

No. 1-13-3955

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).

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

ILIJA VASILJ,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 11 L 0003
)	
HARVEY TEICHMAN,)	Honorable
)	Sanjay Tailor,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's grant of summary judgment in favor of defendant was proper where the undisputed facts show that plaintiff knew or reasonably should have known that he was injured, and the injury was wrongfully caused, more than two years before he filed his legal malpractice complaint. Therefore, the statute of limitations barred plaintiff's complaint.

¶ 2 Plaintiff, Ilija Vasilj, appeals the order of the circuit court granting defendant Harvey Teichman's motion for summary judgment on the basis that the statute of limitations barred Vasilj's attorney malpractice complaint. On appeal, Vasilj contends that the trial court erred in granting summary judgment because a question of fact exists as to when he should have known he had suffered an injury caused by Teichman's alleged negligence. Vasilj also argues that Teichman's negligence proximately caused his injuries. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court granted Teichman's motion for summary judgment on November 21, 2013. Vasilj filed his notice of appeal on December 20, 2013. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 On March 27, 2007, Vasilj purchased the first floor of a building located at 2650 W. Belden in Chicago, Illinois, for \$2,600,000. The first floor was vacant and undeveloped, while the second and third floors of the building contained existing condominiums. Vasilj purchased the property with the intent to develop 12 condominiums for resale. At the time of purchase, the second and third floors of the building were part of the existing Brau Haus Condominium Association (association) and subject to the Declaration of Condominium Ownership (declaration). The declaration did not include the first floor of the building as a part of the condominiums. The association, in an attempt to incorporate the first floor, passed the first amendment to the declaration which included the first floor in the association. However, the

association did not record a new plat survey reflecting the changes. The failure to record a new plat survey resulted in a defective title to Vasilj's property.

¶ 7 Vasilj hired Teichman to represent him in the purchase of the Belden property. Teichman was aware that Vasilj purchased the property in order to develop 12 condominiums for resale. Prior to closing, Teichman did not review the amendment to the declaration, nor did he know that a new plat survey was never filed and recorded with the amendment. The resulting defective title to Vasilj's property would prohibit him from selling the condominiums he would later develop. Unaware of the defective title, Vasilj closed on the Belden property and began development of the condominiums.

¶ 8 During construction, issues arose between the association and Vasilj that needed to be resolved before the association would approve the construction and amend the declaration. In a letter dated December 4, 2007, and addressed to Vasilj's attorney Jack E. Boehm, Jr., the association's board of directors (board) reminded Vasilj that the issues, including deviations from plans regarding window size and type, plumbing costs, and communication with the association's board, had not been resolved. The letter stated that it hoped Vasilj would work on these issues "in order to facilitate [the board's] approval of the construction and amendment of the Declaration to facilitate the sales of the Residential Units." On January 16, 2008, the board sent a letter to Vasilj's daughter, Diane J. Vasilj, who also served as his attorney in the matter. That letter referred to issues regarding the common elements and infrastructure, and informed Vasilj that he "ha[d] no right to make any alterations to the Common Elements without prior Board approval." The letter also stated, however, that the board was "not interested in delaying the completion of the project" and wanted to work with Ms. Vasilj "in order to draft a proper amendment to the Declaration in order to subdivide the first floor into twelve (12) Residential

Units." The board informed Vasilj that its "authorization [was] contingent upon [Vasilj's] agreement to comport with the approved plans" regarding the build-out of interior garage spaces. It acknowledged that Vasilj had told the board that he had "no intention to actually build the garage spaces in conformance with the plans." However, the board "insist[ed] that those spaces be built before [it would] facilitate the amendment to the Declaration." The association did offer an alternative to Vasilj if he insisted on not building the garage spaces. It would accept "a statement, in writing, from the City of Chicago Department of Buildings, verifying that the parking spaces [would] not be built out as indicated in the approved plans and the City [had] no objection to the conversion of the first floor into twelve (12) Residential Units without the requisite parking spaces." The board reiterated that it was "very interested in facilitating the completion of this project."

¶ 9 Although Ms. Vasilj acknowledged the board's concerns in a letter dated January 26, 2008, her letter did not respond to the issues presented in the January 16, 2008, letter. On January 31, 2008, the board sent another letter to Ms. Vasilj reiterating its demand before it would approve an amendment. It further stated that "[t]o the extent that you have alluded to other means of facilitating the sale of individual Units without the Board's approval, please be aware that the Board will affirmatively act to impede the sale of those Units to the extent that any documentation falsely represents that the Board has approved the reconstruction." Vasilj himself responded to the letter with a letter dated February 18, 2008. In that letter, Vasilj stated that "[i]t is essential for my business to title the proposed units as quickly as possible – such is the nature of development. Thus, waiting until the project is completed to receive the Board approval of the amendments to the condominium documents remains unworkable. We also cannot wait until the city stipulates in writing to an amendment to the proposed development."

Vasilj further promised "to deliver, as quickly and economically as possible, twelve exceptional loft condominiums to the market." To achieve that goal, Vasilj again requested that the board "amend the Association bylaws to properly recognize the twelve new residential [units] with[in] the next 10 business days."

¶ 10 Vasilj continued the construction of the condominium units even though he did not obtain the association's approval. The board never amended the declaration to include the 12 newly constructed units. In April and June of 2008, Vasilj entered into contracts to sell some of the units. However, due to the defective title, Vasilj could not close on the purchases. The first sales contract fell through on July 23, 2008, and the other contract was cancelled on October 13, 2008. Vasilj, however, alleged that Teichman never informed him of the reason why the sales did not close.

¶ 11 In July 2008, Vasilj retained Mark Rosenbaum to act as additional counsel in the matter. In a letter to the board dated August 26, 2008, Rosenbaum stated that he examined the original declaration "in the course of doing due diligence with regard to the existing situation at the building." He found that Vasilj's title to the property was defective because "at no time was a survey ever recorded for the first floor commercial area in order to bring it into compliance with the requirements" of the Illinois Condominium Property Act (Act). The letter further speculated that as a result, Vasilj "may not be bound by the Declaration and maybe [sic] free to develop the first floor area as a separate development in any way he may choose."

¶ 12 The board responded to Rosenbaum in a letter dated September 30, 2008. In the September letter, it disagreed with the assertion that the first floor was not a part of the association and threatened litigation. It also detailed the remaining issues the association had which precluded approval of Vasilj's construction of the condominiums, and noted that Vasilj

had not responded to the association's requests. The association filed a declaratory action against Vasilj for outstanding fees and assessments. In his response, Vasilj argued that the first floor was not subject to the Act, "and thus not subject to the Declaration, and not a condominium unit of the" association. The claim was eventually settled out of court. Some time in 2010, Vasilj spoke with his attorney friend Jack Boehm, who told Vasilj that Teichman had committed malpractice.¹ Vasilj did not obtain the association's approval, and could not sell his constructed units, until July of 2010. Although he was able to sell the condominiums, he sold "at a far reduced price because of the condominium real estate market collapse in Chicago in 2008 and 2009."

¶ 13 On January 3, 2011, Vasilj filed a complaint against Teichman alleging legal malpractice. On March 16, 2012, he filed an amended complaint alleging that at all times Teichman knew that Vasilj intended to develop the first floor into condominium units. Vasilj alleged that Teichman never informed him of the reason why the sales contracts did not close; specifically, that the title was defective and Vasilj could not legally convey the condominiums he had constructed. Vasilj alleged that Teichman was negligent in "failing to assure that [Vasilj] received clear title to his property, so that he could develop condominium units, and [Vasilj] was damaged because he was unable to sell the condominium units that he had developed." Furthermore, Vasilj alleged that Teichman "breached his duty of care by allowing [Vasilj] to purchase property that [Vasilj] thought was subject to the Condominium Act when the property was not subject to the Condominium Act." Vasilj also alleged that Teichman fraudulently concealed his negligence by not informing Vasilj of the defective title even after Teichman discovered the problem.

¹ Although Vasilj's brief states that Boehm informed him of the malpractice in January of 2009, Vasilj's amended complaint alleged that Boehm told him of the malpractice some time in 2010.

Vasilj alleged that he did not know of the malpractice until an attorney friend informed him of it sometime in 2010. He requested damages relating to lost profits, assessment fees, interest, payment of property taxes, and loss of income.

¶ 14 On July 18, 2013, Teichman moved for summary judgment, arguing that Vasilj's claim was barred by the statute of limitations and that he did not proximately cause Vasilj's injuries. After hearing argument on the motion, the trial court granted summary judgment in favor of Teichman. The court noted that when malpractice is discovered is generally a question of fact, but it did not "find it's a question of fact in this case." It found that Vasilj "knew or reasonably should have known that he was injured and it was wrongfully caused no later than August 25, 2008, and probably well before that." The trial court did not reach the issue of fraudulent concealment or estoppel "because no argument, no authority is cited in the plaintiff's brief on that issue and there's no reasoned argument offered in that regard." Vasilj filed this timely appeal.

¶ 15 ANALYSIS

¶ 16 Vasilj contends that the trial court erred in granting summary judgment on the grounds that the statute of limitations barred his attorney malpractice claim. Summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2008). The trial court's grant of summary judgment is reviewed *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 17 "An action for damages based on tort, contract, or otherwise *** 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." 735 ILCS 5/13-214.3(a) (West 2008). However, the limitations period does not begin to run until the plaintiff "discovers, or within a reasonable time should discover, his injury and incurs damages directly attributable to counsel's neglect." *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349, 353 (1998). This discovery rule tolls the start of the statute of limitations "until the plaintiff knows or reasonably should have known of the injury and that it may have been wrongfully caused." *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 672 (1997). Generally, when the plaintiff has or should have this knowledge under the discovery rule is a question of fact. *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill. 2d 240, 250 (1994). However, summary judgment is proper if the undisputed facts compel the conclusion that more than two years had passed from the time the plaintiff knew or should have known of his injury, and the date plaintiff filed his complaint. *Id.*

¶ 18 The statute of limitations did not begin to run until the time Vasilj knew or reasonably should have known of his injury, and that it was wrongfully caused. His amended complaint alleged Vasilj purchased the property with the intent to develop 12 condominium units, and that he informed Teichman of his intention. Vasilj constructed the condominiums and entered into purchase contracts with potential buyers in April and June of 2008. When the sales fell through, Vasilj alleged that Teichman never informed him of the reason why the sales contracts did not close; specifically, that the title was defective and Vasilj could not legally convey the condominiums he had constructed. The complaint alleged that Teichman was negligent in "failing to assure that [Vasilj] received clear title to his property, so that he could develop condominium units, and [Vasilj] was damaged because [in 2008,] he was unable to sell the

condominium units that he had developed." Vasilj alleged that he did not know of the malpractice until his attorney friend, Jack Boehm, informed him of it sometime in 2010.

¶ 19 Although Vasilj contends that he did not know of his injury, or that it was wrongfully caused, until 2010, the record shows that he was aware of the defective title much earlier and understood that the defect would impede his ability to sell the condominiums. The undisputed facts show that Vasilj began construction on the condominiums some time after March of 2007. During the construction, issues arose between Vasilj and the board. In a letter dated December 4, 2007, addressed to Vasilj's attorney Jack Boehm, the board stated that the issues needed to be resolved before it would approve the construction and amend the declaration accordingly. The letter also stated that the board hoped Vasilj would work on these issues "in order to facilitate [the board's] approval of the construction and amendment of the Declaration to facilitate the sales of the Residential Units." On January 16, 2008, the board sent a letter to Vasilj's daughter, who is an attorney, stating that Vasilj "ha[d] no right to make any alterations to the Common Elements without prior Board approval." The board, however, reiterated that it was "not interested in delaying the completion of the project" and wanted to work with Vasilj "in order to draft a proper amendment to the Declaration in order to subdivide the first floor into twelve (12) Residential Units." Ms. Vasilj sent a letter on January 26, 2008, that did not respond to the board's requests. On January 31, 2008, the board sent Ms. Vasilj another letter reiterating its demands before it would approve an amendment. It further stated that "[t]o the extent that you have alluded to other means of facilitating the sale of individual Units without the Board's approval, please be aware that the Board will affirmatively act to impede the sale of those Units to the extent that any documentation falsely represents that the Board has approved the reconstruction." In a letter dated February 18, 2008, Vasilj himself stated that the board's

demands were "unworkable" because he needed the condominiums titled as quickly as possible for business reasons. He requested that the board "amend the Association bylaws to properly recognize the twelve new residential [units] with[in] the next 10 business days." Vasilj must have understood during this time that he did not have clear title to the constructed condominiums and as a result, his ability to sell the units would be affected.

¶ 20 When contracts to purchase his condominiums did not close in July and October of 2008, Vasilj should have been aware that he suffered an injury resulting from the defective title. Vasilj disagrees, arguing that although he suffered injury, he did not know Teichman engaged in wrongdoing until so informed by his attorney friend, Jack Boehm in 2010.² However, the discovery rule does not delay the running of the statute of limitations until one has actual knowledge of negligent conduct. *Dancor*, 288 Ill. App. 3d at 673. Instead, it begins when one "has a reasonable belief that the injury was caused by wrongful conduct thereby creating an obligation to inquire further on that issue." *Id.* In *Dancor*, this court reasoned that " 'if knowledge of negligent conduct were the standard, a party could wait to bring an action far beyond a reasonable time' " from when they received sufficient notice of a possible injury, and such a rule would defeat the underlying purpose of statutes of limitations to prevent the loss of evidence and discourage delay in bringing claims. *Id.* (quoting *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 170-71 (1981)).

¶ 21 The undisputed evidence shows that Vasilj was aware of possible wrongdoing, and suffered an injury as a result, no later than July of 2008. He had an obligation at that time to

² We note that an attorney named Jack Boehm also received the December 4, 2007, letter from the board in which the title issue is discussed. If it is the same Jack Boehm who informed Vasilj in 2010 of Teichman's negligence in failing to discover the defective title, it is unclear why he waited almost three years to tell Vasilj of the possible malpractice.

inquire further into whether an actionable wrong had been committed and, therefore, the statute of limitations began to commence. Since Vasilj filed his complaint on January 3, 2011, more than two years later, the statute of limitations bars the complaint and summary judgment in favor of Teichman was proper. See *Jackson Jordan*, 158 Ill. 2d at 250. Therefore, we need not address the issue of whether Teichman's negligence proximately caused Vasilj's injuries.

¶ 22 Vasilj also contends that Teichman fraudulently concealed the malpractice from him so that he could not discover the wrongdoing in a timely manner. Vasilj, however, offered no reasoned argument or supporting authority on the issue before the trial court, thereby forfeiting consideration of the issue on appeal. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 344 (2002) (issues not argued before the trial court cannot be raised for the first time on appeal). In addition, the issue as argued in Vasilj's briefs do not cite to any supporting authority in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) (argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"). Therefore, we will not address the fraudulent concealment issue here.

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

¶ 24 Affirmed.