

Corporate & Financial Weekly Digest

September 9, 2011 by Michael S. Gordon

Defendants' Ineffective Document Review Procedure Results in Finding of Waiver

Co-authored by Elizabeth Langdale

The U.S. District Court for the Northern District of Illinois held that defendants, Village of Park Forest and individual defendants (collectively, the Village), waived privilege as to inadvertently produced documents where they failed to take reasonable precautions to prevent the disclosure of privileged material and subsequently failed to correct their error in a timely manner. Citing defendants' lack of an adequate explanation of their review process, their failure to check the production before sending it to the plaintiffs and their ultimate failure to identify and withhold from production any of the 159 documents on their privilege log, the court determined that the steps taken to prevent disclosure were not reasonable. Further, the Court found no unfairness in allowing the plaintiffs to access the privileged documents and ultimately held the Village responsible for its failure to take reasonable care to safeguard the privilege and to rectify the error once it occurred.

Thorncreek Apartments III, LLC v. Village of Park Forest, et al., Nos. 08 C 1225, 08 C 0869, 08-C-4303 (N.D. III. Aug. 9, 2011).

Katten Muchin Rosenman LLP Charlotte Chicago Irving London Los Angeles New York Washington, DC