

FIFTH DIVISION  
June 29, 2012

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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NICHOLAOS STELLATOS and GERASIMOULA	)	
STELLATOS, also known as AMY STELLATOS,	)	
	)	Appeal from the
Plaintiffs-Appellees,	)	Circuit Court of
	)	Cook County.
	)	
v.	)	No. 10 L 11417
	)	
NICKOLAS K. PRITTIS and THE LEGAL	)	
ADVOCATES GROUP, P.C., an Illinois Professional	)	
Corporation,	)	
	)	Honorable
Defendants - Appellants.	)	Eileen M. Brewer,
	)	Judge Presiding.

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**ORDER**

JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Epstein and Justice McBride concurred in the judgment.

¶ 1 HELD: Trial court's decision to deny defendants' motion to dismiss or stay the proceedings in the underlying malpractice action is affirmed when (a)

defendants failed to file a report of proceedings or a bystander's report from the hearing on their motion, and (b) when the cause of action for legal malpractice was not premature.

¶ 2 Defendants, Nicholas K. Prittis and The Legal Advocates Group, P.C., filed this interlocutory appeal, seeking review of the circuit court's order denying their request to stay the proceedings in the underlying legal malpractice action filed by plaintiffs, Nicholaos Stellatos (Nick) and Gerasimoula Stellatos (also known as Amy Stellatos) (Amy). For the following reasons, we affirm.

### ¶ 3 BACKGROUND

¶ 4 On October 6, 2010, plaintiffs filed a complaint seeking monetary damages for legal malpractice and breach of fiduciary duty (the underlying action) from defendant attorney Prittis and his law firm. Plaintiffs alleged that they loaned money to several individuals, based upon the recommendation of defendants, who prepared the loan documents. The borrowers defaulted on the payments due on the loans and plaintiffs sought damages from defendants.

¶ 5 According to the allegations raised in the complaint, plaintiffs are seeking \$250,000 from defendant Prittis for funds given to him for the purpose of forwarding the funds to parties recommended by Prittis. The money was advanced by plaintiffs in June and September of 2008, and the borrowers stopped making payments in October 2008.

¶ 6 According to the complaint, Prittis approached Amy and recommended that her father, Nick, lend \$150,000 to Kevin Keller, Matt Ward, and their company, Niew Money LLC. Prittis represented that Keller and Ward had a personal net worth of several million dollars, and that Nick's loan would be secured by property worth at least \$2 million. Nick advanced the funds to

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Prittis; Keller and Ward made three payments, and then defaulted.

¶ 7 Plaintiffs further alleged that Prittis also approached Amy and recommended that she lend \$100,000 to George Kotsionis and his company, Konis Capital. Prittis represented that Kotsionis had a personal net worth in excess of \$1 million, and that Amy's loan would be secured by a second mortgage on property worth at least \$400,000 in excess of the first mortgage. Amy advanced the funds to Prittis and Kotsionis never made a payment.

¶ 8 Count I of the complaint alleged that Prittis failed to disclose that some of the money advanced to him for the Keller, Ward and Kotsionis transactions was intended to be used to pay him; failed to disclose that some of the money was intended to pay Prittis' sister, Jeannie Gyftakos; failed to disclose Prittis' conflict of interest in the transactions; failed to obtain or recommend that Nick and Amy obtain credit reports, financial statements, title reports, appraisals, estoppel certificates and/or insurance certificates to protect their interests in the transactions; failed to record Nick and Amy's security interests in the collateral; failed to recommend to Nick and Amy that they record their security interests in the collateral.

¶ 9 Count II of the complaint alleged that Prittis and Amy had been close personal friends for many years prior to these transactions, having known one another socially and professionally. Amy trusted Prittis personally and professionally, and Prittis knew that Amy trusted him. Nick is disabled and has difficulty reading, writing and speaking the English language. Because of the long-standing relationship between Amy and Prittis, Prittis knew in June 2008 that Nick was disabled, that he had difficulty with English, that he relied upon Amy, and that Nick had several hundred thousand dollars in cash and assets. Plaintiffs alleged that their relationship of trust and

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confidence with Prittis gave rise to a fiduciary relationship, which Prittis breached by persuading them to advance funds to him for Keller, Ward and Kotsionis without revealing what he knew about the transactions.

¶ 10 On August 5, 2011, defendants filed a motion to dismiss plaintiffs' action, without prejudice pursuant to 735 ILCS 5/2-619(a)(9) (West 2010), or alternatively, to stay the proceedings. Defendants argued that plaintiffs' claims for professional negligence and breach of fiduciary duty were premature as they had not taken any formal steps to collect the money from Konis Capital or Niew Money; that plaintiffs were required to exhaust their legal remedies or suffer dismissal or stay; and that if plaintiffs tried and failed to collect on the notes, their claims against defendants would fail because the sole proximate cause of plaintiffs' injuries would then be failure to pay by Kotsionis, Keller and Ward. Defendants attached plaintiffs' complaint to their motion, but no other affidavits or evidentiary material.

¶ 11 Plaintiffs responded, contending that their claims were not premature as they sustained actual, pecuniary damages when they advanced funds for the loan transactions based on defendants' recommendation. Additionally, plaintiffs contended that they were not required to exhaust their available legal remedies or pursue collection actions against Kotsionis, Keller and Ward before proceeding with their professional negligence and breach of fiduciary duty claims against defendants because defendants were free to implead those parties if defendants believed them responsible for repayment under the loan agreements.

¶ 12 The trial court denied defendants' motion without prejudice on January 3, 2012. This timely interlocutory appeal followed.

¶ 13 ANALYSIS

¶ 14 Defendants contend that the circuit court abused its discretion in denying their request for a stay of proceedings on plaintiffs' premature claims for legal malpractice and breach of fiduciary duty.

¶ 15 Defendants filed this interlocutory appeal under Illinois Supreme Court Rule 307(a)(1) (eff. March 20, 2009), which allows appeals as of right from interlocutory orders of the circuit court "granting, modifying, refusing, dissolving or refusing to dissolve or modify an injunction." A denial of a motion to stay may be treated as a denial of a request for preliminary injunction fit for interlocutory appeal. See *TIG Insurance Co. v. Canel*, 389 Ill. App. 3d 366, 371 (2009); *Lundy v. Farmers Group, Inc.*, 322 Ill. App. 3d 214, 216 (2001).

¶ 16 A circuit court's decision to grant or deny a motion to stay will not be overturned on appeal absent an abuse of discretion. *TIG Insurance*, 389 Ill. App. 3d at 372. Under the abuse of discretion standard, a reviewing court does not decide whether it agrees with the circuit court's decision, but, rather, determines whether the circuit court "acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 67 (2007). "The only question before the reviewing court on interlocutory appeal is whether there was a sufficient showing made to the trial court to sustain its order granting or denying the relief sought." *Estate of Bass*, 375 Ill. App. 3d at 67, (quoting *Lindsey v. Board of Education of the City of Chicago*, 127 Ill. App. 3d 413, 418 (1984)).

¶ 17 A reviewing court looks to the sufficiency of the evidence, not to determine controverted

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rights or to decide the merits of the case, but only for the limited purpose of ascertaining whether the trial court abused its discretion in entering the interlocutory order. *Estate of Bass*, 375 Ill. App. 3d at 68. An appeal under Rule 307 does not open the door to a general review of all orders entered by the trial court up to the date of the order that is appealed. *Panduit Corp. v. All States Plastic Manufacturing Co., Inc.*, 84 Ill. App. 3d 1144, 1151 (1980).

¶ 18 A stay order seeks to preserve the status quo existing on the date of its entry and does not address in any way the merits of the underlying dispute. *Estate of Bass*, 375 Ill. App. 3d at 68. A circuit court may stay proceedings as part of its inherent authority to control the disposition of cases before it. *Estate of Bass*, 375 Ill. App. 3d at 68. It may consider factors such as the orderly administration of justice and judicial economy in determining whether to stay proceedings. *Estate of Bass*, 375 Ill. App. 3d at 68.

¶ 19 Turning to the case at bar, we begin by noting that although defendants have filed a common law record, they have failed to file a report of proceedings or bystander's report from the hearing on the motion which is the subject of this appeal. An appellant has the burden to present a sufficiently complete record of the report of proceedings at trial to support a claim of error. See Illinois Supreme Court Rule 323(a) (eff. Dec. 13, 2005). In the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. Here, since defendants did not file any record of what happened at the hearing on their motion to dismiss or stay the proceedings, we are unable to conclude that any

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injustice was done and must conclude that the trial court followed the law and had a sufficient basis for its ruling. *Foutch*, 99 Ill. 2d at 392; *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 241 (2007).

¶ 20 Moreover, even if we were to address the merits of defendants' appeal, we would find that the trial court properly denied their motion to dismiss or stay the proceedings. As a general rule, a cause of action for legal malpractice will not accrue prior to the entry of an adverse judgment, settlement, or dismissal of the underlying action in which plaintiff has become entangled due to the purportedly negligent advice of his attorney. *Preferred Personnel Services, Inc. v. Meltzer, Purtill and Stelle, LLC*, 387 Ill. App. 3d 933, 939 (2009). However, a legal malpractice claim can accrue before the client suffers a final, adverse judgment in the underlying action where it is " 'plainly obvious, prior to any adverse ruling against the plaintiff, that he has been injured as the result of professional negligence' " or where an attorney's neglect is a direct cause of the legal expense incurred by the plaintiff. *Estate of Bass*, 375 Ill. App. 3d at 70, (quoting *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349, 355, 358 (1998)).

¶ 21 Here, the complaint alleged that Prittis failed to disclose the true nature of the financial transactions he recommended plaintiffs to engage in, namely that some of the money advanced by plaintiffs was to pay Prittis and his sister; that he had a conflict of interest in the transactions, that he failed to protect the plaintiffs' interests in the transactions; that he failed to record plaintiffs' security interests in the collateral; and that Prittis' relationship of trust and confidence rose to the level of a fiduciary relationship which he breached by persuading them to advance funds for Keller, Ward and Kotsionis without disclosing the true nature of the transactions.

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These shortcomings in defendant's legal representation of plaintiffs, as alleged in the complaint, are a direct cause of the legal expenses incurred by plaintiffs, regardless of any separate or subsequent litigation against Keller, Ward and Kotsionis. See *Estate of Bass*, 375 Ill. App. 3d at 70. For this reason, we reject defendants' contention that plaintiffs' malpractice action was premature and conclude that the trial court did not act arbitrarily in denying defendants' motion for a stay of proceedings.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 24 Affirmed.