

Not Reported in N.E.2d, 59 Ill.Ct.Cl. 316, 2007 WL 7076039 (Ill.Ct.Cl.)
(Cite as: 59 Ill.Ct.Cl. 316 (Ill.Ct.Cl.), 2007 WL 7076039 (Ill.Ct.Cl.))

Court of Claims of Illinois.
 ABARI CONSTRUCTION COMPANY, INC.,
 Claimant,
 v.
 The STATE OF ILLINOIS, Respondent.
(No. 04-CC-0976--Claim dismissed.)

Order filed May 30, 2007.

Statute of Limitations

Contractor's claim against the Illinois Department of Transportation ("IDOT") seeking over \$2 million in delay damages under a 1996 bridge reconstruction contract was dismissed as having been filed beyond the statute of limitations where claim was filed beyond 60 days after the final level review by IDOT as mandated by the Standard Specifications.

Statute of Limitations--Administrative Procedure Act

The 60-day limitations period imposed by the Standard Specifications for between the Claimant and IDOT is a term to a contract agreed upon by the parties to this action and not a rule subject to the Administrative Procedure Act.

Statute of Limitations--Shorter Limitations Period Pursuant to Contract

Illinois law is clear that parties can contractually agree to shorter limitations period to replace a statute, as long as it is reasonable.

Statute of Limitations--Shorter Limitations Period Pursuant to Court of Claims Act

The Court of Claims Act specifically allows for the applicability of shorter limitations periods than that set forth by the Court of Claims Act.

West Headnotes

LAKOMA LAW FIRM, LLC ([MATTHEW LAKOMA](#), of counsel), for Claimant.

LISA MADIGAN, Attorney General (**JILL OTTE, Assistant Attorney General, of Counsel**), for Respondent.

STORINO, J.

ORDER

*1 This cause coming before this Court on Respondent's Renewed Motion to Dismiss Amended Complaint, Claimant's Motion for Leave to File Second Amended Complaint, and Respondent's Objection to Claimant's Motion for Leave to File Its Second Amended Complaint, these matters having been briefed, oral argument having been heard, and this Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Claimant's Motion for Leave to file Second Amended Complaint is hereby granted. Respondent's Objection to Claimant's Motion for Leave to File Its Second Amended Complaint is denied and Respondent's Renewed Motion to Dismiss Amended Complaint is denied as moot.
2. This Court however, hereby adopts Respondent's arguments in its prior Motions to Dismiss and in Respondent's Objection to Claimant's Motion for Leave to File Second Amended Complaint and hereby dismisses Claimant's Second Amended Complaint with prejudice as having been filed beyond the contractual limitations period of sixty (60) days.

Discussion

The claim before this Court is a Contractor's claim against the Illinois Department of Transportation ("IDOT") seeking over \$2 million in delay damages under a 1996 bridge reconstruction contract. In April of 2001, Claimant commenced a contract claim before IDOT seeking compensation for its alleged delay damages in accordance with the provisions of the Standard Specifications for Road and Bridge Construction. The Standard Specifications mandate three levels of review of any contract claim prior to seeking adjudication before the Court of Claims. Pursuant to the Standard Specifications, a contractor is given 60 days to file a claim before the Court of Claims after a final decision at the third level of review by IDOT, otherwise the claim is released and waived. On January 22, 2003, IDOT issued its final decision denying Claimant's contract claim. Said decision was

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issued to the President of Claimant, Abari Construction Company, Inc., as opposed to its attorney, to whom previous correspondences were sent. Claimant delayed in forwarding this final decision to its attorney until September of 2003.

On October 1, 2003, over 8 months after the issuance of the final decision, Claimant, through its attorney, filed its initial Complaint with the Court of Claims. IDOT moved to dismiss arguing that Claimant's action was barred by the 60-day limitations period imposed in the contract between the parties. After the parties fully briefed the motion to dismiss, but prior to the decision on the motion, Claimant asked for leave to file an Amended Complaint, which was granted by this Court. IDOT renewed its previous motion to dismiss again arguing for dismissal based upon the 60-day limitations period. This renewed motion was also fully briefed before this Court. In response to this renewed motion, Claimant also filed a motion for leave to file a Second Amended Complaint.

The Second Amended Complaint filed by Claimant is identical to the Amended Complaint, the only change being the addition of Count XX seeking a declaration that the imposition of the contractual 60-day limitations period is a violation of the rulemaking procedures of the Administrative Procedure Act. Both parties have fully briefed this issue in the previous motions before this Court, and it is this Court's ruling that the imposition of the contractual 60-day limitations period in this matter is not a violation of the rulemaking procedures in the Administrative Procedure Act. Accordingly, Claimant's argument is without merit and this matter is barred as having been filed beyond the applicable limitations period.

The 60-day limitations period imposed upon the Claimant is a term to a contract agreed upon by the parties to this action and not a rule subject to the Administrative Procedure Act as asserted by Claimant. The rule making procedures of the Administrative Procedure Act do not apply to matters relating to a contract. (See 5 ILCS 100-5-35(c)). Illinois law is clear that parties can contractually agree to shorter limitations period to replace a statute, as long as it is reasonable. See [Medrano v. Production Engineering Co.](#), 332 Ill. App.3d 562, 774 N.E.2d 371 (2002); [Florsheim v. Travelers Indemnity Co. of Illinois](#), 75 Ill. App. 3d 298, 30 Ill. Dec. 876, 393 N.E.2d 1223

(1979). Moreover, the Court of Claims Act specifically allows for the applicability of shorter limitations periods than that set forth by the Court of Claims Act. (See [705 ILCS 505/22](#)). As such, Claimant's argument is without merit and does not defeat the imposition of the contractual 60-day limitations period.

It is undisputed that the parties entered into a valid contract in 1996 for the reconstruction of a bridge. Both parties agreed to the Standard Specifications for Road and Bridge Construction, Adopted July 1, 2004. In that document, which is part of the contract, the parties chose to shorten the general statute of limitations applicable to these cases in commencing an action before this Court of Claims.

Specifically, Article 109.09(d) of the Standard Specifications provides, in pertinent part, follows:

Full compliance by the Contractor with the provisions specified in this Article is a contractual condition precedent to the Contractor's right to seek relief in this Court of Claims. The Director's written response shall be deemed a final action of the Department. Unless the Contractor files a claim for adjudication by the Court of Claims within 60 days after the date of the written response, the failure to do so shall constitute a release and waiver of the claim.

Claimant argues that the 60-day limitation period of the Standard Specifications is unreasonable because it drastically reduces what would be a 5-year limitation period under the Court of Claims Act to a limitation period of 60 days. This argument is without merit. This Court notes that, even if applicable, the 5-year limitation period would have begun to run at a much earlier date, for the actual cause of contract action would have accrued on the date of the contract breach. The 60-day limitation period did not commence at the accrual of the action, but began to run at the end of the IDOT claims procedure, which occurred at a much later date. As such, Claimant was allowed a significant time in recognizing its right to adjudicate its claim before this Court. In fact, the complaint alleges that the contract work was complete by August of 1998. Thus, even under the seemingly longer limitation period, Claimant would have been required to file its action by no later than August of 2003. Under the 60-day limitation term, Claimant was required to pursue action by March 22, 2003. Claimant brought this claim before the Court in

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October of 2003, beyond both the contractual limitation period and any other arguable limitation period. Therefore, any argument that the 60-day contractual limitation period is unreasonable is without merit. Moreover, Claimant fully participated in the claims procedure as set forth in the Standard Specifications, and was admittedly aware of the 60-day limitation period imposed. Accordingly, this Court finds the 60-day contractual limitation period to be reasonable and applicable to the case at hand.

The statute of limitations is jurisdictional on the Court, and failure to comply leaves the Court powerless to enter any award. (See 705 ILCS 505 22(h)); [Illinois Bell Telephone Co. v. State, 35 Ill. Ct. Cl. 345](#); [Conglis v. State, 14 Ill. Ct. Cl. 73](#); [Weber v. State, 19 Ill. Ct. Cl. 33](#); [Moore v. State, 11 Ill. Ct. Cl. 491](#). This Court has no jurisdiction and even defenses of estoppel do not apply. This Court acknowledges that the delay in filing the claim before this Court is the fault of the Claimant itself for failing to promptly forward the final decision to its attorney and is by no means the fault of Claimant's attorney. Although this Court is dismayed by IDOT's failure to forward the final decision letter to Claimant's attorney, the Court cannot identify a violation of any rule or contractual term on behalf of IDOT for sending the final decision directly to Claimant, the actual party to the contract. Although dismissal for failure to timely file is a harsh result, the Court of Claims does not have equitable jurisdiction to allow Claimant to utilize equitable defenses to overcome the Court's strict limitations provisions. [Reyes v. Board of Trustees of University of Illinois, 48 Ill. Ct. Cl. 170 \(1996\)](#); [in re Application of Ward, 35 Ill. Ct. Cl. 398 \(1981\)](#). As such, the equitable arguments made by Claimant regarding its failure to file its claims before this Court within the 60-day limitation period cannot be considered.

For these reasons, it is hereby ordered by this Court that Claimant's Second Amended Complaint is dismissed with prejudice as having been filed beyond the 60-day contractual limitation period.

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