



Alerts

Landscaping Co. Gets Clipped: Malpractice Action Time-Barred and Fraudulent Concealment Claim Rejected

December 3, 2020

Lawyers for the Profession®

County Line Nurseries & Landscaping, Inc. v. Kenney, 2020 IL App (1st) 200615 (11/20/20)

Brief Summary

An Illinois appellate court held that plaintiffs' malpractice action was time-barred because plaintiffs knew, or reasonably should have known, of their wrongfully caused damages more than two years before they filed. The court also rejected plaintiffs' fraudulent concealment claim. Another division of this same court has previously (and aptly) noted: "[t]he application of a statute of limitations, especially in legal malpractice claims, can be tricky and technical, and, as this case shows, deadly to those who fail to adequately anticipate its possibility." *Carlson v. Fish*, 2015 IL App (1st) 140526, ¶1 (Hyman, J.).

Complete Summary

Plaintiffs, County Line and its owner (Collins), were involved in a contract dispute with Glencoe Park District (the Park). In September 2013, County Line filed a complaint against the Park for breach of contract, seeking approximately \$75,000. The Park filed a counterclaim for breach of contract. During the case, County Line was represented by a number of different attorneys.

On May 29, 2014, the defendant attorney (defendant) attended a status hearing and addressed the court, although he had not filed an appearance for County Line. Defendant advised the court that he had spoken to Collins and was reviewing the file. The court continued the case to June 10, 2014, and ordered County Line to file an appearance by then. On June 10, 2014, defendant asked for another continuance and the case was continued to June 18, 2014. On June 18, 2014, defendant again appeared, but did not file an appearance, and Collins was present in court. After the status hearing on June 18, 2014, defendant raised the prospect of a settlement with the Park's counsel. The parties discussed a settlement with a one-time payment of \$17,500 to County Line. The Park's counsel informed defendant the next day that the Park agreed to the settlement. Counsel e-mailed defendant a release for Collins to sign by June 24, which would enable the court to dismiss the case at the next scheduled status on June 26, 2014.

Attorneys

Terrence P. McAvoy

Service Areas

Lawyers for the Profession®

Professional Liability



On June 24, 2014, the Park's counsel was contacted by an attorney named Joshua Slade, who informed him that Collins spoke to him about representing County Line. Slade stated that he had no knowledge of a settlement. The Park's counsel then contacted defendant, who was unaware of Collins contacting other attorneys. Defendant stated that he had sent the release to Collins by June 24, but was unable to contact him. On June 26, 2014, yet another attorney (Zohaib Ali) filed an appearance for County Line. Ali stated that he was unaware of a settlement and requested a continuance. The case was continued to July 24, 2014. On July 1, 2014, the Park filed a motion to enforce the oral settlement agreement and for sanctions. County Line filed a response, which denied that there was any settlement. County Line argued that defendant was not authorized to make settlement offers on County Line's behalf. County Line's response was supported by Collins' affidavit, wherein he acknowledged that he and defendant had discussed the possibility of a settlement with the Park's counsel, but that Collins did not believe the case was settled when he left court on June 18. Collins further stated that on August 4, 2014, his attorney forwarded to him the Park's motion to enforce the settlement and for sanctions. Collins claimed that it was at that time he first "read and review[ed] the purported settlement agreement that [was discussed] on June 18, 2014."

On September 23, 2014, the trial court granted the Park's motion to enforce the settlement and for sanctions. The court found that Collins' affidavit was not credible and that Collins had changed his mind after the agreement. Alternatively, the court found that Collins had ratified defendant's acts of engaging in settlement discussions. County Line appealed. On December 23, 2015, the court affirmed the trial court's finding that the parties had entered into an enforceable settlement agreement and that Collins had ratified. The court, however, reversed the trial court's order for sanctions. *County Line*, 2015 IL App (1st) 143776, ¶37. On remand, the trial court dismissed the case with prejudice on July 14, 2016.

On October 26, 2016, plaintiffs filed this legal malpractice action. In their amended complaint, they alleged that on June 18, 2014, defendant "on his own authority and decision" entered into settlement negotiations with the Park." Plaintiffs claimed that defendant never informed Collins of the settlement offer or his acceptance. Plaintiffs further alleged that defendant "fraudulently concealed ... that he had entered into the settlement agreement," and instead told Collins that he was not representing County Line. Plaintiffs claimed that Collins did not become aware of a cause of action against defendant until December 23, 2015, when the appellate court affirmed the trial court's order to enforce the settlement. Plaintiffs claimed that because of the alleged concealment, the time to file suit against defendant was extended to December 23, 2020.

As damages, plaintiffs claimed that they were forced to accept a nominal settlement and incurred attorneys' fees in appealing the court's order enforcing the settlement. Plaintiffs alleged that they would not have incurred these damages but for defendant's alleged conduct. Defendant's motion to dismiss argued that plaintiffs should have known of their injury by September 23, 2014, when the trial court entered its order enforcing the settlement. Plaintiffs thus had until September 23, 2016 to file their malpractice complaint. Because they filed their complaint more than two years later, their claims were time-barred. The trial court denied the motion. Defendant filed a motion to reconsider, which was granted and the case was dismissed with prejudice.

The appellate court affirmed. The court initially noted that in Illinois, legal malpractice actions "must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought." 735 ILCS 5/13-214.3(b). This provision incorporates the discovery rule, which tolls "the start of the period of limitations until the injured party knows or reasonably should know of the injury and knows or reasonably should know that the injury was wrongfully caused." *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶20. The court then stated:

Importantly, knowledge that an injury was wrongfully caused does not equate to "knowledge of a *specific* defendant's negligent conduct or knowledge of the existence of a cause of action." (Emphasis in original.) Rather, such knowledge is present when an injured person "becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved." At this point, the statute of limitations "begins to run and the party is under an obligation to inquire further to determine whether an actionable wrong was committed." [internal citations omitted].

The court held that plaintiffs' injury resulted from the June 18, 2014 settlement agreement. Even if Collins was not aware of the settlement on June 18, he acknowledged in his affidavit that he knew of the purported settlement on August 4, 2014. The court recognized that "[f]or purposes of a legal malpractice action, a client is not considered to be injured unless



and until he has suffered a loss for which he may seek monetary damages." *Northern Illinois Emergency Physicians*, 216 Ill.2d at 306. Generally, pursuant to Illinois' adverse judgment rule, that loss occurs when plaintiff has suffered an adverse judgment or dismissal of the underlying action due to the attorney's negligence. See, e.g., *Lucey v. Law Offices of Pretzel & Stouffer*, 301 Ill.App.3d 349, 356 (1998). Here, the trial court enforced the settlement on September 23, 2014. Plaintiffs thus should have had sufficient knowledge that they had suffered an injury, and of its potentially wrongful cause then, on September 23, 2014. At that point, plaintiffs had a duty to inquire further as to whether an actionable wrong had been committed. The statute of limitations therefore commenced on September 23, 2014, and plaintiffs had until September 23, 2016 to file their malpractice claim. Because plaintiffs failed to do so, their complaint was time-barred.

Plaintiffs then argued fraudulent concealment, which is often-raised by plaintiffs in malpractice actions when faced with a statute of limitations defense. They contended that defendant fraudulently concealed that he was acting as County Line's attorney without authority or consent and that he settled the case. Plaintiffs asserted that pursuant to Section 13-215 (Illinois' fraudulent concealment statute), they had five years from the time they learned of an injury to file suit. Plaintiffs argued that the five-year limitations period began on June 18, 2014, at the earliest. The court correctly noted that concealment can only be achieved through affirmative acts or representations "calculated to lull or induce a claimant" to delay filing suit. *Barratt v. Goldberg*, 296 Ill.App.3d 252, 257 (1998). The court recognized, however, that it is well-settled law in Illinois "that if the plaintiff discovers the fraudulent concealment and a reasonable time remains within the relevant limitations period" to file an action, Section 13-215 does not apply to extend the limitations period. The court concluded that despite defendant's alleged concealment, plaintiffs had sufficient knowledge of a wrongfully caused injury no later than September 23, 2014, when the trial court enforced the settlement. Plaintiffs still had ample time to file a complaint within the two-year limitations period, which did not expire until June 18, 2016. The five-year fraudulent concealment statute thus did not apply.

Significance of Decision

This case is noteworthy because the court held that plaintiff's malpractice was time-barred because plaintiffs knew or reasonably should have known (objectively) of their wrongfully caused injuries more than two years before they filed suit. Also, plaintiffs' fraudulent concealment claim was rejected because they still had ample time to file suit within the original limitations period when they admittedly discovered the alleged "concealment." Experienced counsel, as well as "dabblers," are well-advised to heed Justice Hyman's cautionary notice quoted in the [Brief Summary above](#).