



Alerts

Illinois Supreme Court Applies Adverse Judgment Rule, Rejects Statute of Limitations Defense in Legal Malpractice Claim

February 1, 2022

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Suburban Real Estate Services, Inc. v. Carlson, 2022 IL 126935 (Jan. 21, 2022)

Brief Summary

The Illinois Supreme Court held that hiring new counsel and incurring legal fees did not, by itself, trigger the two-year statute of limitations to file a legal malpractice action (735 ILCS 5/13-214.3(b)) because plaintiffs did not suffer actual damages.

Complete Summary

Plaintiffs were a real estate management company and its sole owner. In February 2006, plaintiffs and a business partner joined together to create a new company, each with a 50% ownership interest. In May 2010, plaintiffs retained defendants for legal advice on unwinding the relationship. Based on defendants' advice, plaintiffs sent their business partner a "break-up" letter that outlined the steps that would be taken to terminate the relationship.

In August 2010, the business partner sued plaintiffs, alleging that plaintiffs breached their fiduciary duties by taking the actions outlined in the "break-up" letter. In October 2010, plaintiffs retained a new law firm to defend them in the breach of fiduciary duty action. In April 2013, the trial court voiced its opinion that plaintiffs' prior attorneys, *i.e.*, defendants, "one hundred percent" committed malpractice, and in June 2015, entered judgment in favor of the business partner. Plaintiffs then filed a legal malpractice action against defendants in May 2016.

Defendants moved for summary judgment, asserting that the claim was barred by the two-year statute of limitations (735 ILCS 5/13-214.3(b)). Defendants argued that the statute of limitations commenced in November 2010, when plaintiffs retained new counsel and began paying them attorneys' fees. Defendants argued that plaintiffs knew or should have known of the injury no later than April 2013, when the trial court voiced its opinion on defendants' committed legal malpractice. In response, plaintiffs argued that defendants' advice could not have caused any actual injury if plaintiffs had prevailed in the underlying lawsuit, and plaintiffs' claim thus did not accrue until June 2015,

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when an adverse judgment was entered against them in the underlying litigation. The trial court agreed with defendants' analysis and granted summary judgment in their favor. The appellate court reversed (2020 IL App (1st) 19153), and the Illinois Supreme Court now affirmed the reversal.

The Supreme Court focused on the "actual damages" necessary to sustain a legal malpractice action and reaffirmed that "a client is not considered 'injured' unless and until they have suffered a loss for which monetary damages may be sought." The court noted that this framework is typically applied where the alleged wrongdoing occurred in the underlying litigation, but that it may also be applied in the transactional context where, "after following counsel's legal advice, the client is subsequently sued by a party involved in the transaction." The court distinguished plaintiffs' action from cases where there is a pecuniary loss directly attributable to an attorney's neglect prior to any adverse judgment or settlement. Instead, the court found that plaintiffs did not suffer any actual injury, thus triggering the statute of limitations, until they "became obligated to pay a sum that they otherwise would not have had to pay but for defendants' alleged negligence," which was at the time of the adverse judgment in June 2015.

Significance of Decision

This decision clarifies that hiring new counsel and incurring legal fees, by itself, will not trigger the two-year statute of limitations where it remains uncertain whether the client will suffer a pecuniary loss. See, e.g., *Northern Ill. Emerg. Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill.2d 294, 307 (2005) (where damages are speculative, no cause of action for malpractice exists).