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Illinois Supreme Court Precludes Recovery of Economic Losses Resulting from Negligent Legal Representation

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Itemized Phone Bills

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public under the Local Fiscal Affairs Law.

The supreme court rejected the Newspaper's arguments. The court noted that regardless of how the word "detailed" was interpreted, attempting to expand the scope of the Right-to-Know Law by reference to the requirements of a related statute was inappropriate. In addition, the court found that when the Right-to-Know Law was enacted, the legislature did not intend for "records required by law to be made, maintained or kept" to apply to all the detailed information generated by computers.

No Common-Law Right of Access

The Supreme Court of New Jersey agreed with the appellate court's common-law analysis that the Board's privacy interests outweighed the public's interest in viewing the requested records. The supreme court found several problems with granting unlimited access to the information in the itemized phone bills. First, unlimited access would disclose the identity of persons whom public officials had called. The court found that such a disclosure would violate these individuals' right of privacy, which extends to the people and places called, the conversations, and the telephone bills.

Second, unlimited access would intentionally disclose the identity of persons who had called government officials. This type of disclosure, the court stated, could directly conflict with an express legislative policy or governmental need, such as protecting the identity of those who report child abuse to government social workers.

Third, unlimited access would violate the "official information" privilege provided by the New Jersey Evidence Rules, which prohibits disclosure of official information when such disclosure would be harmful to the interests of the public. For example, the court explained, a mayor might need to call a political activist to gain support on a sensitive issue and disclosure of the call could be disruptive.

The court acknowledged that the

public's interest in disclosure here was gaining access to sufficient information to evaluate potential misuse of public funds by Board officials. The court found, however, that the information already available to the Newspaper - the amount of the charges, the names of the officials who incurred the charges, and a comparison with past expenditures - was sufficient to satisfy the public's interest. Furthermore, the information available could satisfy the public's interest without disclosing the identity of third persons who called or were called by Board officials.

ACLU Solution Rejected

The court also rejected an argument submitted by the American Civil Liberties Union ("ACLU") on behalf of the Newspaper. The ACLU argued that the court should interpret the Right-to-Know Law to require disclosure of the detailed telephone bills only for official calls made by Board members. For personal calls, the ACLU recommended disclosure only of the cost and quantity of calls. The court disagreed, however, stating that the ACLU recommendation overlooked the official information privilege and failed to alleviate the risk of disclosing the identity of persons who called the officials.

Richard B. Vaughn

Illinois Supreme Court Precludes Recovery of Economic Losses Resulting From Negligent Legal Representation

In *Collins v. Reynard, et al*, No. 70325, 1991 Ill. LEXIS 104 (Ill. Oct. 31, 1991), the Illinois Supreme Court held that purely economic losses resulting from legal malpractice may not be recovered under a negligence theory. The exceptions for fraud or extracontractual duties did not apply in this case.

Background

Dorothy J. Collins ("Collins") hired Charles Reynard and the law

partnership of Reynard and Robb ("Reynard") to negotiate the installment sale of her business to Steven Legner ("Legner"). Legner later pledged the assets of the business to a bank. Upon Legner's subsequent default, the bank repossessed the assets of the business and sold them. Although Collins had a ready, willing, and able buyer, she was unable to complete the sale because the bank had already repossessed the assets.

Collins sued Reynard in the circuit court of Sangamon County, alleging that because Reynard negligently drafted or approved the sales contract, the contract did not reflect Collins' intention to retain a first and prior security interest in the business and the assets sold. As a result of Reynard's negligence, the bank had a security interest superior to that of Collins. Collins claimed her damages amounted to the money due under the installment contract, which included the principal and interest, the cost of collection, and attorney fees.

Reynard filed a motion to dismiss the negligence counts, arguing that Illinois law precluded recovery of economic loss for professional negligence under a tort theory. The circuit court denied Reynard's motion, but allowed Reynard to appeal to the appellate court on the question of the availability of such a cause of action. The appellate court reversed the circuit court and found that Illinois law precluded recovery of economic loss in tort cases, including legal malpractice, brought under a negligence theory. Collins appealed to the Illinois Supreme Court, and the Illinois Trial Lawyers Association supported her position with a supplemental brief.

Damages are Attributable to Economic Loss

The preliminary question before the Illinois Supreme Court was whether the damages sought by Collins were attributable to economic loss. Previously, the court had found that injuries resulting from legal malpractice were monetary, rather than personal. Further, in order to recover damages in the negligence action, Collins had to show harm beyond disappointment of expectations.

Collins argued that her losses were not economic because a distinction could be made between those losses due to Legner's breach of the installment contract and those due to Reynard's negligence. Collins stated that she sought only to recover the losses incurred because of Reynard's negligence, rather than for amounts due under her contract with Legner. The court, however, found no distinction. Regardless of the terminology used, Collins sought to recover economic losses in the amount due under the contract, including the principal, interest, cost of collection, and attorney fees.

Losses Do Not Fit an Exception

Having concluded that Collins sought only economic damages, the court then considered whether recovery of economic loss in tort cases, including legal malpractice, could be based on negligence. The leading case in this area, *Moorman Manufacturing Co. v. National Tank Co.*, 91 Ill. 2d 69 (1982), rejected a products liability complaint seeking solely economic loss under the tort theories of strict liability, negligence, or innocent misrepresentation. However, the decision set forth two exceptions, making economic losses recoverable when: (1) a person intentionally made false representations; or (2) when a person in the business of supplying information to guide others in their business transactions made a negligent representation.

The court here found Reynard's conduct did not fall within either exception, as neither intentional nor negligent misrepresentation was alleged. Further, the Restatement (Second) of Torts states that the second exception does not apply to lawyers, but to suppliers of information such as surveyors, newspapers, accountants, and credit bureaus.

Thus, the court found that recovery for economic loss under legal malpractice was limited to instances in which the attorney owed a duty not only to the client, but also to individuals that the client intended to benefit. The limited exception was inapplicable in this case because there was no

evidence that Reynard breached any extracontractual duty owed to Collins.

Contract, not Tort, Proper Cause of Action

The court noted that the denial of Collins's tort claim did not lead to an unjust result because Collins still had a pending contract claim. The court stated that contract law provided a better basis than tort law for the resolution of cases concerning the failed expectations of clients when the only losses sought to be recovered are economic. Contract law applies to the obligations that parties voluntarily undertake and their mutual expectations. Tort law, in contrast, imposes a standard of conduct designed to protect third parties from unreasonable risk. Failure to conform to the standard creates liability, even in the absence of a contract. Here, Collins freely entered into the contractual relationship with Reynard, and no further duties existed. Therefore, a contract action was the appropriate route for Collins to pursue.

The Dissenting Opinion

Chief Justice Miller's dissent argued that the majority improperly abandoned an established body of case law. Prior to this case, tort law had been recognized as a proper ground for recovery of malpractice actions, and courts had given no indication that tort-based recovery was improper.

The dissent also stated that it was inappropriate to place attorney malpractice actions within the *Moorman* doctrine. Throughout its development, the doctrine had denied tort remedies to a party whose complaint was rooted in disappointed contractual or commercial expectations. The theory behind denying recovery was that the party could have bargained for a guarantee or warranty against the type of harm suffered. Applying the theory behind the *Moorman* doctrine to the area of legal representation was difficult, however, because attorneys rarely will guarantee or promise a particular result to a client.

Rehearing was granted on February 3, 1992. No opinion has been

issued as of publication.

Stacy Feldman

Florida Supreme Court Bases Probate Attorney's Fees On Reasonable Rate, Not Fixed Percentage

In *In Re Estate of Platt*, 586 So.2d 328 (Fla. 1991), the Supreme Court of Florida held that in probate or condemnation procedures, attorney and personal representative fees could not be calculated as a percentage of the estate's value. Rather, reasonable fees should be assessed by applying the state statute governing attorney's fees, which allows consideration of an hourly rate.

Background

For the two years prior to his death, Lester Platt ("Platt") was incompetent. His attorney, George A. Patterson ("Patterson"), and NCNB National Bank ("NCNB") served as his co-personal representatives, and were compensated accordingly. Platt died leaving his two children, Patricia Platt Faulkner and Barbara Platt Swanson ("Daughters") as the beneficiaries of his seven million dollar estate.

At the beginning of probate, Patterson and NCNB advised the beneficiaries that their co-personal representative fees and attorney's fees would be 4.5 percent of the Platt estate, or approximately \$315,000. The Daughters objected to this method of payment and instead requested that Patterson and NCNB keep accurate time records of their services.

When probate closed two years later, Patterson and NCNB sought fees totalling \$489,877, about 6 percent of the value of Platt's estate. Patterson requested \$144,300 for attorney's fees and \$92,500 for his co-personal representative role. The bulk of Patterson's staff services consisted of typing and proofreading services. NCNB sought a fee for its work as corporate representative, plus an additional sum for extraordinary services. The Daughters asked the

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