FIFTH DIVISION
March 31, 2011

No. 1-10-1928

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

GRATER, INC., and JAMES T. ZAVAKI,	)	
	)	Appeal from the
Plaintiffs-Appellants,	)	Circuit Court of
	)	Cook County, Illinois.
v.	)	
	)	No. 09 L 11926
KATTEN MUCHIN ROSENMAN, L.L.P.,	)	
MARTIN T. TULLY, and SONJA K.	)	Honorable
CLAYTON-PEDERSEN,	)	Jeffrey Lawrence,
	)	Judge Presiding.
Defendants-Appellees.	)	

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

HELD: Trial court's section 2-619 dismissal of legal malpractice suit as time-barred under the two-year statute of limitations was affirmed where complaint was filed over two years after adverse final judgment was entered against malpractice plaintiffs in the underlying suit. Trial court correctly rejected plaintiffs' argument that the adverse judgment was a requirement of indemnification and therefore contingent upon a finding of liability of the indemnitee to a third party, which had not yet been established, and thus the judgment had not yet ripened as a source of actionable damage; such an interpretation would be contrary to the plain language of the judgment order.

Plaintiffs Grater, Inc. and James T. Zavacki, the president of Grater, Inc. (hereinafter jointly referred to as Grater), appeal from the trial court's dismissal of their legal malpractice suit against defendants, the law firm of Katten Muchin Rosenman, LLP, Martin Tully, a partner in the aforementioned law firm, and Sonja Clayton-Pedersen, an associate in the aforementioned law firm (all of whom will be jointly referred to as Katten). At issue in this appeal is whether Grater's suit is barred by the two-year statute of limitations for legal malpractice actions.

The underlying action, during which the alleged legal malpractice occurred, was a breach of contract action styled *CVS Foods, Inc. and MS Produce, Inc. v. Whitehall Specialties, Inc. and Grater, Inc.*, Case No. 05 CH 14982 (Cir. Ct. Cook Co.), in which Katten represented Grater. In that lawsuit, as shall be more fully described below, CVS Foods, Inc. and MS Produce, Inc. (hereinafter jointly referred to as CVS) sought recovery from Grater for allegedly failing to pay for cheese products that Grater had purchased from CVS. As part of this litigation, CVS served Grater with requests to admit that it had ordered and received the cheese products at issue but failed to pay for them. Katten, as Grater's counsel, allegedly failed to file responses in a timely fashion. As a result, the court deemed those matters admitted and entered summary judgment against Grater and in favor of CVS.

Grater filed the complaint in the instant action on October 7, 2009, seeking recovery from Katten for this alleged malpractice. Katten moved to dismiss under section 2-619 (735 ILCS 5/2-619(a)(5) (West 2010)), contending that Grater's complaint had been filed after the expiration of the two-year statute of limitations for legal malpractice actions. The trial court granted Katten's motion and dismissed Grater's complaint with prejudice. Grater now appeals.

For the reasons that follow, we affirm.

I. BACKGROUND

A. The Underlying Suit

Because the facts of the underlying suit are crucial to our resolution of the statute of limitations issue that the parties have brought before us, we examine those facts in some detail.

CVS, the plaintiff in the underlying suit, alleged in its complaint that, in October or November of 2003, Grater approached CVS and indicated that it wished to purchase grated blended cheese from CVS, since Grater's own processing facilities were "out of room." Thereafter, Grater retained CVS to act as its sole agent for purchasing cheese products from Whitehall Specialties, Inc. (Whitehall). The alleged arrangement was as follows. Grater would send purchase orders to CVS, which would then order the requested cheese from Whitehall. Whitehall would ship the cheese to CVS. CVS would process the cheese in accordance with Grater's instructions and then ship the processed cheese to Grater. Once Grater received that cheese, it would send payment to CVS, and then CVS would forward that payment to Whitehall. Whitehall was allegedly aware of this arrangement.

According to CVS, Grater failed to pay CVS for outstanding invoices in the amount of $89,653 that it incurred as a result of this arrangement. It would appear that CVS did not pay Whitehall on these invoices either, since CVS states in its complaint that "This is also the same amount allegedly owed to Whitehall by CVS." In March 2004, CVS and Whitehall entered into a settlement agreement whereby the parties acknowledged that the outstanding invoices in question were owed by Grater to Whitehall, and Whitehall agreed to assist CVS in its collection

efforts from Grater. However, Whitehall failed to assist CVS pursuant to this agreement, and although CVS demanded that Grater pay the invoices at issue, Grater refused to do so.

Therefore, CVS brought suit against both Grater and Whitehall, seeking damages against Grater for breaching its contract with CVS by not paying the outstanding invoices, and also seeking damages against Whitehall for breaching the settlement agreement by not assisting CVS in its collection efforts from Grater. In response, Whitehall filed a counterclaim against CVS, seeking to recover the outstanding amounts on the invoices at issue.

Grater raised a number of affirmative defenses to CVS's suit. (These defenses are not directly contained in the record, but Grater describes them in its complaint in the instant lawsuit.) In particular, Grater claimed that CVS failed to provide any valid evidence that the cheese products in question were ever delivered to Grater. It also claimed (apparently in the alternative) that it had offsets in the form of various payments that Grater made to unspecified other companies controlled by James Kubeck, the owner and controller of CVS. Grater alleged that it made these payments for purchase of cheese products but Kubeck's companies never delivered the products.

During the course of discovery, CVS served Grater with requests to admit that it ordered the cheese products at issue, that it received those products, and that it was invoiced for those products, but that it failed to pay for those products. Katten, as counsel for Grater, failed to file responses to these requests to admit in a timely fashion. As a result, the trial court, per Judge Allen Goldberg, deemed these matters to have been admitted by Grater. On that same day, Kevin T. Keating of Keating & Shure, Ltd. filed an appearance as substitute counsel for Grater.

CVS then moved for summary judgment, contending that no issue of fact remained with regard to its breach of contract claim in light of Grater's admissions. On April 18, 2007, substitute counsel for Grater filed its response to this motion, the contents of which are not contained in the record (and, in any event, are not material to this appeal). On July 13, 2007, Judge Goldberg granted summary judgment against Grater and in favor of CVS in the amount of $89,653. Judge Goldberg additionally entered a finding under Supreme Court Rule 304(a) that there was no just reason for delaying either enforcement or appeal of the judgment.

Subsequently, on April 17, 2008, Grater filed a motion to deem the judgment against it to have been satisfied. In that motion, Grater alleged the following facts. After summary judgment was entered against Grater, Grater filed a timely notice of appeal, and then Grater and Whitehall entered into settlement negotiations. On or about January 30, 2008, Grater and Whitehall reached an agreement whereby Grater agreed to pay Whitehall directly in the amount of $45,000 in exchange for the release of all claims against Grater.[1] Although CVS was "initially included" in the settlement negotiations, it would appear that CVS was not a party to the final agreement between Grater and Whitehall. In any event, pursuant to that agreement, Whitehall dismissed its claims against CVS with prejudice. Grater then requested that counsel for CVS acknowledge that the judgment against Grater had been satisfied by the settlement between Grater and Whitehall, so that Grater might dismiss its appeal. CVS refused to so acknowledge. Therefore, Grater requested that the court enter an order deeming the judgment to have been satisfied.

[1] Grater does not state the amount of the settlement agreement in its motion to deem judgment satisfied, but it states the figure as $45,000 in its complaint in the instant action.

Grater argued in its motion that "By satisfying all claims against Plaintiffs by Whitehall, Grater satisfied the claims that gave rise to [CVS' breach of contract claim against Grater] and the judgment of July 13, 2007 against Grater."

The court, per Judge Goldberg, issued an order granting Grater's motion. The order does not state any reasons for this decision, nor does the record contain any transcript of any oral argument that might have occurred before Judge Goldberg on this matter.

B. The Instant Litigation

Grater filed the instant legal malpractice suit against Katten on October 7, 2009. It alleged that, as a result of Katten's failure in the underlying suit to file its responses to CVS's requests to admit in a timely fashion, the trial court entered judgment against Grater and in favor of CVS in the amount of $89,653, and Grater was subsequently "forced" to pay $45,000 to Whitehall "to obtain the release of its claims that formed the basis for the judgment."

Thus, Grater sought relief in two counts. First, in count I, it sought relief on a legal malpractice theory, alleging that Katten's actions fell below the standard of care for a reasonable attorney. Second, in count II, it sought relief on a breach of contract theory, alleging that Katten had breached its agreement to conform to the standard of care for a reasonable attorney. Both counts were based upon the same operative facts and sought the same relief, namely, the $89,653 judgment that was levied against Grater, as well as "legal fees they were forced to incur in effort to minimize the damages suffered in the trial court."

Katten moved to dismiss Grater's suit in its entirety pursuant to section 2-619(a)(5) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(5) (West 2010) (providing for involuntary

dismissal of an action on grounds that "the action was not commenced within the time limited by law"), contending that it was time-barred pursuant to the two-year statute of limitations for legal malpractice actions set out in section 5/13-214.3(b) of the Code of Civil Procedure, which provides, in relevant part:

> "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 *** 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) (West 2010).

Katten argued that, under this section, Grater's claim accrued no later than April 18, 2007, the date upon which Grater's substitute counsel filed a response to CVS's motion for summary judgment, because, as of that date, Grater had incurred damage in the form of attorney fees resulting from Katten's alleged malpractice. In the alternative, Katten argued that Grater's claim accrued on July 13, 2007, the date upon which summary judgment was entered against Grater in the underlying suit. In either event, Katten concluded that Grater's legal malpractice claim, filed on October 7, 2009, would be time-barred. Grater filed a response in which it contended that the date upon which the statute of limitations began to run was January 30, 2008, the date on which it settled with Whitehall,[2] because it was only on that date that its damages became certain.

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[2] Grater actually states in its response that it settled with Whitehall on February 1, 2009. This would appear to be a typographical error, since, as has already been noted, Grater stated in its April 17, 2008, motion to deem judgment satisfied that the settlement with Whitehall occurred

On January 28, 2010, the trial court, per Judge Jeffrey Lawrence, granted Katten's motion to dismiss. In doing so, Judge Lawrence rejected Grater's contention that the obligation incurred by Grater in the July 13, 2007, summary judgment order was contingent upon a finding that CVS owed that same sum of money to Whitehall. Judge Lawrence explained:

> "You know what, I read Judge Goldberg's opinion, and I would be less than candid if I said I completely understood it. But I sure as heck understand the last sentence, judgment against your client [Grater] for $89,000 entered more than two years before you filed this action. *** That is an unqualified money judgment against your client for $89,000."

It is from this dismissal that Grater now appeals.

II. ANALYSIS

On appeal, Grater contends that the trial court erred in dismissing its suit as time-barred under the two-year statute of limitations for legal malpractice actions. We review a dismissal under section 2-619 *de novo* (*Butler v. Mayer, Brown and Platt*, 301 Ill. App. 3d 919, 922 (1998)), bearing in mind that, in ruling on a section 2-619 motion, the court must accept as true all well-pleaded facts and reasonable inferences that can reasonably be drawn therefrom. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 85 (1995).

A cause of action for legal malpractice has four elements: (1) an attorney-client relationship, (2) a duty arising from that relationship, (3) a breach of that duty, and (4) actual

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on January 30, 2008. In any event, the distinction between these dates is immaterial to this appeal, insofar as both dates were within two years of the filing of the instant legal malpractice action.

damages arising from that breach. *Preferred Personnel Services, Inc. v. Meltzer, Purtill & Stelle, LLC*, 387 Ill. App. 3d 933, 939 (2009); *Romano v. Morrisroe*, 326 Ill. App. 3d 26, 28 (2001). As stated earlier, the applicable statute of limitations for legal malpractice actions is as follows:

> "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 *** 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) (West 2010).

Thus, at issue in the present case is the date upon which Grater knew or reasonably should have known that it incurred injury as a result of Katten's alleged malpractice. Grater contends that it had not yet incurred any injury when the trial court entered summary judgment against it on July 13, 2007, since that judgment, when viewed in context, was not a concrete money judgment but, rather, an obligation to indemnify CVS for any sum that CVS might be found to owe to Whitehall, up to $89,653. Thus, it contends, its liability was contingent upon the resolution of Whitehall's counterclaim against CVS, and Grater did not suffer any damages with certainty until January 30, 2008, the date upon which it entered into a settlement agreement with Whitehall whereby Grater would pay $45,000 to Whitehall in exchange for Whitehall's dismissal of its claim against CVS.

In response, Katten raises two arguments, as it did before the trial court. First, Katten argues that Grater's claim accrued on April 18, 2007, where Grater incurred legal fees in hiring substitute counsel to file a response to CVS's motion for summary judgment. Second, Katten

argues in the alternative that the summary judgment order of July 13, 2007, was an unqualified money judgment, not contingent upon any subsequent rulings in the underlying suit, and Grater's suit therefore accrued at the moment that judgment was handed down. We consider Katten's arguments, and Grater's responses to those arguments, in turn.

In considering these arguments, we are mindful that the statute of limitations for a legal malpractice action does not begin to run at the time that the attorney misapplies his legal expertise, but only when the client realizes injury as a result of that misapplication. *Hermitage*, 166 Ill. 2d at 90; *Romano*, 326 Ill. App. 3d at 31. A client is not considered to have been injured by legal malpractice until it has suffered a loss for which it may seek monetary damages. *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306 (2005) (explaining that "The injury in a legal malpractice action is not *** the attorney's negligent act itself [citation]. Rather, it is a pecuniary injury to an intangible property interest caused by the lawyer's negligent act or omission"); see *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 226 (2006) (actual damages to client is necessary element of legal malpractice claim). Thus, where there is uncertainty as to the very fact of damages, as opposed to the amount of damages, damages are merely speculative, and no cause of action for legal malpractice yet exists. *Preferred*, 387 Ill. App. 3d at 939; see *Romano*, 326 Ill. App. 3d at 32 (cautioning that finding a legal malpractice claim to have accrued before damage to the client in the underlying action has become certain "could lead to a surfeit of provisional and prophylactic malpractice cases"); *Northern Illinois Emergency Physicians*, 216 Ill. 2d at 307 (client in legal malpractice suit bears burden of demonstrating that he has sustained monetary loss as a result of

counsel's negligence). However, the converse is true as well: damages are not considered speculative where their existence is certain even if their exact amount is uncertain or yet to be fully determined. *Northern Illinois Emergency Physicians*, 216 Ill. 2d at 307; *Profit Management Development, Inc. v. Jacobson, Brandvik & Anderson, Ltd.*, 309 Ill. App. 3d 289, 309 (1999).

A. Grater's April 18, 2007, Response to CVS's Summary Judgment Motion

We first consider Katten's contention in its brief that Grater knew or should have known that it incurred damages in the form of attorney fees on April 18, 2007, the date that substitute counsel filed Grater's response to CVS's summary judgment motion. We note parenthetically that Grater did not address this argument in its appellate brief, nor did it file any reply brief in which response could have been made.

There are three cases specifically dealing with the question of whether attorney fees incurred prior to the entry of any adverse judgment against the client can constitute injury for purposes of a legal malpractice suit. In two of those cases, *Palmros v. Barcelona*, 284 Ill. App. 3d 642 (1996), and *Goran v. Glieberman*, 276 Ill. App. 3d 590 (1995), both cited by Katten in this action, the court answered this question in the affirmative. In the third case, *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349, 356 (1998), the court answered this question in the negative. For the reasons that follow, we find *Lucey* rather than *Palmros* and *Goran* to be applicable to the instant facts.

In *Lucey*, plaintiff was originally employed by The Chicago Corporation, which provided advice and brokerage services to various clients, including the Michigan Physicians Mutual

Liability Company. *Lucey*, 310 Ill. App. 3d at 351. Plaintiff was planning to resign from The Chicago Corporation and start his own firm. Upon the advice of his counsel, he attended a Michigan Physicians meeting and disclosed his plans to resign and start his own firm. Michigan Physicians then announced plans to transfer its portfolio to plaintiff's new firm. *Lucey*, 310 Ill. App. 3d at 351-52. The Chicago Corporation brought suit against plaintiff based upon the loss of the Michigan Physicians account. *Lucey*, 310 Ill. App. 3d at 352. While the Chicago Corporation suit was still pending, but after plaintiff had incurred legal fees in his defense in that suit, plaintiff filed a complaint against his counsel for legal malpractice, alleging that his counsel had incorrectly advised him in regards to the Michigan Physicians meeting. *Lucey*, 310 Ill. App. 3d at 352.

Under these facts, the *Lucey* court found plaintiff's legal malpractice suit to have been premature, since the Chicago Corporation suit was still pending, even though it was undisputed that plaintiff had incurred legal fees in his defense of the Chicago Corporation suit. *Lucey*, 310 Ill. App. 3d at 358. The *Lucey* court explained:

> "Admittedly, 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. [Citations.] 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. Since it is also possible the former client will prevail when sued by a third party, damages are entirely speculative until a

judgment is entered against the former client or he is forced to settle." *Lucey*, 310 Ill. App. 3d at 355.

Thus, the *Lucey* court held that plaintiff's potential damages arising out of the attorney fees incurred in defending against the Chicago Corporation suit would not become actionable unless and until an adverse judgment was rendered against him in that litigation. *Lucey*, 310 Ill. App. 3d at 359. The *Lucey* court noted this to be in line with the general rule in Illinois that "a cause of action for legal malpractice will rarely accrue prior 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." *Lucey*, 310 Ill. App. 3d at 356.

In rendering this decision, the *Lucey* court also carefully distinguished the court's decision in *Goran*, 276 Ill. App. 3d 590, in which the plaintiff was represented by the defendant attorney in an appeal from a judgment of dissolution of marriage. After filing an appellate brief, the defendant attorney withdrew from the case. *Goran*, 276 Ill. App. 3d at 591. Plaintiff hired substitute counsel, who was required to review the court record and transcripts, for which plaintiff incurred approximately $11,000 in fees. *Goran*, 276 Ill. App. 3d at 595. In addition, the appellate court found that the brief and the record filed by defendant counsel were not in compliance with court rules, and, as a result, plaintiff was required to pay substitute counsel $1,297 in order to redo it. *Goran*, 276 Ill. App. 3d at 591-92. Plaintiff subsequently lost her appeal. *Goran*, 276 Ill. App. 3d at 592.

Under these facts, the *Goran* court found that the $11,000 in fees was not actionable, since it "was simply incurred as a result of [defendant's] permitted withdrawal from the case."

Goran, 276 Ill. App. 3d at 596. However, the *Goran* court also found that plaintiff incurred actionable damages and, thus, her cause of action accrued, when she paid the $1,297 in fees to bring defendant's defective brief and record into compliance with court rules. *Goran*, 276 Ill. App. 3d at 596.

In distinguishing *Goran*, the *Lucey* court explained that "the only reason these damages were actionable was that a clear finding of attorney neglect had already been made in that case." *Lucey*, 310 Ill. App. 3d at 355. At that point in time, the appellate court in *Goran* had already issued an order that the brief and the record filed by defendant counsel were deficient and had to be redone, and, therefore, the fees incurred by plaintiff in remedying that deficiency were directly attributable to counsel's neglect. *Lucey*, 310 Ill. App. 3d at 355. By contrast, in *Lucey*, there was not yet any "clear finding of attorney neglect," in that the Chicago Corporation suit was not yet resolved, so it had not yet been determined that the legal advice that defendants gave to plaintiff was incorrect, nor could such a determination be definitively made until the conclusion of that suit. *Lucey*, 310 Ill. App. 3d at 359.

We find the current case to be analogous to *Lucey* rather than *Goran*. At the time that Grater's substitute counsel filed a response to CVS's motion for summary judgment, there was no clear finding of attorney neglect, in that no adverse judgment had yet been rendered against Grater as a result of Katten's alleged negligence. If the trial court had denied CVS's motion for summary judgment, then the fees incurred by Grater in defending against that motion for summary judgment would not have been actionable. *Lucey*, 310 Ill. App. 3d at 355 (attorney fees incurred in defending against suit not actionable where plaintiff prevails in that suit). Since

the very fact of damages would have been speculative at that point, no cause of action for legal malpractice yet existed. *Preferred*, 387 Ill. App. 3d at 939; *Romano*, 326 Ill. App. 3d at 32.

Nor does the decision in *Palmros*, 284 Ill. App. 3d 642, also cited by Katten on this issue, demand a different result. In *Palmros*, a widow filed a legal malpractice suit against her late husband's attorney, alleging negligence in drafting and executing her late husband's will. After the death of her husband, she was named as a defendant in an action contesting the validity of her late husband's will and trust. *Palmros*, 284 Ill. App. 3d at 644. At issue was whether the injury for which the widow sought redress occurred prior to the death of her husband, in which case a two-year statute of limitations would apply, or whether it occurred after the death of her husband, in which case a six-month statute of limitations would apply. *Palmros*, 284 Ill. App. 3d at 645. On appeal, the widow contended that the injury occurred before the death of her husband, or, in the alternative, that it would not have occurred until the will had been invalidated by the probate court. *Palmros*, 284 Ill. App. 3d at 645. The *Palmros* court disagreed on both counts, citing *Goran* as its sole authority in holding that the widow was injured after her husband's death when she incurred attorney fees in defending against the will contest. *Palmros*, 284 Ill. App. 3d at 647.

To the extent that *Palmros* stands for the proposition that, under *Goran*, any payment of attorney fees that results from allegedly negligent attorney conduct immediately triggers the period of limitations regardless of whether any adverse judgment has been rendered against the client, we must reject that proposition, as it is based upon a misreading of *Goran*. As stated in *Lucey*, *Goran* is limited to those situations in which "a clear finding of attorney neglect had been made" (*Lucey*, 301 Ill. App. 3d at 355) – in that case, by the appellate court's order requiring

plaintiff's counsel to redo the deficient brief and record. No such order is present in the instant case.

B. Summary Judgment Order of July 13, 2007

Notwithstanding the foregoing, Katten argues that, in any event, Grater incurred damages as a result of Katten's alleged negligence when Judge Goldberg entered summary judgment against it and in favor of CVS in the amount of $89,653 on July 13, 2007, such that the statute of limitations would begin running on that date. Grater, on the other hand, argues that the summary judgment order, when viewed in context, was not an unqualified money judgment but merely an obligation to indemnify CVS in the event that CVS should later be found liable to Whitehall. Thus, according to Grater, its damages did not become certain, and the statute of limitations did not begin to run, until it settled directly with Whitehall for $45,000 on January 30, 2008. For the reasons that follow, we agree with Katten.

By its plain text, Judge Goldberg's summary judgment order does not purport to make Grater's liability to CVS contingent on the resolution of Whitehall's claim against CVS. Instead it states, without qualification, that "Plaintiff's motion for summary judgment is granted in favor of Plaintiffs and against Defendant in the amount of $89,653.00." The court additionally grants CVS's request for a Rule 304(a) finding, stating, "We determined that, as a matter of law, Plaintiffs are entitled to recovery under Count II [breach of contract] in the amount of $89,653.00. And we find no just reason for delaying enforcement of that judgment or appeal." Nowhere in the order does the court state that such liability is dependent upon, or limited by, any liability that CVS might incur to Whitehall for the cheese products at issue. Thus, it is apparent

from the language of the July 13, 2007, summary judgment order that said order does not merely impose a duty to indemnify but, rather, a straightforward and independent pecuniary obligation in the amount of $89,653.

Grater, however, contends that this summary judgment order was "clarified" by Judge Goldberg's subsequent ruling on Grater's motion to deem the judgment against it satisfied. As noted, after summary judgment was entered against Grater and in favor of CVS, Grater and Whitehall entered into settlement negotiations. As a result of those negotiations, Grater and Whitehall entered into an agreement, to which CVS was apparently not a party, whereby Grater would pay $45,000 to Whitehall in exchange for Whitehall dismissing its claim against CVS with prejudice. Based upon this settlement with Whitehall, Grater moved to deem the judgment against it to have been satisfied, and Judge Goldberg granted the motion. Grater now argues that this subsequent decision shows that the prior summary judgment order was merely contingent in nature, because, if it had been an unqualified money judgment, Grater's settlement with Whitehall and Whitehall's dismissal of its claims against CVS would not have affected Grater's liability to CVS.

However, for reasons previously discussed, such an interpretation of the summary judgment order would contradict the plain text of that order. Therefore, to the extent that Judge Goldberg's order deeming the judgment satisfied would change the unqualified money judgment against Grater and in favor of CVS to mere contingent liability, it could not be a mere clarification; rather, it would effectively function as a postjudgment modification of the summary judgment order. It is arguable that Judge Goldberg would have lacked jurisdiction to take such

action, since Grater had already filed a notice of appeal from that summary judgment order. It is well established that the filing of a notice of appeal divests the trial court of jurisdiction to enter any order involving a matter of substance, and the trial court thereafter retains jurisdiction "only to decide matters independent of and collateral to a judgment." *Wierzbicki v. Gleason*, 388 Ill. App. 3d 921, 926-27 (2009); see also, *e.g.*, *People v. Vasquez*, 339 Ill. App. 3d 546, 551 (2003) (order by circuit court modifying sentence during pendency of appeal was void for lack of jurisdiction); *In re Marriage of Steinberg*, 302 Ill. App. 3d 845, 849 (1998) (once a notice of appeal has been filed, trial court lacks jurisdiction to enter an order modifying the judgment or its scope).

More overridingly, the possibility of postjudgment modification of a final order would not, in any event, toll the statute of limitations in a malpractice suit. *Hermitage*, 166 Ill. 2d at 86-87. Thus, in *Hermitage*, the court held that the malpractice statute of limitations for an improperly prepared mechanic lien began to run when the trial court entered an order reducing the value of the lien, not two years later when the trial court denied plaintiffs' motion to reconsider its order. *Hermitage*, 166 Ill. 2d at 86-87. The *Hermitage* court explained that the trial court's order reducing the lien served to put plaintiffs on notice that the lien might have been improperly prepared, thus triggering the statute of limitations, despite the fact that reconsideration of the order was still possible. *Hermitage*, 166 Ill. 2d at 86. "Otherwise," the court noted, "the statute of limitations could be postponed indefinitely until all avenues of appeal in the earlier suit were exhausted." *Hermitage*, 166 Ill. 2d at 87. See also *Belden v. Emmerman*, 203 Ill. App. 3d 265 (1990) (statute of limitations in legal malpractice action began to run when

the circuit court issued a final order in the underlying action, not when the appellate court affirmed the circuit court's order); *Zupan v. Berman*, 142 Ill. App. 3d 396 (1986) (statute of limitations in legal malpractice action began to run from date of judgment, not from date of denial of posttrial motions).

Likewise, in the present case, the statute of limitations for legal malpractice began to run on July 13, 2007, the date upon which the trial court entered what appeared upon the four corners of its face to be an unqualified money judgment against Grater and in favor of CVS, notwithstanding any possibility of later modification of that order by the circuit court or any possibility that it might be erroneous and reversed on appeal. *Hermitage*, 166 Ill. 2d at 87 (period of limitations began when circuit court issued adverse final order, notwithstanding the possibility that a motion to reconsider could later be granted); *Belden*, 203 Ill. App. 3d at 269 (period of limitations began when circuit court issued adverse final order, notwithstanding possibility that circuit court order could have been reversed on appeal); *Zupan*, 142 Ill. App. 3d 396 (period of limitations began when circuit court issued adverse final order, notwithstanding posttrial motions and subsequent appeal). The adverse judgment of July 13, 2007, put Grater on notice that Katten might have committed malpractice in its representation of Grater, and Grater was therefore required " 'to inquire further to determine whether an actionable wrong was committed.' " *Hermitage*, 166 Ill. 2d at 86, quoting *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981). Since Grater did not file the instant legal malpractice suit until October 7, 2009, more than two years after adverse judgment had been rendered in the underlying suit, the trial court was correct to dismiss Grater's legal malpractice suit as time-barred.

For the foregoing reasons, we affirm.

Affirmed.