1st) 142989, ¶ 13 (internal quotation omitted).

Defendant argued that the statute of limitations began to run in March 2016 when the Chicago City Council downzoned the building or, in the alternative, in March 2017 when the Business Partners filed suit against the City of Chicago. In response, Plaintiffs asserted that nothing about the facts of the downzoning should have led Plaintiffs to suspect "their own attorneys." Plaintiffs also contended that even when the Business Partners filed the District Court action in March of 2017, Plaintiffs still did not have notice of Defendant's involvement and there were no facts to suggest Defendant "was remotely possible for the damages." The trial court granted Defendant's motion to dismiss.

The appellate court affirmed the trial court's dismissal. It found that Plaintiffs knew of their injury in March 2016 when the downzoning ordinance was passed and that Plaintiffs knew that their injury was wrongfully caused by at least March 2017 when the Business Partners filed the complaint against the City of Chicago. The court reasoned that "because [P]laintiffs knew by March 2017 when they filed the federal lawsuit against the City of Chicago that they were injured by the downzoning, that their injury was wrongfully caused, and that [the Prospective Purchaser] was involved in the ordinance change, the statute of limitations began to run . . . and it was [P]laintiffs' burden to inquire further as to the existence of a cause of action."

Significance of Decision

This decision again illustrates that once a client knows (or reasonably should have known, including through his or her business dealings) that he or she was injured and the injury was wrongfully caused, he or she must act promptly to pursue possible claims or be forever barred, even against unknown participants. *See, e.g., Carlson v. Fish*, 2015 IL App (1st) 140526, ¶ 39 ("identification of one wrongful cause of [plaintiff's] injuries initiates [the] limitations period as to all other causes").