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# A Father's Concealment Cannot Support A Legal Malpractice Claim

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On March 1, 2022, the United States District Court for the Northern District of Illinois, Eastern Division dismissed brothers and Plaintiffs Bruce, Brad and Brain Brandolino's (collectively "Plaintiffs") legal malpractice claim for failure to assert a plausible claim for fraudulent concealment and as time barred. *Brandolino v. Schlak*, No. 19 C 0102, 2022 WL 602474, at \*1 (N.D. Ill. Mar. 1, 2022).

On January 9, 2019, Plaintiffs filed their legal malpractice suit against Defendant attorney Douglas Schlak ("Defendant"). *Id.*, at \*2. Plaintiffs' complaint alleged that Defendant intentionally tricked them into selling their interest in a parcel of real property for less than fair market value in 2005. *Id.* According to the brothers, Defendant represented their father in the sale of the real property. Their father received an offer for \$1.8M for the property. *Id.*, at \*1. Unbeknownst to the brothers, the property was titled to their father as a life tenant and Plaintiffs as remainder-persons. *Id.* Without knowing that they could equally split the property after their fathers' death, the brothers each accepted a \$100,000 gift for "helping their father" execute the sale. *Id.*

Defendant moved to dismiss the complaint as time barred under the statute of repose. *Id.*, at \*2 (citing 735 Ill. Comp. Stat. Ann. 5/13-214.3(c) (“The Illinois statute of repose for legal malpractice actions provides that such actions ‘may not be commenced in any event more than 6 years after the date on which the act or omission [giving rise to the claim] occurred.’”)). Plaintiffs argued that Defendant’s actions were fraudulent and therefore the statute of repose should be tolled. *Id.* In addressing the fraud question, the Court held that allegations of fraud can toll the statute of repose limitations period if Defendant committed affirmative acts of misrepresentations or in limited circumstances, Defendant’s fraudulent omissions.

Typically, fraudulent concealment must be more than “mere silence.” *Id.*, \*3. Further the Court held that these acts of concealment must be done by the defendant. Here, the Court opined that the acts of concealment, if any, were committed by the Plaintiffs’ father, not the Defendant. The Court also stated that Defendant’s omissions could only serve to toll the statute of limitations if Plaintiffs could prove “fraudulent concealment by ‘[p]leading specific facts demonstrating [that] either (1) greater diligence would not have caused them to discover the fraud sooner; or (2) the trust and confidence they placed in [the defendant] by virtue of their relationship prevented them from discovering the fraud any soon.” *Id.* The Court concluded that Plaintiffs could do neither. Plaintiffs alleged that in 2005, they were only given the signature page of the closing documents and executed these contracts without requesting a complete set of the documents – no reasonable person would have done so. Notably, the Court asserted that the brother’s failure to take any steps to obtain the closing documents was made more questionable given their status as “sophisticated businesspeople.” *Id.*, at \*4. Additionally, Plaintiffs could not prove the existence of a fiduciary relationship between themselves and Defendant. *Id.* As Plaintiffs could not assert a claim of fraudulent concealment and they waited 14 years to file their legal malpractice claim, the Court dismissed their complaint.

*Brandolino v. Schlak, No. 19 C 0102, 2022 WL 602474*

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