

TABLE OF CONTENTS

PAGE ONE

Do I have a case?

PAGE TWO

Bankruptcy: no longer the easy way out of divorce payments.

PAGE THREE

Legislation on radon awareness.

PAGE FOUR

Brownfield development means Government money for you.

PAGE FIVE

Seniors beware.

PAGE SIX

Conventional wisdom, urban legends, RSP news, recent announcements, and more.



Robert Winter
Direct: 312.456.0374
rwinter@rsplaw.com

DO I HAVE A CASE?

You ask your lawyer, "Do I have a case?" and the lawyer answers: "Maybe, maybe not." For this, you're paying \$350 per hour? Whether you "have a case" is only part of the decision-making process by which you determine whether or not to file a lawsuit. Ultimately the important question is, "Should I file suit." Let's break this process down.

First, do you have a case? This really encompasses several questions. Did someone commit a wrong against you for which the law provides a remedy? Some wrongs have no legal remedy, and in those situations you don't have a case.

For example, your neighbor, who does everything she can to make your life miserable, just had the side of her house that faces yours painted magenta with neon green polka dots. Unless your community has aesthetic zoning laws, this is not a wrong for which there is a remedy and therefore, you have no case. On the other hand, wrongs for which the law does provide a remedy are things like breach of contract, trespass, conversion (theft) of your property or ideas, negligence (automobile accidents, medical malpractice and the like), defamation, non-payment of a debt, fraud and the list goes on.

Assuming someone has committed a wrong against you for which there is a legal remedy, we then need to ask: "Is there any reason not to sue?" This presumes that you and your lawyer have tried to resolve the matter amicably by an agreed settlement of the matter. As Illinois' most famous lawyer, Abraham Lincoln, once said: a lawsuit and the courthouse are choices of last resort. If the wrongdoer refused your settlement proposals, we then ask: "Is there any reason why I shouldn't sue?"

ROBBINS, SALOMON & PATT, LTD.

25 East Washington Street
10th Floor
Chicago IL 60602
Phone: (312) 782-9000
Fax: (312) 782-6690

2222 Chestnut Avenue
Suite 101
Glenview IL 60026
Phone: (847) 729-7300
Fax: (847) 729-7390

www.rsplaw.com

Here are just a few examples of reasons not to sue:

- *The damage done to you by the wrongdoer is minimal and the cost of the litigation far outweighs the benefit.*
- *You did something worse to the other guy, and if you sue him he will surely sue you back.*
- *You have other more important business or other relationships with the wrongdoer that you do not want to risk or damage.*
- *You have better things to do with your time, money and energy.*

There are plenty of other reasons, but you get the idea.

On the other hand, there may be reasons, business or otherwise, that prompt you to want to sue the wrongdoer even if it costs you an arm and a leg. It could be personal or a matter of principle. However, most attorneys urge clients not to sue for such reasons. Emotions don't run high forever. Eventually, you calm down and ask, "Why did my lawyer ever let me do this? Why did he ever let me file suit? What good is he if he can't protect me from me?"

The same is true for "principle." Vindicating principles can be very expensive. Unless you have money to burn, let the preachers and the prosecutors worry about enforcing principles and righting the wrongs of the world.

How do you decide whether to file suit, assuming you have a case? You and your attorney need to answer the

following questions: Is the financial loss or bodily injury caused by the wrongdoer a substantial loss or injury? If you do file suit, what is the likely outcome? Are you likely to win? Completely or only partially? Some lawyers try really hard not to answer these kinds of questions, but one worth his salt should be able to give you a pretty good idea of your chances of success.

As the case develops, your chances may change – sometimes for the better, sometimes not. If you want a fairly reliable answer to the question of the likelihood of success, you need to be honest with your lawyer. Tell him all the bad stuff as well as the good. He will learn it all eventually. The sooner he knows your case, with all of its warts, the better he can advise you.

You will also want to ask, what is this going to cost? Again, your lawyer should be able to give you price ranges for each step of the litigation, from investigation and filing suit through discovery and motions, on through trial. Of course, cases often settle before trial. That's why you want to know what each phase of the litigation will cost. Then you can decide whether the cost of the litigation is justified by the likely outcome.

So, if and when someone commits a wrong against you, remember to ask your lawyer both questions: "Do I have a case?" and "Should I file suit?"

✿ *Robert Winter*



Richard Fimoff
Direct: 312.456.0185
rfimoff@rsplaw.com

BANKRUPTCY: NO LONGER THE EASY WAY OUT OF DIVORCE PAYMENTS.

Financial problems are often said to be the major cause of marital discord and divorce. Or is it the other way around: that marital problems are the major cause of financial woes? People going through or completing a divorce often find themselves with more bills than they can cope. Frequently, a bankruptcy follows closely on the heels of a divorce.

The primary goal of any debtor filing for bankruptcy is to obtain a discharge from his or her debts. Whether through the use of a Chapter 7 bankruptcy with the liquidation of the debtor's non-exempt assets, or through a Chapter

13 bankruptcy reorganization installment payment plan, many divorced ex-husbands have sought a bankruptcy discharge of their obligations for property settlements, support and debt indemnification.

The widely publicized 2005 amendment to the bankruptcy law closed many of the avenues previously available to debtors to avoid their divorce obligations to pay support, property settlements and debt indemnification due their former spouses and children. No longer can a debtor seek bankruptcy relief from the support obligations and property settlements imposed in a divorce.

Under the old bankruptcy law, property settlement obligations and orders to pay marital debts that were included in a divorce decree or settlement were often dischargeable in a subsequent bankruptcy. There was a balancing test to determine if the property settlement was dischargeable. Property settlement obligations were dischargeable if payment of the property settlement hurt the debtor worse than non-payment hurt the former spouse and children. This allowed federal bankruptcy judges plenty of room within which to discharge the divorce obligations imposed by the state court divorce judge.

That's all changed now. The 2005 amendment to the bankruptcy law provides that domestic support obligations are *not* dischargeable in bankruptcy. The section of the old bankruptcy law that allowed the discharge of divorce property settlements has been reversed. Now any domestic support obligation arising from a divorce judgment, separation agreement or other order of the divorce court is not dischargeable in bankruptcy. This change includes obligations due to a spouse, a former spouse or a child of the debtor.

This change applies not only to property settlement obligations, but also applies to obligations to pay for marital debts and indemnification obligations contained in divorce judgments. While this revision to the law still does not prohibit the debtor from obtaining a discharge of the debt from the perspective of the creditor owed the debt, it does prohibit the debtor from discharging any indemnification or hold harmless provision in favor of the former spouse provided in the dissolution judgment. The old balancing test has been eliminated.

Another change in the bankruptcy law in 2005 was to make domestic support obligations a first priority for payment in Chapter 7 cases. Now, in Chapter 7 cases, all past due support obligations will be paid out of the assets in a bankruptcy estate ahead of all other debts.

After a divorce, with its adverse financial consequences, a Chapter 13 bankruptcy is often an alternative to a Chapter 7 bankruptcy liquidation. A Chapter 13 bankruptcy is an individual reorganization plan, with a modification of the debt or a repayment of the debt over a period of years. Generally, debts not paid in full under the plan are discharged upon completion of the payments under the plan. For an individual with property that would otherwise be lost to a bankruptcy trustee in a Chapter 7 bankruptcy, a Chapter 13 bankruptcy is often a more attractive alternative because, after the confirmation of the Chapter 13 plan, the property of the debtor continues in the hands of the debtor.

Although under the amendment to the bankruptcy law, domestic support obligations are not dischargeable in bankruptcy (whether Chapter 7 or Chapter 13), obligations for property settlements and obligations for debts under a divorce judgment can be put into a Chapter 13 bankruptcy plan, and paid under that plan. Thus, while domestic support obligations cannot be discharged in a Chapter 13 proceeding, the payments can be delayed and extended.

However, a Chapter 13 discharge is now conditioned on the debtor being current on all post-bankruptcy domestic support obligations and that payment of all pre-petition domestic support obligations provided for in the debtor's confirmed plan have been made.

✦ *Richard Fimoff*



Barry Glazer
Direct: 312.456.0187
bglazer@rsplaw.com

YET ANOTHER THING THAT OUR LEGISLATURE THINKS NEEDS FIXING: THE RADON AWARENESS PROBLEM.

Potentially unsafe levels of radon have been found everywhere. Effective this year, a new statute, the Illinois Radon Awareness Act, is supposed to increase public knowledge of the health risks associated with radon and encourage homeowners to test their homes for the presence of radon.

Radon is a radioactive gas released from the decay of naturally occurring uranium in soil. It is invisible, odorless and tasteless and is present in nearly every bit of air we breath. Generally it is at low – and allegedly safe – levels. However, anyone inhaling more than 4.0 picocuries of radon per liter of air (whatever that means) is at an increased risk for developing lung cancer.

Indeed, radon is the second leading cause of lung cancer. Cigarettes, of course, are the dubious possessors of the first place championship.

Radon can enter a home through cracks in floors, walls or foundations, sump pumps or soil in the crawl space. Radon levels can actually be higher in those homes that are well insulated and tightly sealed. Basements and first floors typically have the highest radon levels.

The only way to know if your home has elevated radon levels is to conduct a qualified test. Home kits are available from home improvement stores and governmental agencies like the Illinois Emergency Management Agency.

If indoor radon concentrations are elevated, licensed mitigation professionals using specialized equipment can discover where radon is entering and recommend how to reduce or get rid of the radon. The cost of an active mitigation system to get rid of the radon is typically between \$800 and \$2,500.

The Radon Awareness Act requires that all sellers of homes in Illinois must provide prospective buyers with

two documents (in addition to the myriad of non-radon documents already required). The first is a publication called "Radon Testing Guidelines for Real Estate Transactions." This provides information for the buyer, including test options, recommendations on who should conduct a radon test, guidelines on proper testing and information about what to do if the results show elevated levels of radon.

The second document is a "Disclosure of Information on Radon Hazards." This requires the seller to provide the buyer with any information or documents regarding the presence of elevated levels of radon at the home. The seller is not obligated to conduct any radon testing or mitigation activities. The law applies only to real estate that has one to four residential dwelling units. If a building has five apartments or more, it is exempt (those folks are on their own). Also excluded from the law are transfers pursuant to court order, through mortgage foreclosure, from a co-owner, pursuant to a will or death, from certain relatives, from relocation companies and by or to governmental entities (those folks too are on their own).

✦ *Barry Glazer*



R. Kynn Harp
Direct: 312.456.0378
rkharp@rsplaw.com

BROWNFIELD DEVELOPMENT: GOVERNMENT MONEY FOR YOU.

A "brownfield" is a parcel of real estate that is either actually contaminated or is perceived to be contaminated, and has an active potential for redevelopment. For many decades, owners, developers and lenders were reluctant to become involved in brownfields because of the possible monetary liability that could result from association with environmentally contaminated property.

That is beginning to change. It is now possible to entirely avoid liability for environmental contamination created by others. In many cases, it is also possible to obtain government funds to pay for the added cost of redeveloping environmentally contaminated sites. The combination of these two factors, coupled with the often very desirable "in-fill" location of brownfield sites, can make brownfield site redevelopment extremely profitable.

Brownfields exist in virtually every town and city. They often consist of abandoned, unused or underused commercial and industrial properties. Brownfields include everything from old gas stations to closed factories, warehouses, dry cleaners, industrial sites and other properties that have ceased to be used for their highest and best use because of concerns they may be environmentally contaminated.

Besides new limitations on liability for dealing with environmentally contaminated property, there is no longer any question that public funds may be used to facilitate private redevelopment, even if a private developer is to reap the financial benefit. Economic redevelopment has been found by the United States Supreme Court to be a proper public purpose for which states, cities and towns may expend public funds.

Private redevelopment of environmentally contaminated property is a recognized proper public purpose.

Private developers who do not obtain public funds for redevelopment when warranted will find themselves at an economic disadvantage with their competitors who are obtaining public redevelopment incentives. Exploring the availability of public funds should be included in the pre-acquisition entitlement process leading up to real estate development, especially when redeveloping recognized brownfield sites. Taking advantage of these financial entitlement programs can turn a marginally profitable redevelopment project into a thriving economic success.



Robert Winter
Direct: 312.456.0374
rwinter@rsplaw.com

SENIOR CITIZENS: BEWARE

The U.S. Securities and Exchange Commission is warning senior citizens to beware of so-called “free lunch” seminars being offered by some stockbrokers and investment firms. Seniors should be particularly skeptical of solicitations that urge them to hurry to get free advice before some financial disaster befalls them. Such tactics sometimes cause seniors to make decisions without allowing time to consider their options or to consult with independent advisers.

The SEC says that many free lunch seminars fail to comply with SEC regulations and more than half use misleading advertising. The brokers at these events routinely pass themselves off as financial experts when they are often little more than salesmen.

Some go so far as to prohibit attorneys and accountants from attending the seminars with their senior clients. This enables the salesmen to pressure the seniors to buy immediately without an independent advisor’s presence.

The so-called public-private partnership arising when public funds are made available for private economic development can create a win-win scenario. The recognized benefits to local communities include revitalization of blighted and decaying areas, decreased pollution, increased jobs, expanded retail choices for local residents, relief of the tax burden on local residents, increased value in the tax base, and improvements in the quality of life. The recognized benefit to private developers is greater profit.

Those who would like more information about this topic should give us a call and ask for our free booklet, ***Brownfield Development: Public Money for Private Development.***

✿ *R. Kymn Harp*

On the other hand, not every free lunch seminar is a scam. Many are run by legitimate brokers and other professionals who offer good advice. The key is to determine whether the speakers are agents of the company whose products they are touting, and whether lawyers and accountants are welcome to attend. Read the advertising carefully. Does it convey a sense of urgency?

Seminars run by professionals, without any particular investments to sell and for which there is no pressure to attend, are more likely to be legitimate.

Seniors who have questions about the appropriateness of a seminar or the product being offered should consult family members or their attorney or accountant.

Let’s be careful out there.

✿ *Robert Winter*



Richard Lee Stavins
Direct: 312.456.0371
rstavins@rsplaw.com

CONVENTIONAL WISDOM

Everything you never wanted to know, and more.

WORDS TO LIVE BY

From your editor/publisher/copyboy...

If you feel so depressed that you're beginning to think no one cares if you're alive, try missing a couple of mortgage payments.

GREAT URBAN LEGENDS OF THE LAW

Fact or Fiction?

It's illegal to fire an employee without a good reason.

A: Mostly fiction. If a worker has an employment agreement, he generally cannot be fired except for good cause. Employment contracts are common in unionized industries, in the upper echelons of corporations and in the sports and entertainment industry. But outside of those few settings, most people do not work under an employment contract.

Workers who do not have an employment contract are deemed to be employees at will. That means that they can be fired for absolutely no reason whatsoever or for the most incredibly unfair reason. "You're fired because I don't like the brand of pen you use," is a perfectly valid reason to fire someone who is terminable at will. Indeed, "You're fired because of absolutely no reason whatsoever," and "You're fired and I'm not going to tell you why," are also perfectly valid reasons to fire an employee at will.

On the other hand, no one – whether he has a contract or not – may be fired because of a legally protected reason. That means that an employee may not be fired because of his race, color, creed, religion, gender, age (if over 40), handicap, place of national origin, ancestry, military record, marital status, and a few other such reasons.

"You're fired because I don't like the color of your skin" is an absolutely abhorrent and invalid reason to fire someone, but "You're fired because I don't like the color of your shirt" is quite lawful.

RECENT ANNOUNCEMENTS

All the news you can use...

Alan Wolf is the new grandfather of Naomi Alyssa Weiler of Durham, North Carolina. Naomi enters the world at 6 lbs 13 oz. Alan now has three daughters and three granddaughters.

NEW ATTORNEY

We are pleased to announce that attorney **R. Kymm Harp** has joined the firm as a partner. Kymm brings to the firm 30 years of experience in real estate, banking, finance and business organization law. He is admitted to practice in Indiana and New Mexico, as well as Illinois. Kymm is the author of the *Brownfield Development* article on page 4 of this issue of the RSP Quarterly.

ACHIEVEMENTS OF NOTE

Michael Schlesinger, a member of the adjunct faculty of the John Marshall Law School, recently attended the global legal skill conference sponsored by Facultad Libre de Derecho in Monterrey, Mexico. Michael moderated a panel that discussed teaching opportunities outside the United States and Canada.

Tracy Stevenson was selected by the board of governors of the Illinois Association of Defense Trial Counsel to be the co-chair of its trial academy. The academy teaches young attorneys the intricacies of trial by jury. Tracy also is teaching a class on insurance fraud prevention at the National Insurance Crime Bureau.

Crystal Kontny authored a chapter on negotiating commercial transactions and **Larry Woodard** authored a chapter on condominium law, for the Chicago Bar Association's real estate manual for young lawyers. Larry also delivered a talk at the bar association on conveying property through assignments of beneficial interests in land trusts.

Andrés Gallegos authored an article on dialysis facility licensing, registration and certification which appeared in the national trade magazine *Renal Business Today*.

ROBBINS, SALOMON & PATT, LTD.

Marshall K. Brown
James M. DeZelar
Richard H. Fimoff
Andrés J. Gallegos
Richard L. Gayle
Barry Glazer
Howard S. Golden
R. Kymm Harp
Crystal L. Kontny
Andrew W. Lapin

Eric G. Patt
Stephen P. Patt
Nathaniel J. Pomrenze
Diana H. Psarras
Robert F. Rabin
Jeffrey M. Randall
Andrew M. Sachs
Paul T. Saharack
Edward S. Salomon
Michael D. Schlesinger

Donna M. Shaw
Kimberly A. Sherman
Caroline S. Smith
Scott D. Spears
Richard Lee Stavins
Tracy E. Stevenson
Robert McKenna Winter
Alan J. Wolf
Larry N. Woodard
Dr. Michael J. Hriljac *Of Counsel*

The publication of this legal newsletter by Robbins, Salomon & Patt, Ltd. is a service to clients, other professionals and friends of the law firm. Written entirely by members of the law firm, we welcome any comments or questions about topics covered in this issue. This legal newsletter is not intended as a replacement for individualized legal advice. Consultation with a lawyer is recommended before implementing any of the ideas or suggestions discussed in this issue. The contents of this law bulletin may be quoted or reproduced if credit is given to the source.

©2008 Robbins, Salomon & Patt, Ltd.