



Alerts

Illinois Appellate Court Holds That Legal Malpractice Claim Was Barred by Six-Year Statute of Repose, and Collateral Estoppel Precluded Fraudulent Concealment Claim

July 5, 2016

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Prospect Development, LLC, et al v. Donald Kreger and Schiff Hardin, 2016 IL App (1st) 150433

Brief Summary

Plaintiff sued a lawyer and his law firm for alleged legal malpractice arising out of the collapse of a deal to develop a sports arena for the City of Prospect Heights, Illinois (City), and a "friendship loan" granted by plaintiff to the lawyer. The Illinois Appellate Court affirmed a dismissal of the case based on the six-year statute of repose.

Complete Summary

Defendant lawyer was a partner at defendant law firm, and served as the City's general counsel from 1977 through 2003. In 1994, the City hired plaintiff as a consultant to conduct a feasibility study into constructing and operating a sports arena. Prospect Development Corporation subsequently executed a redevelopment agreement to proceed with the project. The sports arena was never built. In January 2005, plaintiff and his companies sued the City for breach of contract, seeking to recover more than \$20 million. Notably, plaintiff alleged that defendant attorney, as one of the City's agents, approached plaintiff on multiple occasions to request a \$100,000 loan in connection with a personal financial problem. Plaintiff alleged that he granted the loan because he thought refusal would adversely affect the developer's ability to complete the project.

The court ruled in favor of plaintiff on the breach of contract claim. But it denied recovery based on plaintiff's "unclean hands." The court found that plaintiff engaged in bad faith when he failed to disclose his financial relationship with defendant lawyer. The appellate court affirmed.

On July 12, 2012, subsequent to the Illinois appellate court's decision in the underlying case, plaintiff filed this malpractice case alleging that defendants represented him in the "friendship loans," and that they provided negligent advice that caused plaintiff not to disclose the loans. Defendants moved to dismiss the complaint based on Illinois' six-year statute of repose. Plaintiff filed a second amended complaint and acknowledged that the complaint was filed

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outside the six-year statute of repose. Bur he contended that the lawyer's alleged misstatements and concealment suspended or tolled the statute of repose under the doctrine of equitable estoppel or fraudulent concealment. The trial court denied the motion to dismiss, finding that there was no injury to plaintiff until the conclusion of the bench trial in the underlying case.

Defendants moved for reconsideration and pointed out that the statute of repose runs from the date of the negligent act, not the date the negligent act causes injury. The trial court granted the motion to reconsider and dismissed the second amended complaint with prejudice.

The appellate court affirmed, noting that the trial court in the underlying case in July 2010 had already concluded that plaintiff knew or should have known in 2005 that "friendship loan" advice was potentially negligent and that plaintiff could not rely on the lawyer's advice. Because the trial court in its 2010 findings determined that plaintiff knew in 2005 that he could not rely on the loan advice, the doctrine of collateral estoppel precluded plaintiff from arguing that alleged negligence was fraudulently concealed until July 2010.

Significance of Opinion

The court's opinion affirms the principle that that the six-year statute of repose is triggered when the negligent act occurs, regardless of whether any action has accrued or whether an injury has resulted. Also, the court again recognized Illinois' well-settled policy that the statute of repose will not be tolled where a claimant should have discovered the fraudulent concealment through ordinary diligence, and a reasonable amount of time remains within the repose period to file suit.

For more information, please contact [Kate G. Schnake](#) or [Terrence P. McAvoy](#).

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