

Construction Law in North Carolina

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You Cannot Have Your Cake and Eat It, Too! (Estoppel) (law note)

July 7, 2011 by Melissa Brumback



We've talked previously about the [statute of limitations](#) here at *Construction Law in North Carolina*. A recent North Carolina Court of Appeals case gives a vivid example of one exception to a statute of limitations defense— estoppel.

Estoppel is the act of **lulling a party into not filing a lawsuit** through your actions. You are then deemed “estopped” from asserting the statute of limitations as a defense.

That is, a party cannot use the statute of limitations as a sword to benefit from his own conduct which induced a plaintiff to delay filing suit. Proof of actual fraud or bad faith is not required; however. The “basic question” is whether defendant’s actions “have lulled the plaintiff into a false sense of security and so induced [the plaintiff] not to institute suit in the requisite time period.” [Cleveland Const., Inc. v. Ellis-Don Const., Inc. et al.](#), ___ N.C. App. ___, ___ S.E.2d ___ (5 April 2011).

In that case, the general contractor on a public hospital project, Ellis-Don, asked Cleveland Construction Inc. (CCI), one of its subcontractors, to delay making its own delay claim on the project. The general contractor sent a letter to CCI asking it not to sue it in order to present a “unified front” to the State during the State Construction Office’s administrative claims process.

The Court found that Ellis-Don affirmatively represented to CCI that it was pursuing CCI’s claims as part of its overall claim against the State. The Court further found that

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Ellis-Don affirmatively represented to CCI that CCI should not initiate a claim because that would jeopardize the success of the total contractor recovery with the State. As such, Ellis-Don **lulled CCI into a false sense of security**, as CCI reasonably believed that Ellis-Don would pass through to CCI any proceeds attributable to its claim from Ellis-Don's settlement with the state. Ellis-Don was, therefore, **equitably estopped from asserting the statute of limitations** when CCI later sued Ellis-Don on those same claims.

Here, Ellis-Don tried to benefit from including CCI's claim in its overall claim at the State Construction Office, and later benefit from CCI's failure to adhere to the time limits imposed on bringing claims. The Court held that a contractor cannot have its cake and eat it too. (After all, too much cake is bad for anyone).

Practice Note: Do not count on the theory of equitable estoppel for untimely claims. A court could decide you were not reasonable in holding back from initiating legal action, in which case your claim would be denied. Equitable theories are to prevent injustice, but you cannot and should not rely on them.

Have you ever delayed filing suit on the promises or statements of another party? Did the Court find the other party was equitably estopped from claiming a statute of limitations defense, or did the Court allow such a claim? Share your experience in the comments section below.

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