UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Orgone Capital III, LLC v. Keith Daubenspeck

Orgone Capital III, LLC v. Keith Daubenspeck, 912 F.3d 1039 (7th Cir. 2019) · No. No. 18-1815 · Decided January 7, 2019

SUMMARY

The Seventh Circuit affirmed dismissal of securities fraud claims as time-barred under Illinois' three-year statute of limitations (815 ILCS 5/13(D)). The court held that common law claims for fraud, breach of fiduciary duty, and negligent misrepresentation arising from securities purchases are governed by the Illinois securities law limitations period, regardless of choice-of-law provisions. The court also held that the limitations period begins to run upon inquiry notice—when the plaintiff has notice of facts that would lead a reasonable person to investigate—and that public disclosures such as a private research report and congressional hearings provided such notice. The district court properly considered the original complaint's allegations of notice even after amendment, as those facts were judicially noticeable public records.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Brennan; Wood; Easterbrook
JURISDICTION	Federal
DECIDED	January 7, 2019
DOCKET	No. 18-1815
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from district court's dismissal of complaint on statute of limitations grounds.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	published
PARTIES	Orgone Capital III, LLC et al. v. Keith Daubenspeck et al.

TOPICS

statute of limitations · choice of law · motions to dismiss · standard of review · appellate procedure · fraud

PRACTICE AREAS

Securities Litigation · Civil Procedure · Appellate Practice

QUESTIONS PRESENTED

1. Whether plaintiffs' claims are governed by Illinois securities law's three-year statute of limitations or by Delaware law with a longer period.
2. Whether plaintiffs' claims are time-barred under the three-year statute of limitations.

HOLDINGS

1. Claims arising from securities purchases, including common law claims for fraud, breach of fiduciary duty, and negligent misrepresentation, fall within the scope of the Illinois securities law and its three-year statute of limitations, regardless of choice-of-law provisions in some purchase agreements.
2. Plaintiffs' claims are time-barred because they had notice of facts that would lead to actual knowledge of the alleged violations more than three years before filing suit, specifically by April 2013.

KEY QUOTATIONS

> *"Thus, 'claims that do not directly invoke the [Illinois securities laws] may still fall within its statute of limitations,' including Delaware common law claims, like those plaintiffs assert."* (1044)

> *"Plaintiffs cannot avoid Illinois's statute of limitations by encasing their common law claims in a Delaware husk."* (1046)

> *"Even assuming plaintiffs shut themselves off from media, a simple internet search of 'Fisker' to check on the status of their investment—as any reasonable investor would do—would have revealed these troubling facts."* (1048)

FACTUAL BACKGROUND

Fisker Automotive was a luxury hybrid electric car manufacturer that attracted significant venture capital investment, including over $10 million from plaintiffs. After a highly publicized rise, Fisker collapsed in 2013, filing for bankruptcy. In April 2013, a private research firm (PrivCo) published a report detailing Fisker's mismanagement and imminent failure, and Congress held hearings on the matter. Plaintiffs alleged defendants misled them about Fisker's value and concealed material adverse information.

PROCEDURAL HISTORY

Plaintiffs filed class action in 2016 alleging securities fraud, breach of fiduciary duty, etc. District court dismissed original complaint as time-barred under Illinois securities law's three-year statute of limitations, granted leave to amend. Plaintiffs amended by deleting references to PrivCo report and congressional hearings and asserting Delaware law. District court dismissed amended complaint with prejudice. Plaintiffs appealed.

DISPOSITION

affirmed

CASES CITED

- Klein v. George G. Kerasotes Corp., 500 F.3d 669 (7th Cir. 2007)
- Tregenza v. Lehman Brothers, Inc., 678 N.E.2d 14 (Ill. App. Ct. 1997)
- Carpenter v. Exelon Enterprises Co., LLC, 927 N.E.2d 768 (Ill. App. 1 Dist. 2010)
- Ferens v. John Deere Co., 494 U.S. 516 (1990)
- Indep. Tr. Corp. v. Stewart Info. Servs. Corp., 665 F.3d 930 (7th Cir. 2012)
- Milwaukee Police Ass'n v. Flynn, 863 F.3d 636 (7th Cir. 2017)
- Brooks v. Ross, 578 F.3d 574 (7th Cir. 2009)
- O'Gorman v. City of Chicago, 777 F.3d 885 (7th Cir. 2015)
- Whirlpool Fin. Corp. v. GN Holdings, Inc., 67 F.3d 605 (7th Cir. 1995)
- McCoy v. Iberdrola Renewables, Inc., 760 F.3d 674 (7th Cir. 2014)
- Vukadinovich v. McCarthy, 59 F.3d 58 (7th Cir. 1995)
- Allstate Ins. Co. v. Countrywide Fin. Corp., 824 F. Supp. 2d 1164 (C.D. Cal. 2011)
- 188 LLC v. Trinity Indus., Inc., 300 F.3d 730 (7th Cir. 2002)
- General Electric Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074 (7th Cir. 1997)
- Watkins v. United States, 854 F.3d 947 (7th Cir. 2017)

CITED IN

- Orgone Capital III, LLC v. Keith Daubenspeck, Orgone Cap. III, LLC v. Daubenspeck, 912 F.3d 1039 (7th Cir. 2019)