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SIXTH DIVISION
March 31, 2014

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMAAL BUNNI d/b/a MGDN Enterprise, Ltd.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
RICHARD BOYKIN and BARNES & THORNBURG,)	No. 11 L 008468
LLP,)	
)	
Defendants-Appellees)	
)	
(Isaac Carothers and Luis Villanueva,)	The Honorable
)	Thomas R. Mulroy, Jr.,
Defendants).)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Reyes concurred in the judgment.

ORDER

¶1 *HELD:* Summary judgment was proper where plaintiff failed to file his legal malpractice suit within the two-year statute of limitations. Pursuant to the "discovery rule," plaintiff knew he sustained an injury and damages as a result of his attorney's alleged malpractice more than two years prior to filing his complaint.

¶2 Plaintiff, Jamaal Bunni d/b/a MGDN Enterprise, LTD., appeals the circuit court's order granting summary judgment in favor of defendants, Richard Boykin and Barnes & Thornburg, LLP (defendant lawyers).¹ Plaintiff contends the circuit court erred in finding there was no issue of material fact and granting summary judgment as a matter of law where plaintiff's legal malpractice claim against defendants was not barred by the statute of limitations. Based on the following, we affirm.

¶3 FACTS

¶4 In 2003, plaintiff purchased and began operating a Citgo filling station and convenience store. According to his complaint, in early November 2007, plaintiff was approached by Luis Villanueva regarding expanding plaintiff's business to include a liquor store. Villanueva presented himself as a "business representative" of Alderman Isaac Carothers and told plaintiff he could earn more money if he operated a liquor store on his property. According to plaintiff's complaint, Villanueva informed plaintiff that Carothers would be willing to assist plaintiff in obtaining a liquor license if plaintiff made twice yearly "donations" to Carothers. Plaintiff refused, stating that "the law forbid the sale of alcohol at any establishment deemed a 'filling station.' " A few days later, Villanueva informed plaintiff that Carothers said owning a filling station would not prevent plaintiff from obtaining a liquor license. Plaintiff was told that, so long as he made the necessary modifications to his existing business, he could be granted a zoning ordinance variance and a liquor license. Plaintiff was told to contact defendants Boykin and Barnes & Thornburg, LLP.

¹ Plaintiff entered an agreed order to dismiss defendant Isaac Carothers from the underlying case. Villanueva is not a party to this appeal.

¶15 On November 19, 2007, plaintiff met with Boykin, again expressing concern that it was illegal to operate a liquor business at the same location as a filling station. According to plaintiff's complaint, Boykin advised him that Boykin could obtain a "package liquor license" and a "zoning" variance within 45-90 days. Boykin instructed plaintiff to make constructive improvements on the premises, to obtain a second address for the new storefront, to create a separate legal entity to represent the liquor store, and to obtain a second lease for the newly created portion of the premises. On December 3, 2007, Boykin mailed a "Representation to Secure Liquor License" engagement letter to plaintiff. The letter included a flat fee of \$18,000 for Boykin's services. Between November 19, 2007, and February 2, 2008, plaintiff allegedly spent over \$180,000 on "improvements" to his store, as well as administrative fees for the liquor license and zoning variance. Thereafter, Boykin prepared a liquor license application.

¶16 On June 26, 2008, plaintiff was informed by the Liquor License Control Commission (Control Commission) that his application was complete except for a \$4696.00 application fee. Plaintiff was notified that the next step in the process was to pass city inspections. On July 3, 2008, plaintiff's property was inspected by the City of Chicago. Then, on August 15, 2008, plaintiff's liquor license application was denied by the Control Commission because of the presence of plaintiff's filling station. On August 25, 2008, Boykin sent plaintiff a letter advising him that the Control Commission's denial of his liquor license could be appealed. Boykin reminded plaintiff that their retainer agreement did not include an appeal; however, Boykin was willing to work on an appeal. Boykin advised plaintiff that "please know that the chance of

winning your appeal is not high. That being said, I am not going to charge you anything for working on this appeal."²

¶7 In October 2008, plaintiff fired defendant lawyers and hired new counsel, Mike Lavelle. Lavelle advised plaintiff that Boykin should have known that a liquor license would not be awarded to a filling station property; therefore, Boykin could not satisfy his guarantee to secure the liquor license. In his deposition testimony, plaintiff said he and Lavelle talked about filing suit against Boykin. According to plaintiff, Lavelle described "what [Boykin] did to this guy," adding that "[Boykin] messed up big time." Plaintiff testified that he did not attempt to sue Boykin after hiring Lavelle because the appeal was ongoing and Lavelle "promised [that] he [had] a strong chance to get the license." On October 24, 2008, plaintiff wrote a check to Lavelle in the amount of \$1,500. On December 4, 2008, Lavelle filed an appeal with the License Appeal Commission (Appeal Commission). On February 26, 2009, the Appeal Commission reversed the August 15, 2008, decision by the Control Commission and granted a liquor license to plaintiff. However, on April 29, 2009, the City appealed seeking administrative review of the Appeal Commission's decision to grant the liquor license. On December 18, 2009, the circuit court overruled the Appeal Commission's decision, thereby revoking plaintiff's liquor license. We affirmed the circuit court's decision on appeal. *Daley v. MGDN Enterprise Ltd.*, No. 1-10-0425 (March 28, 2011) (unpublished order pursuant to Supreme Court Rule 23).

¶8 In December 2009, plaintiff was approached by agents from the Federal Bureau of Investigations (FBI) and questioned regarding his involvement with Carothers.

² Boykin initially informed plaintiff that he would appeal the Control Commission's ruling for a \$5000 fee. However, in his deposition testimony, plaintiff said Boykin later retracted the additional fee.

¶9 In 2009, plaintiff filed for and was discharged from bankruptcy. In his bankruptcy schedules, plaintiff did not disclose claims against the defendant lawyers.

¶10 On August 12, 2011, plaintiff filed his original complaint, alleging fraud, civil conspiracy, and breach of contract/detrimental reliance/promissory estoppel. On September 20, 2012, plaintiff filed his third amended verified complaint³, alleging, *inter alia*, breach of contract, detrimental reliance/promissory estoppel, legal malpractice, and civil conspiracy. On July 8, 2013, defendants filed a motion for summary judgment. In response, plaintiff voluntarily dismissed all of his claims except the legal malpractice claim. In relation to the legal malpractice claim, defendants argued that summary judgment was proper where: (1) plaintiff's claim was barred by the statute of limitations; (2) plaintiff did not have standing because his claim belonged to the bankruptcy estate; and (3) plaintiff was judicially estopped from pursuing his claim because he did not list the claim in his bankruptcy schedules. On September 11, 2013, the circuit court granted summary judgment in favor of defendants without providing the basis for its decision. The circuit court certified its decision for immediate appeal pursuant to Supreme Court Rule 304(a). This appeal followed.

¶11 DECISION

¶12 Plaintiff contends the circuit court erred in granting summary judgment where a genuine issue of material fact exists regarding when plaintiff became aware of his injuries. Defendants respond that plaintiff's legal malpractice claim is barred by the statute of limitations because the undisputed facts demonstrate plaintiff was aware he suffered injuries as a result of Boykin's conduct well before the two-year limitations period. In addition, defendants argue that plaintiff lacked standing to bring his claim where the claim belonged to the bankruptcy estate.

³ The second amended complaint is not relevant to the instant appeal.

Defendants further argue that plaintiff was judicially estopped from pursuing his claim because he failed to list it in his bankruptcy schedules.

¶13 Summary judgment is proper where the pleadings, admissions, depositions, and affidavits on file demonstrate there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010). All evidence is construed strictly against the moving party and liberally in favor of the nonmoving party. *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 308 (2008). Summary judgment is a drastic measure that should only be granted if the movant's right thereto is clear and free from doubt. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). However, if the plaintiff fails to establish any element of his claim, summary judgment is deemed appropriate. *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001). We review a trial court's decision granting summary judgment *de novo*. *Outboard Marine Corp.*, 154 Ill. 2d at 102.

¶14 A claim for legal malpractice requires: (1) an attorney-client relationship; (2) a duty arising from that relationship; (3) a breach of that duty; and (4) actual damages or injury proximately caused by the breach. *Romano v. Morrisroe*, 326 Ill. App. 3d 26, 28 (2001). Pursuant to section 13-214.3(b) of the Code of Civil Procedure (Code) (735 ILCS 5/13-214.3(b) (West 2010)), a lawsuit brought "against an attorney arising out of an act or omission in the performance of professional services *** must be commenced within two years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought." The "discovery rule" provided by section 13-214.3(b) of the Code establishes that the two-year period only begins to run when the plaintiff " knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused." " *Morris*, 197 Ill. 2d at 35-36 (quoting *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981)).

¶15 In this context, the injury is not the negligent act itself; rather, it is something caused by the negligent act or omission for which damages may be sought by the plaintiff. *Romano*, 326 Ill. App. 3d at 28. "The injuries resulting from legal malpractice are not personal injuries but pecuniary injuries to intangible property interests." *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349, 354 (1998). The statute of limitations for a legal malpractice claim does not begin to run when the attorney allegedly commits a negligent act, but only when the plaintiff realizes injury as a result of that negligence. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 90 (1995). Moreover, a cause of action for legal malpractice may not accrue without actual damages. *Romano*, 326 Ill. App. 3d at 28. Generally, the discovery date is a question of fact; however, if it is apparent that only one conclusion can be drawn from the undisputed facts, the question becomes one for the court. *Id.* at 36.

¶16 Plaintiff argues that he filed his legal malpractice claim within the applicable two-year statute of limitations where he did not have any actual damages until this court made its final decision denying his request for a liquor license on March 28, 2011. Plaintiff avers that, because he is a layman, he was not responsible for knowing whether legal malpractice occurred, especially where Lavelle was successful in obtaining a liquor license for a period of time. Defendants respond that plaintiff's deposition testimony reveals he was aware of Boykin's alleged negligence on August 15, 2008, when the Control Commission denied his application for a liquor license, in October 2008 when he fired defendants and hired Lavelle to obtain a liquor license, or, at least, on October 24, 2008, when he paid Lavelle for services he had already compensated defendants to complete. Plaintiff responds that the earliest his legal malpractice claim could have accrued was December 18, 2009, when, on administrative review, the circuit court reversed the Appeal Commission's decision to award the liquor license because he did not

have damages until the license was revoked. Plaintiff, therefore, argues that his lawsuit was timely filed on August 12, 2011.

¶17 The undisputed facts are these: plaintiff hired defendants to secure a liquor license and paid an \$18,000 retainer to compensate for those efforts; in 2007, plaintiff spent approximately \$180,000 to improve his property in anticipation of obtaining the liquor license; on August 15, 2008, the Control Commission denied plaintiff's application for a liquor license; on August 25, 2008, Boykin informed plaintiff of his intent to appeal the Control Commission's decision, but that the odds of success were low; and, in October 2008, plaintiff hired Lavelle, remitting an additional \$1,500 for services aimed at securing the liquor license.

¶18 In his deposition, plaintiff stated that, in August 2008, he worked with Boykin and another attorney⁴ to appeal the Control Commission's decision; however, plaintiff described "feeling like something [was] going on" and that "he just waste[d] his money." While meeting with Boykin's associate, plaintiff mentioned that Boykin was responsible for not securing the "guaranteed" license and for the money plaintiff spent in attempting to obtain the license. In his deposition, plaintiff averred that he hired Lavelle to continue the appeal. In their initial meeting in 2008, plaintiff and Lavelle discussed the fact that Boykin failed to honor his guarantee of securing a liquor license. Lavelle advised plaintiff that Boykin should have known that a liquor license would not be awarded to a filling station property. According to plaintiff, Lavelle and he spoke about filing suit against Boykin. Lavelle introduced plaintiff to his son, an attorney, and described "what [Boykin] did to this guy. [Boykin] messed up big time." Plaintiff explained that he did not attempt to sue Boykin after hiring Lavelle because the appeal was ongoing and Lavelle "promised [that] he [had] a strong chance to get the license."

⁴ Boykin was in Washington, D.C. on other matters.

¶19 Construing the evidence strictly against defendants and in favor of plaintiff, we find that the pleadings, admissions, depositions, and affidavits on file demonstrate there was no genuine issue as to any material fact and that defendants were entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010). In this case, plaintiff was issued, temporarily, the liquor license as a result of Lavelle's efforts, not defendants' efforts. Any injury proximately caused by defendants accrued, at a minimum, when plaintiff hired Lavelle. The alleged malpractice was that Boykin advised plaintiff he could obtain a liquor license at a filling station when Boykin knew the law was to the contrary. Boykin's failure to make good on his guarantee and plaintiff's admitted belief that Boykin would be unsuccessful on appeal led plaintiff to hire Lavelle. Plaintiff, therefore, believed in October 2008 that Boykin could not obtain the liquor license for plaintiff. As a result, in October 2008, plaintiff incurred the injury and sustained the loss in the form of additional legal expenses to hire Lavelle in an effort to obtain the result for which he had been guaranteed and had already paid Boykin. "Where an attorney's neglect is a direct cause of the legal expenses incurred by the plaintiff, the attorney fees incurred are recoverable as damages. [Citation.] However, the converse of this rule is equally true: where an attorney's neglect is *not* a direct cause of the legal expenses incurred by the plaintiff (*i.e.*, the plaintiff prevails when sued or loses for reasons other than incorrect legal advice), the attorney fees incurred are generally not actionable." *Lucey*, 301 Ill. App. 3d at 355.

¶20 We recognize the unique facts of this case, in that plaintiff was awarded a liquor license for nearly 10 months. As stated, however, the license was awarded as a result of Lavelle's efforts. Therefore, where Boykin proximately caused plaintiff damages in the form of additional legal expenses as a result of Boykin's alleged breach of duty, plaintiff's legal malpractice claim remained intact. Our case is distinguishable from cases such as *Lucey* where the legal

malpractice cause of action arose out of an attorney's purportedly negligent advice that caused the plaintiff to become entangled in a lawsuit. See, e.g., *Lucey*, 301 Ill. App. 3d at 351-52; *York Woods Community Ass'n v. O'Brien*, 353 Ill. App. 3d 293, 299 (2004). In those instances, a cause of action for legal malpractice does not accrue prior to the entry of an adverse judgment, settlement, or dismissal of the underlying action since the plaintiff could prevail, making damages prior to that time entirely speculative. *Lucey*, 301 Ill. App. 3d at 355-56; *O'Brien*, 353 Ill. App. 3d at 299. Here, the existence of plaintiff's damages was certain. *Id.* ("[w]hen uncertainty exists as to the very fact of damages, as opposed to the amount of damages, damages are speculative, [citation] and no cause of action for malpractice can be said to exist"). The mere possibility that plaintiff could have been successful in retaining the liquor license following administrative review and appeal did not negate the injury caused by Boykin's alleged malpractice, namely, having to hire Lavelle to complete the job. *Cf. O'Brien*, 353 Ill. App. 3d at 299 (noting the strong policy rationale against "prophylactic malpractice cases" wherein a malpractice case is completely dependent on the outcome of a pending case).

¶21 Moreover, in this case, plaintiff did receive an adverse judgment, namely, the denial of his liquor license by the Control Commission. The adverse judgment, combined with Boykin's advice regarding the unlikely success for appeal, demonstrate that plaintiff should have known of his injury. In fact, plaintiff's deposition testimony confirms as much where he stated that he fired Boykin and hired Lavelle to pursue the appeal because he believed Boykin could not obtain the license. *Cf. Racquet v. Grant*, 318 Ill. App. 3d 831, 836-37 (2000) (where it could not be said, as a matter of law, that the plaintiffs knew their attorney committed malpractice in their trial proceedings or in failing to appeal or cross-appeal). Additionally, in his deposition, plaintiff testified that Lavelle advised him that Boykin committed malpractice. While "[a] professional

opinion that legal malpractice has occurred is *not required* before a plaintiff is charged with knowing facts that would cause him to believe his injury was wrongfully caused," (emphasis added) (*Id.* at 837) the receipt of such an opinion certainly puts a plaintiff on notice that he may have been wrongfully injured. We, therefore, conclude that the statute of limitations for plaintiff's legal malpractice claim began to run in October 2008. As a result, defendant's lawsuit, filed on August 12, 2011, failed to comply with the two-year statute of limitations.

¶22 Because we have found that plaintiff's legal malpractice claim was barred by the statute of limitations, we need not determine whether he had standing to bring his claim in light of his bankruptcy proceedings or whether he was judicially estopped from doing so. Although the record does not reveal the basis for the circuit court's grant of summary judgment, we may affirm on any basis appearing in the record. *Gallager v. Hasbrouk*, 2013 IL App (1st) 122969, ¶17. We conclude that summary judgment was granted properly in favor of defendants.

¶23 CONCLUSION

¶24 We affirm the judgment of the circuit court granting summary judgment in favor of defendants.

¶25 Affirmed.