



IN PARI DELICTO DOCTRINE PREEMPTED BY STATUTE IN ACCOUNTING CONTEXT

Under the equitable common-law doctrine of in pari delicto, Massachusetts courts have historically precluded a plaintiff who has committed fraud from recovering damages from an accountant who negligently failed to detect that fraud. This month, however, the Massachusetts Supreme Judicial Court (“SJC”) held, in *Chelsea Housing Authority v. McLaughlin*, that G.L. c. 112, § 87A ¾, preempts the common-law doctrine of in pari delicto as it applies to the negligent conduct of accountants and auditors in failing to detect fraud.

Chelsea Housing Authority involved a suit by the plaintiff (“CHA”), an agency responsible for administering Chelsea’s low-income housing programs, against its former accountants for failing to detect fraudulent conduct of its former executive. The executive had obtained internal approval for a salary in excess of administrative limits and then submitted false salary figures to the Department of Housing and Community Development. CHA, in turn, misallocated federal funds to pay the executive the impermissibly high salary.

The SJC vacated the lower court’s grant of summary judgment in favor of the accountants and held that, consistent with § 87A ¾, “where a plaintiff sues an accountant for negligently failing to detect the fraudulent conduct of the plaintiff, the plaintiff may recover damages from the accountant, but only for the percentage of fault attributed to the accountant.” In reaching its conclusion, the SJC examined, in detail, the history behind passage of G.L. c. 112, § 87A ¾. The SJC recognized that § 87A ¾ does not expressly state that it was intended to repeal the in pari delicto doctrine in the accounting context, nor did any of the Legislative history indicate that the Legislature considered that doctrine when enacting § 87A ¾. Nevertheless, the SJC explained that a common law rule may be replaced by statute if the rule is preempted by “necessary implication,” meaning that the rule is so inconsistent with the statute that both cannot stand.

The SJC concluded that § 87A ¾ could not coexist in harmony with the doctrine of in pari delicto. As the SJC explained, Section 87A ¾ provides for proportional liability for accountants only where others have committed fraud. If the in pari delicto doctrine applied in those circumstances, an accountant who negligently failed to detect fraud would never be held liable and there would therefore never be an occasion to include the plaintiff’s percentage of fault in a calculation of liability, as contemplated by the statute. The SJC was not willing to permit the doctrine to render the proportional liability aspect of the statute “superfluous.”

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