2017 IL App (1st) 151555-U

FIFTH DIVISION
March 17, 2017

No. 1-15-1555

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HOLLY B. GERACI and PETER F. GERACI, individually and on behalf of UNION SQUARE CONDOMINIUM ASSOCIATION,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	
JORDAN M. CRAMER, individually, LAW OFFICES OF JORDAN M. CRAMER, P.C., JAY SCHIESSER, JOHN HOLMES, JAMES PALMICH, MICHAEL NELLER, BARBARA BURKE, and ANGELIQUE GUINN, and UNION SQUARE CONDOMINIUM ASSOCIATION,	)	No. 2014 L 000642
Defendants-Appellees.	)	Honorable Peter F. Flynn, Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: (1) plaintiffs did not properly allege individual claims for constructive eviction; (2) plaintiffs claims for breach of fiduciary duty were precluded by the business judgment presumption; and (3) the trial court did not err in dismissing plaintiffs' claims against the Association's attorney.

¶ 2 This is an appeal brought by plaintiffs Holly B. Geraci and her husband Peter F. Geraci as individuals and on behalf of the Union Square Condominium Association (Association), an Illinois not for profit corporation. This appeal seeks review of the trial court's May 18, 2015, order granting defendants' Jay Schiesser, John Holmes, James Palmich, Michael Neller, Barbara Burke, and Angelique Guinn (collectively Board Defendants) and Jordan Cramer's motions to dismiss plaintiffs' first amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code)(735 ILCS 5/2-615 (West 2014)) and section 2-619.1 of the Code (735 ILCS 5/2-619.1 (2014)).

¶ 3 On appeal, plaintiffs contend that the trial court erred because: (1) their complaint properly alleged demand futility as a prerequisite to their derivative action; (2) their complaint properly alleged individual claims for property damage and constructive eviction; (3) contrary to the trial court's ruling, shareholders are permitted to bring derivative actions against a corporation's lawyer; and (4) the action against the Association's attorney was not barred by any statute of limitations. Because this is an appeal from a dismissal on the pleadings, the facts on appeal are only those alleged in the complaint and, we will recite the relevant facts as we discuss each issue.

I. Standard of Review

¶ 4 A cause of action will not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved which will entitle plaintiffs to recover. *Weisblatt v. Colky*, 265 Ill. App.

3d 622, 625 (1994). When ruling on a section 2–615 motion, a court must accept as true all well-pleaded facts, as well as any reasonable inferences that may arise from them [citation], but a court cannot accept as true mere conclusions unsupported by specific facts. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31(citing *Pooh–Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009)); see also *Hanks v. Cotler*, 2011 IL App (1st) 101088, ¶ 17 (stating that a motion to dismiss under sections 2–615 and 2–619 admits well-pleaded facts, but that "conclusions of law and conclusory factual allegations not supported by allegations of specific facts are not deemed admitted" [citation]). Further, a reviewing court must view the complaint in the light most favorable to plaintiff and determine if the complaint alleges any set of facts upon which relief may be granted. *Bercaw v. Domino's Pizza, Inc.*, 258 Ill. App. 3d 211, 213 (1994).

¶ 5 A motion to dismiss under section 2–619.1 of the Code allows a party to file a motion combining a section 2–619 motion to dismiss with a section 2–615 motion to dismiss. *Patrick*, 2012 IL 113148 at ¶ 31; see 735 ILCS 5/2–619.1 (West 2014). A section 2–619 motion to dismiss admits the sufficiency of the complaint, but asserts a defense outside the complaint that defeats it. *Id.* (citing *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 12 (2005)). Specifically, section 2–619(a)(5) permits involuntary dismissal where the claim is barred because it was not commenced within the time limited by law. 735 ILCS 5/2–619(a)(5) (West 2014).

¶ 6 Our review of a dismissal under either section 2–615 or 2–619 of the Code is *de novo* (*Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006)), and we can affirm the trial court's dismissal for any reason that the record supports (*Holtkamp Trucking Co. v. Fletcher*, 402 Ill. App. 3d 1109, 1115 (2010)). As a result, our *de novo* review demonstrates that the trial court properly dismissed the first amended complaint with prejudice.

II. Discussion

A. Business Judgment Presumption

¶ 7 On appeal, plaintiffs contend that their derivative claims for breach of fiduciary duty were improperly dismissed on the ground that they inadequately pleaded "demand futility" under section 7.80(b) of the Business Corporation Act of 1983 (805 ILCS 5/7.80(b) (West 2014)). The Board Defendants counter that even if plaintiffs had sufficiently pleaded demand futility, their derivative claims for breach of fiduciary duty failed to overcome the business judgment presumption and were therefore properly dismissed. We agree with the Board Defendants.

¶ 8 The business judgment rule acts to shield directors who have been diligent and careful in performing their duties from liability for honest errors or mistakes of judgment. *Stamp v. Touche Ross & Co.*, 263 Ill. App. 3d 1010, 1018 (1993). Under this rule, the judgment of the directors of corporations enjoys the benefit of a presumption that it was formed in good faith and was designed to promote the best interests of the corporation they serve. *Shlensky v. Wrigley*, 95 Ill. App. 2d 173,178 (1968). Consequently, absent allegations of "bad faith, fraud, illegality or gross overreaching, courts are not at liberty to interfere with the exercise of business judgment by corporate directors." *Fields v. Sax*, 123 Ill. App. 3d 460, 467 (1984); see also *Shlensky*, 95 Ill. App. 2d at 181("unless the conduct of the defendants at least borders on one of the elements [fraud, illegality or conflict of interest], the courts should not interfere").

¶ 9 Plaintiffs argue that the business judgment presumption is inapplicable because the Board Defendants violated several provisions of the Declaration and Bylaws. Specifically, plaintiffs allege that the Board Defendants: (1) delayed taking appropriate actions against unit 807 at Union Square Condominiums; (2) pledged substantially all of the Association's assets without the required vote of unit owners holding 2/3 interest; (3) were not authorized to approve changes

or maintenance to the common elements that would structurally change the property; and (4) are required under the Declaration and Bylaws to reimburse the Geracis for damage caused to their unit by the Association's contractors.

¶ 10 A board's proper exercise of its fiduciary duty requires "strict compliance with the condominium declaration and bylaws." *Duffy v. Orlan Brook Condominium Owner's Association*, 2012 IL App (1st) 113577, ¶ 21(quoting *Wolinsky v. Kadison*, 114 Ill. App. 3d 527, 534 (1983)). We interpret condominium declarations and bylaws according to the principles of contract interpretation. *Stobe v. 842-848 W. Bradley Place Condominium Association*, 2016 IL App (1st) 141427, ¶ 13 (citing *Toepper v. Brookwood Country Club Road Association*, 204 Ill. App. 3d 479, 487 (1990)). The primary rule of interpretation is to give effect to the drafting parties' intent. *Id.* (citing *La Salle National Trust, N.A. v. Board of Directors of the 1100 Lake Shore Drive Condominium*, 287 Ill. App. 3d 449, 455 (1997)). To resolve controversies involving a condominium owner's rights, courts must construe the declaration, bylaws and any relevant provisions of the Illinois Condominium Property Act (Condo Act) (765 ILCS 605/1 *et seq.* (West 2014)) as a whole. *Id.*

¶ 11 According to plaintiffs, unit 807 was the subject of a foreclosure suit. On February 12, 2014, the Board voted to short sale the unit to Holmes for $505,000 plus a $17,000 lien for unpaid assessments. The owners of unit 807 had been in default on and off for ten years, and the remaining balance against the unit was $38,000 at the time of their eviction. The outstanding balance consisted of $13,000 in assessments, $22,000 in attorney's fees and $3,000 in late fees. Plaintiffs claim the Board's refusal to enforce the Association's rules sooner, if at all, was a violation of the Declaration and Bylaws which renders the business judgment presumption inapplicable.

¶ 12 After reviewing the Declarations, we find that enforcement of Association rules is left to the discretion of the Board. Section 2 of Article XIV states: "[T]he Association may enforce the provisions of this Declaration and the Articles of Incorporation, By-Laws and rules and regulations of the Association by any proceeding in law or in equity against any person or persons violating or attempting to violate any such provisions." The Declaration and Bylaws do not mandate the assessment of penalties or the initiation of court proceedings when an owner defaults or violates the rules. Therefore, any claim for breach of fiduciary duty premised on a failure to enforce the rules would need to allege facts rebutting the business judgment presumption. See *Davis v. Dyson*, 387 Ill. App. 3d 676, 693 (2008) ("Where only discretionary decisions are at issue, then, as stated in *Stamp*, it is necessary to allege that corporate officers were not acting in the best interest of the corporation in order to state a cause of action for breach of fiduciary duty"). In the instant case, plaintiffs have failed to allege facts rebutting this presumption.

¶ 13 Next, we turn to plaintiffs' claims that the Board Defendants violated the Bylaws by pledging substantially all of the assets of the Association without first obtaining an affirmative vote of the holders of 2/3 of the unit interests. The Bylaws state in subsection A of section four that:

"Matters subject to affirmative vote of Owners having two-thirds (2/3) or more of the total votes at a meeting duly called for that purpose shall include, but not be limited to: (1) merger or consolidation of the Association; (2) sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the property and assets of the Association; and (3) the purchase or sale of land or of Units on behalf of all Owners; and (4) subject to the provisions of

the Act, the commencement of any type of litigation, except for actions in forcible entry and detainer to collect assessments."

¶ 14 Plaintiffs interpret this section to mean that the Board could only pledge substantially all of the assets after obtaining an affirmative vote of the holders of 2/3 of the total unit interest in the Association; however, the Bylaws expressly state that the Board may do so when it receives an affirmative vote of the owners having 2/3 or more of the total votes present at the meeting called for that purpose. Stated differently, so long as a meeting was held for the purpose of pledging substantially all of the assets, and the Board Defendants pledged the assets after receiving 2/3 or more of the total affirmative votes present at that meeting, then the Board Defendants acted in strict compliance with the Bylaws and did not breach their fiduciary duty. *Id* Plaintiffs have not alleged facts contrary to our interpretation of subsection A, thus their contention is without merit.

¶ 15 Next, we address plaintiffs claims pertaining to the Board Defendants' alleged failure to maintain the Union Square roof and common elements. Plaintiffs claim that the "[Board] Defendants have failed and refused to make any repairs to the parapet wall for about 1yrs [sic] after they supposedly discovered it and have barred owners from their limited common areas.***The repair of the parapet wall is a life safety issue, and the repairs cannot be delayed further." We cannot overstate the irony that plaintiffs bring these allegations in a derivative suit to enjoin the Association's plan to repair the parapet wall. Notwithstanding, plaintiffs insist that the repair plan violates the Declaration and Bylaws. Plaintiffs rely on Article V, section three of the Declaration, which states in pertinent part: "Nothing shall be done in any Unit, or in, on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the building."

¶ 16 First, we note that this provision pertains to restrictions on the ability of unit owners to make alterations to their units or to the common elements. Second, in Exhibit I of plaintiffs' complaint, Building Technology Consultants, PC (BTC), opined that the parapet wall, in its current state, is not capable of resting code-prescribed loads. It is untenable to interpret Article V in a way that precludes the Board from bringing the Association's property in compliance with building code regulations, nor would such an interpretation be supported by the Bylaws. Section seven of the Bylaws states in pertinent part:

"The Board, for the benefit of all the Owners, shall acquire the following goods and services and do any of the following things, and shall pay for such goods, services and things as a common expense as follows***

G. Maintenance. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations or assessments which the Board is required to secure or pay for pursuant to the terms of the Declaration and these By-Laws or by law or which in its opinion shall be necessary or proper for the maintenance and operation of the property as a first class condominium complex or for the enforcement of the Declaration, By-Laws, Rules and Regulations and the Act."

¶ 17 Based on our reading, the Board must pay for all structural alterations required by law (i.e. alterations which bring the parapet wall in compliance with building code regulations). Therefore, it cannot be said that the Board's repair plan or exercise of its discretion violated the Declaration and Bylaws.

¶ 18 The final claims in count XIX of the complaint are filed individually by the Geracis. They claim that the Board Defendants and the Association violated the Bylaws by failing to compensate the Geracis for the damage caused by the contractors hired to replace the roof. In

support of their claim, the Geracis rely on Article V of the Declaration addressing maintenance, alterations, and decorating. In section four, it states in pertinent part:

"Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his own Unit, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating.***Decorating of the Common Elements (other than interior surfaces with the Units as above provide), and any redecorating of Units to the extent made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements by the Board, shall be furnished by the Board as part of the Common Expenses."

¶ 19 The parties dispute whether the word "furnishings" includes the water leaks and the Geracis' speakers, cameras and personal property. Based on our reading of Article V, we find the parties intended section four to only address damage to furniture and personal property that is cosmetic in nature. All of the items included under the definition of "decorating" are either pieces of furniture or items used to cosmetically alter or enhance the unit. Only one of them is electronic and none of them are used for entertainment. Had the parties intended to include other personal property in this provision, they could have listed them, if not specifically, at least categorically.

¶ 20 As presently pleaded, the thrust of the remaining allegations in counts IV, XII through XVII, and XVIII attack the decisions made by the Board Defendants or state claims based on conclusory allegations.

¶ 21 For example, plaintiffs contend that the Board Defendants schemed to help Holmes drive down the price of unit 807. Plaintiffs also contend that the Board Defendants facilitated this

scheme through secret meetings in emails, text messages, and phone calls. Although pleadings are to be liberally construed (735 ILCS5/2-603(West 2014)), "a complaint which does not allege facts, the existence of which are necessary to enable a plaintiff to recover does not state a cause of action and [ ] such deficiency may not be cured by liberal construction or argument." *In re Beatty*, 118 Ill. 2d 489, 500 (1987) (quoting *People ex rel. Kucharski v. Loop Mortgage Co.*, 43 Ill. 2d 150, 152 (1969). We find plaintiffs' claims are conclusory and fail to allege sufficient facts suggesting bad faith, fraud, illegality, or gross overreaching by the Board Defendants. See *Fields,* 123 Ill. App. 3d at 467; see also *Hanks,* 2011 IL App (1st) 101088 at¶ 17 (Conclusions of law and conclusory factual allegations not supported by allegations of specific facts are not deemed admitted when reviewing a section 2-615 motion to dismiss). In the absence of contrary factual allegations, we must presume that defendants acted in good faith and with due care, and as a result the business judgment rule precludes their liability regarding these claims. *Stamp,* 263 Ill. App. 3d at 1018 (1993).

¶ 22 Similarly, the Geracis state in their individual claim that the Board Defendants' and the Association breached their fiduciary duty and intended to "ruin the market value of Plaintiffs' unit so John Holmes or James Palmich or an unknown fried [sic] of a Board member can buy Plaintiffs' unit at a $3 million discount***." As we have previously stated, conclusory factual allegations not supported by allegations of specific facts are not deemed admitted. *Hanks,* 2011 IL App (1st) 101088 at ¶ 17. Further, to the extent that these claims involve the Board Defendants' decision to repair the parapet wall, the business judgment presumption shields the Board Defendants from liability.

¶ 23 Next, we turn to counts IV and XII through XVII where plaintiffs' allege that the Board Defendants breached their fiduciary duty by failing to maintain the common areas,

misappropriating funds, committing waste and by providing free construction services and repairs to limited common elements in violation of the Association's Declaration and Bylaws.

¶ 24 Plaintiffs allege that on August 28, 2013, the Board sent a letter to the 10th floor unit owners, which relayed false information regarding the roof issues. The letter stated: "A set of owners asked that we install window washing tie back anchors. While our project engineer, BTC, was investigating this request, it was determined that the parapet wall does not meet building code requirements." Plaintiffs claim that this is false because the Board was asked to install anchors in March 2013 by the Geracis and the parapet wall was exposed in April 2013. Plaintiffs claim, in spite of this, the Board refused to do the work before putting on a new roof and that the Board's letter was an attempt at a "cover-up" because the Board knew of these facts five months earlier and chose to ignore them.

¶ 25 Plaintiffs direct this Court's attention to Exhibit H of their complaint as evidence that the Board Defendants ignored the owners' warnings to install the window washing anchors before commencing the roof project. In Exhibit H, the only mention of washing anchors occurs when Ms. Geraci asks "[a]lso has there been any decision on the window washing hooks?" This is a far cry from a warning or even a suggestion, but merely an inquiry on whether a decision had been made regarding the Board's exercise of their discretion. Thus, it is insufficient to demonstrate a lack of due care by the Board Defendants.

¶ 26 This brings us to the Geracis' final claim in count XIX which alleges that they were constructively evicted from their unit as a result of the roof repair. This claim is without merit. A constructive eviction requires a landlord to have done something of a grave and permanent character with the intention of depriving the tenant of enjoyment of the premises. *Home Rentals Corp. v. Curtis,* 236 Ill. App. 3d 994, 998 (1992). Further, there can be no constructive eviction,

without the vacating of the premises. *Dell'Armi Builders, Inc. v. Johnston*, 172 Ill. App. 3d 144, 148 (1988). The Geracis' complaint alleges no landlord tenant relationship between themselves and any defendant, nor do they allege facts demonstrating that they vacated the premises. Thus, their claim for constructive eviction was properly dismissed.

¶ 27 In sum, the majority of the claims contained in plaintiffs' complaint are against the Board Defendants' exercise of their judgment. To charge these defendants with breaching their fiduciary duties, plaintiffs would be required to plead facts relating to the manner in which the alleged erroneous decisions were reached. *Stamp*, 263 Ill. App. 3d at 1018. However, plaintiffs' complaint is replete with evidence demonstrating that the Board Defendants exercised their judgment on an informed basis and in compliance with the laws, Declaration and Bylaws. In the absence of factual allegations to the contrary, we must presume that the Board Defendants acted in good faith and with due care, and as a result the business judgment rule precludes their liability. *Id.*

B. Cramer's Motion to Dismiss

¶ 28 Next, we address the claims against Jordan Cramer and his law firm for various breaches of fiduciary duty. On appeal plaintiffs raise two questions: (1) whether shareholders may bring derivative malpractice actions against a corporation's attorney; and (2) whether the underlying action against Cramer and his law firm were barred by any statute of limitations. Since the Illinois Supreme Court recently stated that shareholders may bring derivative malpractice suits against a corporation's attorney (*Stevens v. McGuireWoods LLP*, 2015 IL 118652, ¶ 21), we only address whether plaintiffs' claims against Cramer and his firm were barred by any statute of limitations.

i. Statute of Limitations

¶ 29 In 2008, the Association was sued by their developer HFO, LLC for breach of contract. Plaintiffs claim Cramer advised the Board to defend the lawsuit while knowing there was no meritorious defense to the claims. Plaintiffs alleged this was done to protract litigation and generate attorney's fees. In response to plaintiffs' lawsuit, Cramer filed a motion to dismiss claiming that the claims were barred by the two year statute of limitations. In response, plaintiffs contend that the statute of limitations was tolled because Cramer fraudulently concealed the cause of action.

¶ 30 The parties agree that section 13—214.3(b) of the Code applies to the claim against Cramer relating to his representation of the Association. This section contains the statute of limitations for actions for damages arising out of an attorney's performance of professional services. See 735 ILCS 5/13-214 (2014). See *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271. The Code states in pertinent part that:

"(b) An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services or (ii) against a non-attorney employee arising out of an act or omission in the course of his or her employment by an attorney to assist the attorney in performing professional services must be commenced within 2 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(b)

¶ 31 The statute of limitations for legal malpractice actions set forth in section 13–214.3(b) incorporates the "discovery rule" (*Blue Water Partners, Inc. v. Mason*, 2012 IL App (1st) 102165, ¶ 48), "the effect of which is to postpone the start of the period of limitations until the injured party knows or reasonably should know of the injury and knows or reasonably should know that the injury was wrongfully caused." *Steinmetz v. Wolgamot*, 2013 IL App (1st) 121375,

¶ 30 (quoting *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 20). "The question of when a party knew or should have known both of an injury and its [probable] wrongful cause is one of fact, unless the facts are undisputed and only one conclusion may be drawn from them." *Id.* (quoting *Nolan*, 85 Ill. 2d at 171).

¶ 32 According to plaintiffs, the trial court granted HFO's motion for summary judgment in October 2009, and the Board explained on October 25, 2009, that the special assessment was to cover the judgment from the lawsuit. It is well established that a plaintiff is injured at the time an adverse judgment is entered, even if the amount of damages is uncertain or the judgment might be later reversed. *Butler v. Mayer, Brown & Platt*, 301 Ill. App. 3d 919, 923 (1998) (citing *Belden v. Emmerman*, 203 Ill. App. 3d 265, 270 (1990)). Therefore, the latest that the plaintiffs could have learned about the injury was at the board meeting on October 25, 2009.

¶ 33 Next, we focus our inquiry on the issue of wrongful causation. Plaintiffs contend that the statute of limitations did not begin to run until the Geracis discovered that the injury was wrongfully caused in 2013. We disagree.

¶ 34 The phrase "wrongfully caused" does not mean knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action. *Steinmetz*, 2013 IL App (1st) 121375 at ¶ 30. Rather, the term refers to when an injured party "becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved." *Id.* (quoting *Castello v. Kalis*, 352 Ill. App. 3d 736, 744–45 (2004)). In other words, "when a party knows or reasonably should know both that an injury has occurred and that it was wrongfully caused, the statute begins to run and the party is under an obligation to inquire further to determine whether an actionable wrong was committed. In that way, an injured person is not held to a standard of knowing the inherently

unknowable [citation], yet once it reasonably appears that an injury was wrongfully caused, the party may not slumber on his rights." *Id.* (quoting *Nolan v. Johns–Manville Asbestos,* 85 Ill. 2d 161, 171, (1981)); see also *Khan,* 2012 IL 112219, ¶ 21.

¶ 35 After reviewing the complaint, it is clear that both the Association and the Geracis knew or should have known that the cause of action was wrongfully caused prior to the October 25, 2009, special assessment. Exhibit A attached to plaintiffs' complaint contains a letter to the Board from Peter Geraci dated August 18, 2009. In paragraph seven, labeled "Lawsuit", Mr. Geraci asks:

"Are you seriously paying Jordan Cramer 200k to represent this Association in a case where he was working for Levenfeld Pearlstein when they were working for Jerry Lasky to make the agreement to pay his fees? Wasn't Jordan Cramer the fellow who worked for Pearlstein with a 'waiver of conflict of interest'***Did you consider suing him and Levenfeld for malpractice when Jerry Lasky sued to recover his fees based on an agreement that was a breach of fiduciary duty?***Doesn't it look like you will lose that suit and have to pay Jerry Lasky a lot of money, even though it should be winnable?"

¶ 36 Taking the facts pleaded in plaintiffs' complaint as true, Cramer advised the Association that it had a meritorious defense, which was consistent with Mr. Geraci's opinion that the suit should be winnable. See *Patrick,* 2012 IL 113148 at ¶ 31 (stating that a reviewing court must accept as true all well-pleaded facts, as well as any reasonable inferences that may arise from them); see also *Blue Water*, 2012 IL App (1st) 102165 at ¶ 52 (knowledge of a corporate officer is imputed to the corporation)). Once the trial court returned a ruling adverse to both the Association's and Mr. Geraci's expectations, they both possessed sufficient information

concerning the injury and its cause as to put a reasonable person on inquiry notice to determine whether actionable conduct was involved. See *Steinmetz,* 2013 IL App (1st) 121375, ¶ 31.

¶ 37 Plaintiffs attempt to distinguish *Steinmetz* from the present case; however, we find the reasoning and the facts of that case lend further credence to our holding. *Steinmetz* was a legal malpractice case involving a defendant attorney advising his client to enroll in a tax shelter that turned out to be illegal. *Id.* at ¶ ¶ 1, 21.The reviewing court concluded that once the client received a tax bill that was unfavorable, he was on notice of the potential malpractice action. *Id.* at ¶ 31. Plaintiffs note that the tax bill in *Steinmetz* was not the expected result and that the client was on notice after he had received a large tax bill. Similarly, both the Association and Mr. Geraci believed the HFO litigation was winnable, and as a result were on notice to inquire further when they received an unfavorable ruling from the trial court. Therefore, the section 13-214.3(b) statute of limitations bars the HFO litigation claims against Cramer and his law firm, and the claims were properly dismissed. In light of our finding that the Association and Mr. Geraci possessed sufficient information to reasonably put them on inquiry notice, we need not address plaintiffs' claim against Cramer for fraudulent concealment.

¶ 38 Although the claims against Cramer regarding the HFO litigation were properly dismissed, plaintiffs allege several causes of action that accrued within two years of the initiation of the present action; however, for the reasons that follow the trial court's dismissal must be affirmed.

¶ 39 First we address plaintiffs' allegations that Cramer breached his fiduciary duty to the Association by advising Board Defendants to pledge substantially all of the Association's assets in violation of the Associations Bylaws. As we previously discussed, plaintiffs' interpretation of the 2/3 voting requirement is incorrect. Consequently, plaintiffs' have not pleaded facts

demonstrating that Cramer advised the Association to violate the Bylaws. Furthermore, to the extent that the advice was given in the course of his representation in 2009 as plaintiffs allege, the claims are barred by the two year statute of limitations.

¶ 40 Next we address plaintiffs allegations in count VI that Cramer breached his fiduciary duty to the shareholders of the Association by advising the Board to refrain from enforcing the rules against unit 807 and its owners. This claim is also without merit.

¶ 41 Generally, to go forward on a legal malpractice claim, a plaintiff must first establish the existence of an attorney-client relationship that gave rise to a duty of care on the part of the attorney. *Blue Water*, 2012 IL App (1st) 102165 at ¶ 38 (citing *Felty v. Hartweg,* 169 Ill. App. 3d 406, 408 (1988) ("An attorney can be liable for malpractice only to one to whom the attorney has a duty.")). The question of whether a duty exists is one of law. *Id.* (citing *Kopka v. Kamensky & Rubenstein*, 354 Ill. App. 3d 930, 934 (2004). An attorney for a corporate client owes a duty to the corporation, not to a shareholder. *Id.* at ¶ 69. However, a duty of care to a third party may arise "where [the attorney is] hired by the client specifically for the purpose of benefitting that third party." *Kopka,* 354 Ill. App. 3d at 934. Thus, "for a nonclient to succeed in a negligence action against an attorney, he must prove that the primary purpose and intent of the attorney-client relationship itself was to benefit or influence the third party." *Blue Water*, 2012 IL App (1st) 102165 at ¶ 38 (quoting *Pelham v. Griesheimer,* 92 Ill. 2d 13, 21 (1982)).

¶ 42 Plaintiffs' complaint contains no allegations or facts demonstrating that the primary purpose and intent of the Association's attorney-client relationship with Cramer was to benefit or influence the Association's shareholders. Therefore, plaintiffs' have not met their burden (*Id.*), and count VI was properly dismissed.

¶ 43 Similarly, in count XIX the Geracis attempt to state an individual cause of action for breach of fiduciary duty against the Cramer Defendants. However, the plaintiffs admit in their reply brief that "there is no dispute that the Association is the client." Plaintiffs' complaint alleges no other facts demonstrating a fiduciary relationship between Cramer and any of the parties other than the attorney client relationship between Cramer and the Association. “Without a fiduciary relationship, there are no fiduciary duties and no basis for a cause of action alleging breach of fiduciary duties.” *Weisblatt v. Colky*, 265 Ill. App. 3d 622, 625 (1994) (quoting *Overbey v. Illinois Farmers Insurance Co.*, 170 Ill. App. 3d 594, 605(1988)). Thus, count XIX was also properly dismissed.

III. CONCLUSION

¶ 44 For the foregoing reasons, we affirm the decision of the trial court.

Affirmed.