

Tanks for Nothing: Court of Appeals Allows Negligence Claim In UST Removal Case To Proceed To Trial

The Michigan Court of Appeals has reversed a trial court's order granting judgment before trial to the defendant in a negligence suit that stemmed from the removal of underground storage tanks.

Goyette Mechanical Company (Goyette) was the successor to Gary Stephan, who had hired Superior Environmental Corp. (Superior) as a consultant to oversee the removal of underground storage tanks on his property. Wolverine Contractors (Wolverine) was hired to remove the tank. The arrangement was made on the assumption that payment for Wolverine's work would be provided under the Michigan Underground Storage Tank Financial Assurance fund program (MUSTFA). Funding for Wolverine's work under MUSTFA was rejected, however, because Stephan had failed to select Wolverine through the competitive bidding procedures that are required under MUSTFA.

Goyette sued Superior for professional malpractice, claiming that Superior was negligent in failing to ensure use of the proper bidding procedures, and that Goyette (through Stephan) was injured because it would now be responsible for paying Wolverine. Superior's defenses were: (1) Goyette could not show any injury, because Wolverine's agreement was based on the premise that Wolverine would look solely to MUSTFA for reimbursement for its work, and thus, Stephan was not personally obligated to pay Wolverine; (2) Stephan's claim for malpractice was not transferable to Goyette; (3) Goyette failed to support its claims with expert testimony; and (4) the statute of limitations had run, barring Goyette's claims.

Goyette disagreed with all of Superior's contentions, and specifically asserted that the agreement did not limit Wolverine to obtaining compensation solely from MUSTFA. The trial

court agreed with Superior concerning the agreement between Stephan and Wolverine, and granted Superior judgment before trial.

THE AGREEMENT

The court of appeals reversed the trial court, holding that judgment before trial was inappropriate. Such judgment can only be rendered when no factual disputes need to be resolved, leaving a court with only legal issues to decide. The court found, however, that a factual dispute existed regarding whether Stephan could be liable to Wolverine. The court held that, even if the agreement stated that Wolverine would look only to MUSTFA for compensation, Wolverine had a non-contractual claim against Stephan because it “expend[ed] its resources and labor on behalf of Stephan to clean up his property.” Because Wolverine had a claim against Stephan, a factual issue remained concerning the amount of compensation Wolverine was entitled to receive for the work it had performed.

Additionally, because Superior and Goyette advanced differing accounts of the agreement between Wolverine and Stephan, a factual dispute existed regarding the true substance of the agreement. Because factual disputes remained unresolved, judgment before trial was inappropriate.

ASSIGNABILITY OF MALPRACTICE CLAIMS

Superior also argued that Stephan’s malpractice claim against it could not be assigned to Goyette. The court disagreed, observing that only *legal* malpractice claims are not assignable, and none of the public policy reasons for prohibiting the assignment of legal malpractice claims would apply to Stephan’s claim.

NEED FOR EXPERT TESTIMONY

The court additionally ruled that Goyette was not required to support its claims with expert testimony. Such testimony is required “only in those cases where the jury cannot determine the applicable standard of care or determine whether the defendant’s conduct amounted to a breach of that standard of care, because such knowledge is beyond the common knowledge and experience of laymen.” The standard of care applicable to Goyette’s claim, however, was explicitly set forth in MUSTFA, so the jury would have no trouble ascertaining it. Furthermore, the trial court had determined that an “obvious goof up” had occurred. In such a situation, the jury would have no problem deciding whether the standard of care had been breached.

STATUTE OF LIMITATIONS

The appeals court agreed with the trial court that Superior’s statute of limitations defense had been waived. Such a defense must be raised in the answer to the complaint. Because Superior failed to raise the argument in its answer, and never sought to amend its answer to include the defense, that defense was waived.

Goyette Mechanical Company Inc. v. Superior Environmental Corp., Inc., Mich. Ct. App. No. 221244, November 9, 2001

H. Kirk Meadows