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Illinois Claim for Aiding and Abetting Client's Breach of Fiduciary Duty Time-Barred

January 11, 2016
Lawyers for the Profession® Alert

Janousek v. Katten Muchin Rosenman LLP, 2015 IL App (1st) 142989 (10/27/15)

Brief Summary

The plaintiff, a shareholder of limited liability company (LLC), filed an action against a law firm and one of its lawyers, alleging they aided and abetted other shareholders in breaching their fiduciary duties to plaintiff. The trial court granted defendants' motion for summary judgment based on the two-year statute of limitations governing claims against attorneys, 735 ILCS 5/13-214.3. The appellate court affirmed and held that (1) the statute of limitations commenced at the time plaintiff's action was brought against his business associates, rather than at the time of engaging in discovery in that action, and (2) public policy did not preclude defendants from raising the statute of limitations defense.

Complete Summary

In 1999, the plaintiff, together with Burton and Michael Slotky (the "Slotkys"), formed Bureaus Investment Group LLC (BIG), a company to purchase delinquent debt accounts. The Slotkys also named plaintiff president of The Bureaus, Inc., a debt collection agency that serviced BIG's accounts. An attorney at the defendant law firm signed and filed BIG's articles of organization. Years later, the relationship between plaintiff and the Slotkys had so far deteriorated that on October 1, 2007, the Slotkys terminated plaintiff's employment at The Bureaus. Plaintiff alleged that after his termination, the Slotkys "froze" him out of BIG. Plaintiff further alleged that less than a month after terminating him, the Slotkys formed another debt-purchasing entity, Bureaus Investment Group III, LLC (BIG III). Plaintiff claimed that since October 2007, the Slotkys, through BIG III, had been purchasing debt pools, misappropriating BIG's opportunities, and competing with BIG.

On June 19, 2009, plaintiff's attorney sent a letter to the Slotkys and BIG, stating: "[w]e have spent a considerable amount of time with [plaintiff] investigating the circumstances surrounding what has transpired with The Bureaus Inc. and its related entities … since the actions committed by you and your father in October 2007." The letter warned that if the Slotkys did not purchase all of plaintiff's interests in BIG and compensate him "for the harm you wrought," he would file a lawsuit by July 7, 2009, and he warned the Slotkys not

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to use BIG's attorneys or funds in defending the suit.

The Slotkys did not comply with plaintiff's demands. On July 7, 2009, plaintiff filed a complaint alleging the Slotkys, BIG and others breached their fiduciary duties by competing with and usurping opportunities from BIG, as well as acting unfairly toward plaintiff. Defendants continued to represent the Slotkys in that litigation. Nearly three years passed before the plaintiff, individually and on behalf of BIG, filed a two-count complaint against defendants on July 2, 2012. Defendants then filed a motion for summary judgment on the basis that the two year statute of limitations barred plaintiff's claim. Defendants argued that plaintiff was on "inquiry notice" of his injury and its cause on July 7, 2009, the date he filed the underlying lawsuit against the Slotkys, but he did not file his complaint against defendants until almost three years later.

Plaintiff responded that he could not have been on inquiry notice based on a suspicion that defendants had aided and abetted the Slotkys in breaching their fiduciary duties. He further asserted that the limitations period did not begin until 2011, because he did not learn of defendants' substantial assistance in the Slotkys' breaches of their fiduciary duties until the defendants, on behalf of the Slotkys, produced hundreds of pages of documents in late 2010 in response to discovery requests and until the Slotkys sat for depositions in October 2011. After argument, however, the trial court granted defendants' summary judgment motion. Plaintiff appealed.

Plaintiff argued the trial court erred in granting summary judgment because although he suspected defendants of wrongdoing, a reasonable jury could conclude he did not know of their wrongdoing until after uncovering it through discovery in the underlying lawsuit, and that he acted diligently in discovering the wrongdoing, particularly in light of defendants' refusal to turn over documents by claiming attorney-client privilege.

The appellate court initially noted that Section 13–214.3(b) incorporates the discovery rule, "which delays commencement of the statute of limitations until the plaintiff knew or reasonably should have known of the injury and that it may have been wrongfully caused." The statute of limitations begins to run when the injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Dancor*, 288 Ill.App.3d at 673. The court also noted that knowledge that an injury has been wrongfully caused "does not mean knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action." A person knows or reasonably should know an injury is "wrongfully caused" when he or she possesses sufficient information concerning an injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct had occurred.

Plaintiff argued that he only suspected that defendants may have contributed to his injury by aiding and abetting the Slotkys in breaching their fiduciary duties, and he did not know for certain their role in aiding and abetting the Slotkys until late 2010 or early 2011, after engaging in discovery in the underlying lawsuit. The court rejected plaintiff's argument because plaintiff believed no later than July 7, 2009 (when he filed suit against the Slotskys), and likely sooner, that the Slotkys breached their fiduciary duties and any injury he suffered directly resulted from the breach of fiduciary duties. In a letter to the Slotkys dated June 19, 2009, plaintiff's attorney stated that if they did not compensate plaintiff for the "the harm you wrought" he would file a lawsuit by July 7. This letter shows that plaintiff knew no later than June 19 that he had been wrongfully injured.

Plaintiff next argued that even though he knew he had been injured by the Slotkys' breach of their fiduciary duties in July 2009, the role defendants played in the Slotkys' breaches did not manifest itself until the Slotkys complied with his discovery requests in late 2010 and sat for depositions in 2011. Plaintiff asserted that because this second potential cause of his injury remained unknown until, at the earliest, late 2010, he timely filed his aiding and abetting complaint. The court disagreed. First, plaintiff's claim that defendants aided and abetted the Slotkys' breach of their fiduciary duties was not "unknowable." Plaintiff knew that defendants had represented BIG when it filed its articles of incorporation in 2007. Plaintiff also knew that defendants continued to act as the Slotkys' attorney after plaintiff's employment ended, and he filed his lawsuit against the Slotkys. Further, plaintiff knew of the formation of BIG III and could have requested a copy of the articles of incorporation from the Illinois Secretary of State, which lists defendants as the "organizer" of BIG III.

More importantly, the court emphasized that knowledge that an injury has been wrongfully caused "does not mean knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action." Plaintiff knew that he had been wrongfully injured no later than July 2009, and thus, even though he may not yet have known that defendants' representation was partly responsible and that their conduct gave rise to a cause of action, the statute of limitations began to run because plaintiff did have knowledge of the injury and that his injury was wrongfully caused. The

court held that plaintiff's claims against his partners for fraud could not be separated from a claim that defendants failed to protect him from that very same fraud. *See also Blue Water Partners, Inc. v. Mason*, 2012 IL App (1st) 102165; *Carlson v. Fish*, 2015 IL App (1st) 140526.

Finally, plaintiff argued that public policy should preclude attorneys from raising an attorney-client privilege delaying disclosure of their wrongdoing long enough to raise a statute of limitations defense. Specifically, plaintiff alleged that defendants obstructed discovery by claiming that the documents he requested in discovery were protected by the attorney-client privilege. Plaintiff contended that permitting defendants to engage in this type of conduct would set a precedent for other attorneys and adversely affect the practice of law. Plaintiff also argued the attorney-client privilege did not benefit the Slotkys because it exposed them to liability that otherwise could have been shared by defendants. The court rejected this argument on the basis that the privilege refers to a *client's* right to refuse to disclose confidential communications, not the attorney's right. Also, although documents disclosed by the Slotkys in late 2010 and their depositions in early 2011 may have further solidified plaintiff's determination that he had a claim against defendants, he knew well before then that he had been wrongfully injured by his former business associates, which triggered the statute of limitations on his aiding and abetting claim against defendants.

Significance of Opinion

This case is significant because the appellate court again held that for limitations purposes, knowledge that an injury has been wrongfully caused "does not mean knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action." The statute of limitations commences once the plaintiff knows or reasonably should have known that his injury was wrongfully caused. Once a plaintiff files suit against someone, plaintiff has inquiry notice to determine whether actionable conduct had occurred by others.

For more information, please contact Terrence P. McAvoy

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