



Alerts

Final Due Date for Filing Estate Taxes Triggered Statute of Limitations in Third-Party Complaint for Contribution

December 12, 2013

Lawyers for the Profession® Alert

Kadlec v. Sumner, 2013 IL App (1st) 122802

Brief Summary

Plaintiff, an executor of an estate, filed a legal malpractice action arising out of the defendant lawyer's failure to timely file the estate's tax returns. The defendant lawyer then filed a third-party complaint against various accountants for contribution alleging they failed to timely file the estate's tax returns. The appellate court affirmed the trial court's dismissal of the third-party complaint and held that the two-year statute of limitations for contribution claims did not apply because at the time the plaintiff filed the main action, the two-year statute of limitations for accounting malpractice actions had already expired. Plaintiff had entered into a tolling agreement with the defendant attorney, but not with the accountants.

Complete Summary

Plaintiff, the executor of decedent's estate and trustee of decedent's trust, hired defendant attorney to represent the estate and trust pertaining to administration of both entities. Both the plaintiff and defendant knew that the estate tax returns were due to be filed on or before February 15, 2006. Defendant prepared a request for extension to file the estate tax returns until August 16, 2006. The IRS granted the extension and both plaintiff and defendant knew that the returns were due on August 16, 2006. However, defendant failed to file the tax returns.

Plaintiff then hired new attorneys who filed the estate tax returns on January 28, 2008. On February 15, 2008, plaintiff and defendant entered into a tolling agreement whereby they mutually agreed to toll the statute of limitations to the legal malpractice action that plaintiff was contemplating against defendant to September 21, 2009. A month later, March 2008, the IRS notified the plaintiff that the estate was assessed penalties in the amount of \$191,560.39.

Plaintiff filed a legal malpractice action against defendant on September 18, 2009. Defendant then filed a third-party complaint against certain accountants for contribution alleging accounting malpractice, claiming the accountants failed to timely file the returns. The accountants moved to dismiss the third-party contribution claim based on the statute of limitations. The trial court found that

Attorneys

Terrence P. McAvoy

Katherine G. Schnake

Service Areas

Counselors for the Profession

Lawyers for the Profession®



plaintiff knew or should have known that the estate tax returns were due by August 16, 2006, and that when he was not presented with those returns to sign, plaintiff knew or should have known his damages were wrongfully caused, thus triggering the statute of limitations. The court held that the statute of limitations expired August 16, 2008, which was two years after the estate tax returns were due. When plaintiff filed his action against defendant on September 18, 2009 (after their tolling agreement was terminated), he had no viable cause of action against any accountants because the statute of limitations for bringing such complaints had expired over a year earlier because plaintiff had no tolling agreement with the third-party defendants. Therefore, the trial court granted the motions to dismiss. Defendant appealed.

On appeal, the court considered 735 ILCS 5/13-204(b), which provides "[i]n instances where the underlying action has been filed by a claimant, no action for contribution or indemnity may be commenced more than 2 years after the party seeking contribution or indemnity has been served with process in the underlying action." The statute further provides:

"The applicable limitations period contained in subsection (a) or (b) shall apply to all actions for contribution or indemnity and shall preempt, as to contribution and indemnity actions only, all other statute of limitations or repose, *but only to the extent that the claimant in an underlying action could have timely sued the party from whom contribution or indemnity is sought at the time such claimant filed the underlying action.*" 735 ILCS 5/13-204(c) (emphasis added).

Defendant argued that it was not until March 8, 2008, when the IRS notice was issued to plaintiff that the estate was being assessed penalties and interest for failing to file the estate tax returns in a timely manner, that the statute of limitations began to run, because that is the date that the plaintiff had actual knowledge of damages. The court disagreed and noted that neither party considered the March 8, 2009 date when they entered the tolling agreement. Damages began to accrue for the estate immediately upon the failure to timely file the estate tax return.

The court noted that for statute of limitations purposes, the relevant inquiry was not when the IRS discovered that the tax returns were not timely filed and issued the notice of penalties. Rather, the question was when the negligent conduct of failing to file the tax returns was discovered by plaintiff. Here, the defined final due date for filing taxes was August 16, 2006. That date should have easily been noticed by both the plaintiff and the defendant, both of whom signed the one-time extension to file the estate tax returns with the IRS, and had an obligation to inquire further. As such, the appellate court affirmed the trial court's dismissal of the third-party complaint.

Significance of Opinion

This case is significant because the court held that the two-year statute of limitations for contribution claims does not apply if the plaintiff could not have timely filed a claim against the third-party defendants at the time plaintiff filed the main action against the defendant.

For more information, please contact [Terrence P. McAvoy](#) or [Katherine G. Schnake](#).

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.