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The Legal Malpractice Statute of Limitations Begins to Run when the Client Suffered a Monetary Loss Attributable to the Attorney's Neglect

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Suburban Real Estate Services, Inc. (“Plaintiff”) filed a legal malpractice suit against William Roger Carlson Jr. and his law firm, Carlson Partners, Ltd., (collectively “Defendants”) in May 2016. *Suburban Real Est. Servs., Inc. v. Carlson*, 2022 IL 126935, ¶ 4. Plaintiff’s malpractice complaint rose from Defendants’ legal advice regarding a business divorce. *Id.* Despite following Defendants’ advice, Plaintiff was sued by its former business partner for breach of fiduciary duty in August 2010. *Id.*, ¶ 5. Plaintiff retained new counsel to represent it in the litigation. *Id.* In June 2015, the trial court entered judgment for Plaintiff’s former partner and required Plaintiff to pay hundreds of thousands of dollars in damages. *Id.*, ¶ 6.

After the trial court entered judgement in the underlying dispute, Plaintiff filed a legal malpractice complaint against Defendants. Defendants then moved for summary judgment asserting that the claim was barred by the two-year statute of limitations. *See* 735 ILCS 5/13-214.3(b). Defendants argued that Plaintiff knew or should have known it was injured by Defendants’ negligence by November 2010, when it retained new counsel and began paying attorney fees, six years before Plaintiff filed its complaint. *Id.*, ¶ 8. Alternatively, Defendants contended that Plaintiff had to know of its injuries no later than April 2013, because the trial judge in the underlying action told Plaintiffs’ “new counsel that a malpractice action was a certainty.” *Id.* In fact, according to the trial court, Defendants “‘one hundred percent’ committed malpractice.” *Id.*, ¶ 9. Plaintiff, however, maintained that the cause of action did not accrue until June 2015, when a final judgment was entered. *Id.*, ¶ 11. The circuit court disagreed and granted summary judgment in favor of Defendants. *Id.*, ¶ 1. “The appellate court reversed, finding that no realized injury that would trigger the limitations period existed until there was an adverse judgment in the underlying action.” *Id.*

The Illinois Supreme Court began its analysis by setting forth the “discovery rule” embedded within the legal malpractice statute of limitations. This rule provides that a claim for legal malpractice accrues when the client “knew or reasonably should have known of the injury for which damages are sought.” *Id.*, ¶ 16. The Court also noted that “injury,” in the context of a legal malpractice claim, “is a pecuniary injury to an intangible property interest caused by the lawyer’s negligent act or omission.” *Id.*, ¶ 17. Injury, therefore, requires a plaintiff to suffer a loss for which monetary damages may be sought. *Id.* The loss triggers the statute of limitations to run, not an attorney’s act of negligence. *Id.*, ¶ 26.

The Supreme Court held that the statute of limitations did not begin to run until a final judgment was entered against Plaintiff in the underlying action. That is because, even when Plaintiff hired subsequent litigation counsel, it did not know it would be found liable in the underlying case. *Id.* ¶ 36 (citing *Lucey v. L. Offs. of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349, 354 (1st Dist. 1998) (rejecting the assertion that “subsequently incurred attorney fees will, in every case, automatically give rise to a cause of action for legal malpractice against former counsel”)).

The Supreme Court distinguished the Plaintiff in *Suburban* from other cases where clients may have an actual loss prior to the entry of a judgment. For example, the Court discussed *Nelson v. Padgitt*, 2016 IL App (1st) 160571, *Construction Systems, Inc. v. FagelHaber, LLC*, 2019 IL App (1st) 172430, and *Zweig v. Miller*, 2020 IL App (1st) 191409. *Id.*, ¶ 28. “In *Nelson*, there was a loss of salary and commission directly attributable to the drafting of the employment agreement; in *Construction Systems, Inc.*, there was a loss of lien priority directly attributable to the failure to properly perfect the lien; and in *Zweig*, there was a loss of \$2 million to the holding company in direct contravention of the plaintiff’s directive.” *Id.* ¶ 35. The Court concluded that, in these cases, the clients knew or should have known of their injuries “when hiring new counsel to mitigate that loss.”

Suburban Real Est. Servs., Inc. v. Carlson, 2022 IL 126935

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