



Alerts

Illinois Appellate Court Reverses Summary Judgment for Defendants on Plaintiffs' Malpractice Claims Stemming From \$2.8 Million Estate Dispute

October 26, 2021

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Peter Smith Ely v. Pivar, 2021 IL App (1st) 200852-U (10/20/21)

Brief Summary

An Illinois appellate court held that the trial court improperly granted summary judgment in defendants' favor based on the six-year statute of repose governing legal malpractice actions and the five-year statute of repose governing claims against accounting professionals. The appellate court concluded there were disputed issues of material fact as to whether defendants fraudulently concealed the claims to toll the statute of repose. The court also held the trial court erred in refusing to allow plaintiffs to pursue a civil conspiracy claim as an alternate theory of liability.

Complete Summary

The lengthy facts giving rise to this dispute are summarized in the court's Rule 23 Order at pp. 3-10. They center on five trusts created in 1966 by Dr. Herman Smith to benefit his three daughters and his fourth wife, Mary Cade Smith, who died in 2014, as well as her brothers. Cade Smith was a beneficiary of each of the five trusts, while her brothers and Dr. Smith's daughters were also beneficiaries of one trust each. This appeal arose from the trial court's grant of summary judgment in favor of defendants on plaintiffs' claims related to the management of five trust accounts and the dismissal of plaintiffs' conspiracy claim as duplicative of their other claims.

In summary, in 2015, plaintiffs filed suit against defendants alleging that they failed to properly communicate with plaintiffs and advise them of their rights as beneficiaries of the trusts. Plaintiffs asserted that Cade Smith was the only beneficiary to receive distributions from the trusts, and she depleted the trusts before plaintiffs were even aware of their status as beneficiaries. Plaintiffs contended that defendants failed to inform plaintiffs of their rights and obfuscated Cade Smith's activities with regard to the trusts.

In plaintiffs' complaint, they alleged claims of gross negligence, legal malpractice, breach of fiduciary duty, conspiracy, fraud, and aiding and abetting. The trial court dismissed plaintiffs' conspiracy claim as duplicative of their other

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claims. The trial court subsequently dismissed plaintiffs' claims of legal malpractice, breach of fiduciary duty and fraud against the legal professionals (*i.e.*, a law firm and one of its former attorneys). Finally, the trial court granted summary judgment in favor of defendants on plaintiffs' remaining claims, finding that they were barred by the statutes of repose governing accounting and legal malpractice actions. Plaintiffs appealed and argued there were questions of fact as to defendants' fraudulent concealment that should have precluded the trial court's entry of summary judgment with respect to their alleged claims. Plaintiffs also argued the trial court erred in dismissing Count V (conspiracy) as duplicative and that plaintiffs should have been allowed to plead this count as an alternative theory of liability.

After a discussion of the law regarding Illinois' statutes of repose and fraudulent concealment, the appellate court concluded that the trial court erred in granting summary judgment in favor of defendants because the record revealed disputed issues of material fact as to whether defendants fraudulently concealed the cause of action to toll the statute of repose. The trial court had granted summary judgment on the basis that plaintiffs were put on "inquiry notice" of their cause of action and failed to exercise ordinary diligence within the statutory period to toll the statute of repose. The appellate court recognized that "where a plaintiff has been put on inquiry as to a defendant's fraudulent concealment within a reasonable time before the ending of the statute of repose, such that he should have discovered the fraud through ordinary diligence, he cannot later use fraudulent concealment as a shield in the event that he does not file suit within the statutory period." *Mauer v. Rubin*, 401 Ill.App.3d 630, 549 (2010). However, the appellate court found that the trial court's reasoning for granting summary judgment on this basis was flawed. For example, although the evidence suggested that some of the beneficiaries were aware of the *existence* of the trusts, there was no suggestion that the beneficiaries or any plaintiff was aware of any fraudulent concealment of their *rights* under the trusts. Also, the court concluded that because of the fiduciary relationship between defendants and plaintiffs as beneficiaries, defendants were required to disclose material facts to plaintiffs, even in the absence of plaintiffs' exercise of ordinary diligence.

Here, the appellate court noted that none of the plaintiffs or initial trust beneficiaries seemed to have ever received the trust documents. The court stated: "Without knowing what the trust documents provided, it would be impossible for the plaintiffs to know that they bore the onus for requesting such information." The court also stated: "Indeed, without the trust documents it would not be possible for the plaintiffs to know there were any allegedly improper distributions being made." The court rejected defendants' arguments and found there were genuine issues of material fact as to what plaintiffs knew with respect to the trusts and whether defendants knew that plaintiffs were aware of their rights. The trial court had found that plaintiffs were on inquiry notice, but the appellate court instead determined there was no suggestion in the record that plaintiffs were aware that any rights they had under the trusts were being violated and that defendants were fraudulently concealing those rights, as alleged.

Finally, the appellate court reversed the trial court's dismissal of plaintiffs' conspiracy count as duplicative of other theories of recovery because the dismissal was premature. The court expressed no opinion on the ultimate merits of such a conspiracy claim but simply held that the trial court should have allowed plaintiffs to pursue conspiracy as an alternate theory of liability.

Significance of Decision

This decision illustrates that under certain circumstances, particularly in situations involving trusts and estates, the alleged conduct and disclosures (or lack thereof) of an accounting or legal professional may preclude a court from finding, as a matter of law, that the statute of repose has expired.