2012 App (1st) 112748-U

FOURTH DIVISION
September 27, 2012

No. 1-11-2748

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RICHARD LANE and 842 WOOD, LLC,	)	
	)	
Plaintiffs-Appellees,	)	Appeal from the
	)	Circuit Court of
v.	)	Cook County, Illinois,
	)	County Department,
PEDERSEN & HOUPT, P.C., THOMAS	)	Law Division.
W. MURPHY, KIMBERLY CORNELL,	)	
and LAWRENCE BYRNE,	)	
	)	No. 10 L 09260
Defendants-Appellants,	)	
	)	
and	)	
	)	Honorable
ROBERT D. LATTAS,	)	Michael R. Panter
	)	Judge Presiding.
Defendant-Appellee.	)	

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Epstein and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred when it found as a matter of law that the plaintiffs' legal malpractice action against their former real estate attorney accrued before they incurred any actual damages and prior to the entry of an adverse judgment, *i.e.*, their settlement of the underlying action in which they were entangled as a result of the purportedly

negligent advice of their attorney.

¶ 2 This appeal arises out of a complaint for legal malpractice filed by the plaintiffs, Richard Lane (hereinafter Lane) and 842 Wood, LLC (hereinafter 842 Wood) against the defendants, Pedersen & Houpt, P.C., Thomas W. Murphy, Kimberly Cornell and Lawrence Byrne (hereinafter the P&H defendants), as well as the plaintiffs' former attorney Robert Lattas (hereinafter Lattas). The P&H defendants filed a motion to dismiss the plaintiffs' legal malpractice action pursuant to section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)). The circuit court denied that motion and the P&H defendants now appeal. For the reasons that follow, we reverse the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 The record reveals the following relevant and undisputed facts. On June 14, 2006, Lattas represented the plaintiffs in the sale of their four-unit apartment building located at 1025 N. Wood Street in Chicago (hereinafter the Wood Street property). Through an assignment before closing, the property was purchased by Siegel Development, LLC.

¶ 5 On October 24, 2006, Siegel Development, LLC, and its members Gary Siegel and Ross Siegel (hereinafter the Siegels) filed a four-count complaint against the plaintiffs and several other parties, alleging, *inter alia*: (1) that the plaintiffs had conspired to defraud them by convincing them to purchase the Wood Street property for a price substantially in excess of its fair market value; (2) that 842 Wood committed fraud by making knowingly false and fraudulent misrepresentations regarding the property upon which the Siegels relied; (3) that 842 Wood breached the real estate contract when it falsely warranted that the "roof, walls and foundation of

the building [would] not allow water leakage and [would] be in good working condition on the date of the closing;" and (4) that as a result, the Siegels were seeking rescission of the contract.

¶ 6 On February 13, 2007, the plaintiffs retained the P&H defendants to represent them in defending the Siegel suit. On February 1, 2010, the plaintiffs settled the Siegel complaint by paying $75,000.

¶ 7 On August 12, 2010,[1] the plaintiffs filed a complaint alleging legal malpractice against both Lattas and the P&H defendants. With respect to Lattas, the plaintiffs alleged that Lattas breached his duties as their real estate attorney when he failed to draft language in the real estate contract which would have limited their liability on warranties and representations regarding the Wood Street property. Specifically, the plaintiffs alleged that Lattas should have included language in the contract stating that the warranties thereunder were only "to the best of Lane's knowledge." The plaintiffs further alleged that as a proximate result of Lattas's failure to include this language in the contract, they were subsequently sued by the Siegels, after the Siegels discovered that the property was in a far worse condition than that which had been warranted and represented to them in the sales contract.

¶ 8 With respect to the P&H defendants, the plaintiffs alleged that immediately after they retained the P&H defendants to represent them in the Siegel lawsuit, in February 2007, they were

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[1]We note that the initial complaint at law included only one plaintiff, Lane. However, on December 2, 2010, Lane amended his complaint to include 842 Wood, as an additional plaintiff. 842 Wood is an Illinois limited liability company of which Lane is the managing member. Throughout this order we will refer to Lane and 842 Wood collectively as the plaintiffs.

informed that a legal malpractice claim against Lattas was viable and that the P&H defendants would pursue it as part of their litigation strategy in the Siegel suit. The plaintiffs therefore alleged that they were aware of the legal malpractice claim against Lattas during or prior to February 2007. As such, they asserted that pursuant to section 13-214.3(b) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/13-214.3(b) (West 2008)), the two-year statue of limitations on their legal malpractice claim against Lattas started to run as early as February 2007. According to the plaintiffs, however, the P&H defendants breached their duties to them by failing to file the suit on the legal malpractice claim against Lattas within the time required by statute and by failing to advise or counsel them on that statuary limitations requirement. The plaintiffs contend that as a proximate result of the actions of the P&H defendants they settled the Siegel lawsuit for $75,000 and paid P&H $87,000 in attorneys fees.

¶ 9 In support of their contention that the P&H defendants were aware of the legal malpractice claim against Lattas as early as 2007, the plaintiffs attached to their complaint, several emails exchanged between Lane and the P&H defendants, dated between March and June 2008, which they allege demonstrate that the P&H defendants agreed to pursue the legal malpractice claim against Lattas as a litigation strategy in the Siegel lawsuit. The first email is dated March 31, 2008 and was sent at 1:03 p.m. by Lane to one of the P&H defendants, Lawrence Byrne. A carbon copy of the email was also sent to the remaining P&H defendants. This email states in full:

"Larry,

good catching up with you.

> Please talk to Aaron Stanton to determine how we can incorporate Lattas into our strategy. The plan would be for me to initiate a courtesy call prior to filing any claim to explain to Bob [Lattas] what we are doing.
>
> I do not think he would be surprised.
>
> Best to email or call my cell ***.
>
> Thanks–Rich Lane"

In response, Byrne replied by email at approximately 2 p.m. on the same date, stating: "Richard: Will do, my contact info is set out below." Another set of emails followed. On June 20, 2008, Lane emailed another P&H defendant, Kimberley Cornell (hereinafter Cornell) asking her if she and "Aaron ever talked to Bob Lattas?" In response, on June 25, 2008, Cornell emailed Lane back writing:

> "I believe you may have already spoken to Aaron Stanton regarding Bob Lattas. Lattas has asked to attend the mediation on July 22 and has indicated a willingness to contribute to any settlement. We have a telephone conference scheduled with the mediator and all attorneys this Friday to discuss logistics for the mediation and will notify the mediator and [the Siegel's] counsel that Lattas will also be attending the mediation. I don't anticipate any objections but we need to let them know that Lattas plans to attend in advance."[2]

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[2]In their complaint, the plaintiffs further asserted that "liability on the Lattas claim is undeniable, because Lattas has admitted liability to [the plaintiffs] and [the P&H] defendants during the scope of their representation of [the plaintiffs], and other attorneys involved in the

¶ 10 On January 10, 2011, the P&H defendants filed a motion to dismiss the plaintiffs' complaint pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2008)). Therein, the plaintiffs argued that their suit against attorney Lattas was not time barred by the two-year statute of limitations in section 13-214.3(b) of the Code (735 ILCS 5/13-214.3(b) (West 2008)). The P&H defendants contended that that two-year statute of limitations (735 ILCS 5/13-214.3(b) (West 2008)) did not start to run until the plaintiffs' actually settled the underlying Siegel lawsuit on February 1, 2010, and incurred damages. Accordingly, the P&H defendants argued that the plaintiffs could not establish that the P&H defendants had breached their duty to them by failing to timely file the malpractice suit against Lattas.

¶ 11 On February 4, 2011, Lattas filed his own motion to dismiss pursuant to section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2008)) arguing that the plaintiffs' legal malpractice action against him was time barred pursuant to section 13-214.3(b) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/13-214.3(b) (West 2008)), because the two-year statue of limitations on their legal malpractice claim against him started to run as early as February 2007, when both the plaintiffs and the P&H defendants became aware of the plaintiffs' legal malpractice claim against him. In support of his motion to dismiss, Lattas attached several documents, including, *inter alia*, the aforementioned email exchanges between the P&H defendants and the plaintiff, Lane. In addition, Lattas attached a letter dated June 26, 2008, sent by P&H defendant, Cornell, to Lattas, *inter alia*, placing him on notice of the plaintiffs' "legal malpractice claim" against him and directing Lattas to forward the letter to his legal malpractice

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Siegel suit." However, the plaintiffs attached no documentation to support this assertion.

insurance carrier. The letter specifically informs Lattas that "to the extent that the Siegels allege that the real estate contract was breached, [the plaintiffs] contend that you committed legal malpractice by drafting and signing a contract containing a warranty provision which was inconsistent with [the plaintiffs'] intent." The letter further formally requested that Lattas attend a mediation conference scheduled for July 22, 2008.

¶ 12 On April 12, 2011, the circuit court simultaneously granted Lattas' motion to dismiss the plaintiffs' claim against him with prejudice, while denying the P&H defendants' motion to dismiss. In a written order, the circuit court first acknowledged that the two motions to dismiss were mutually exclusive so that if the plaintiffs' case against Lattas was still viable their case against the P&H defendants must be dismissed, and vice versa. The circuit court next explained that "having reviewed the pleadings, briefs and exhibits submitted by all of the parties," it was clear that the plaintiffs and the P&H defendants were aware of the legal malpractice claim against Lattas no later than June 26, 2008. In support of this conclusion, the circuit court relied on the June 25, 2008, email sent by Cornell to Lane, as well as on the June 26, 2008, letter Cornell wrote to Lattas. Accordingly, the circuit court found that since the plaintiffs' complaint against Lattas was not filed until August 12, 2010, that claim was untimely and dismissal of the plaintiffs' complaint against Lattas was proper.

¶ 13 On April 19, 2011, the P&H defendants filed a motion to reconsider the April 12, 2011 order. That motion was denied by the circuit court on August 17, 2011. The P&H defendants now appeal.

¶ 14 II. ANALYSIS

¶ 15 On appeal, the P&H defendants concede that the plaintiffs' lawsuit against Lattas was filed more than two years after the plaintiffs themselves had actual knowledge of Lattas' potential negligence in drafting their real estate contract. They nevertheless contend that the two-year statute of limitations for that malpractice action against Lattas did not expire prior to the plaintiffs' filing of their complaint against Lattas on August 12, 2010. The P&H defendants justify this position by asserting that the two-year statute of limitations (735 ILCS 5/13-214.3(b) (West 2008)) did not begin to run until the plaintiffs actually suffered damages as a result of Lattas' malpractice, *i.e.*, until the settlement was reached in the underlying Siegel litigation.

¶ 16 The plaintiffs disagree with this position and assert that the statute of limitations commenced as early as February 2007, when they retained the P&H defendants to defend them in the Siegel litigation and paid them attorneys fees. The plaintiffs contend that since the statute of limitations began to run in February 2007, or the latest as the circuit court found on June 26, 2008, and they did not file their legal malpractice case until August 12, 2010, their suit is barred by the two year statue of limitations as a direct result of the P&H defendants' oversight. Accordingly, the plaintiffs contend that the circuit court properly dismissed their complaint against Lattas, but permitted them to continue with their malpractice claim against the P&H defendants. For the reasons that follow, we disagree with the plaintiffs and reverse the judgment of the circuit court.

¶ 17 We begin by noting that a motion to dismiss pursuant to section 2-619 (735 ILCS 5/2-619 (West 2008) admits the legal sufficiency of the complaint (*i.e.*, all facts well pleaded), but asserts certain defects, defenses or other affirmative matters that appear on the face of the complaint or

are established by external submissions that act to defeat the claim. *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002). Subsection (a)(5) of section 2-619, pursuant to which the circuit court granted Lattas' motion to dismiss, specifically allows dismissal when "the action was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2008). In ruling on a section 2-619 motion, all pleadings and supporting documents must be construed in a light most favorable to the nonmoving party, and the motion should be granted only where no material facts are in dispute and the defendant is entitled to dismissal as a matter of law. *Mayfield v. ACME Barrel Company*, 258 Ill. App. 3d 32, 34 (1994). The relevant inquiry on appeal is "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill.2d 112, 116-17 (1993). Our review the circuit court's grant of a motion to dismiss pursuant to section 2-619 is *de novo*. *Spillyards v. Abboud*, 278 Ill. App. 3d 663, 668 (1996).

¶ 18 We next note that generally in order to prevail on a legal malpractice claim, the plaintiff must plead and prove: (1) the existence of 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 that breach. *Warnock v. Karm Winnad & Patterson*, 376 Ill. App. 3d 364, 368 (2007) (citing *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306 (2005); see also *Romano v. Morrisroe*, 326 Ill. App. 3d 26, 28 (2001)

¶ 19 The parties here agree that the applicable statute of limitations for legal malpractice claims is found in 13-214.3(a) of the Code. 735 ILCS 5/13–214.3(a) (West 2008)). That section

requires that "[a]n 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). Our courts have repeatedly held that the statute of limitations set forth in this section incorporates the "discovery rule," " 'which serves to toll the limitations period to the time when a person knows or reasonably should know of his or her injury.' " *Blue Water Partners, Inc., v. Edwin D. Mason, Foley & Lardner*, 2012 IL App (1st) 102165 ¶48 (quoting *Hester v. Diaz*, 346 Ill. App.3d 550, 553 (2004)); see also *Romano*, 326 Ill. App. 3d at 28 ("[u]nder the 'discovery rule,' the two-year period does not necessarily begin the day the plaintiff suffers his injury; rather, the period starts when the plaintiff knows or should know facts that would cause him to believe that his injury was wrongfully caused.").

¶ 20 Our courts have repeatedly clarified, however, that the injury in a legal malpractice action is not a personal injury and it is not the attorney's negligent act itself. *Warnock*, 376 Ill. App. 3d at 368 (citing *Eastman v. Messner*, 188 Ill.2d 404, 411 (1999)). Instead, it is "a pecuniary injury to an intangible property interest caused by the lawyer's negligent act or omission." *Warnock*, 376 Ill. App. 3d at 368. In other words, "[t]he injury is not the negligent act itself; it is something caused by the negligent act or omission for which the plaintiff may seek damages." *Romano*, 326 Ill. App. 3d at 28.

¶ 21 The existence of actual damages is, therefore, essential to a viable cause of action for legal malpractice. *Romano*, 326 Ill. App. 3d at 28; see also *Northern Illinois Emergency*

Physicians, 216 Ill.2d at 306 ("[f]or purposes of a legal malpractice action, a client is not considered to be injured unless and until he has suffered a loss for which he may seek monetary damages."). What is more, no cause of action will accrue without actual damages, and those damages will be considered speculative only if their existence itself (rather than merely the amount) was uncertain. *Romano*, 326 Ill. App. 3d at 28; see also *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349, 355 (1998) ("since it is *** possible [that a] 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. When 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").

¶ 22 Ordinarily, the time when a party becomes charged with the requisite knowledge to maintain a cause of action for legal malpractice is a question of fact, and judgment should be entered as a matter of law only when the undisputed facts allow for only one conclusion. *Blue Water Partners, Inc.*, 2012 IL App (1st) 102165 at ¶48 (citing *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill.2d 240, 250 (1994)).

¶ 23 In the present case, the P&H defendants contend that the statute of limitations did not begin to run until the final settlement was reached between the plaintiffs and the Siegels, because prior to that date, the plaintiffs could not have suffered any actual damages. In support of this position, the P&H defendants rely on our appellate court's decisions in *Lucey*, 301 Ill. App. 3d 349, and *Warnock*, 376 Ill. App. 3d at 368. We agree with the rationale of those two decisions and find them applicable to the facts at bar.

¶ 24 In *Lucey*, the plaintiff was employed by The Chicago Corporation, which was in the business of providing advice and brokerage services. *Lucey*, 301 Ill. App.3d at 351. The plaintiff planned on resigning from The Chicago Corporation to start his own firm. *Lucey*, 301 Ill. App. 3d at 351. Prior to his resignation, the plaintiff sought advice from the defendant law firm regarding whether it would be legal for him to solicit one of The Chicago Company's clients at an upcoming meeting. *Lucey*, 301 Ill. App.3d at 351. The defendant law firm advised the plaintiff that he could attend the meeting and announce his intention to leave The Chicago Corporation, so long as the plaintiff attended in his individual capacity and paid for the trip himself. *Lucey*, 301 Ill. App. 3d at 351. In reliance on this advice, the plaintiff attended the meeting, announced his intention to leave The Chicago Corporation, and resigned days later. *Lucey*, 301 Ill. App. 3d at 351. The client transferred its portfolio from The Chicago Corporation to the plaintiff shortly thereafter, and The Chicago Corporation sued the plaintiff. *Lucey*, 301 Ill. App. 3d at 352. The plaintiff initially retained the defendant law firm to defend him in the suit, but later retained different counsel. *Lucey*, 301 Ill. App. 3d at 352.

¶ 25 While the Chicago Corporation litigation was pending, the plaintiff, now represented by new attorneys, filed a legal malpractice action against the defendant law firm. *Lucey*, 301 Ill. App. 3d at 352. The circuit court dismissed the plaintiff's legal malpractice action, holding that the malpractice action was premature. *Lucey*, 301 Ill. App. 3d at 353. The appellate court agreed and affirmed the circuit court's judgment. *Lucey*, 301 Ill. App. 3d at 353.

¶ 26 In doing so, the *Lucey* court first noted that in Illinois "a cause of action for legal malpractice does not accrue until a plaintiff discovers, or within a reasonable time should

discover, his injury *and incurs damages* directly attributable to counsel's neglect." (Emphasis added.) *Lucey*, 301 Ill. App. 3d at 353 (citing *Goran v. Glieberman*, 276 Ill. App. 3d 590, 594-95 (1995)). The court further explained that as a result, "a cause of action for legal malpractice will rarely accrue prior to the entry of an adverse judgment, settlement, or dismissal of the underlying action in which plaintiff has become entangled due to the purportedly negligent advice of his attorney." *Lucey*, 301 Ill. App. 3d at 356.

¶ 27 The court provided a rationale for this principle, stating:

> "Sound policy reasons exist in opposition to a rule which would require the client file a provisional malpractice action against his attorney whenever the attorney's legal advice has been challenged. Among them are judicial economy and preservation of the attorney-client relationship. As our supreme court recognized in *Jackson Jordan*:
>
> > 'The mere assertion of a contrary claim or the filing of a lawsuit [by a third party] [a]re [*sic*] not, in and of themselves, sufficiently compelling to induce [a] client to seek a second legal opinion. Meritless claims and nuisance lawsuits are, after all, a fairly commonplace occurrence. It would be a strange rule if every client were required to seek a second legal opinion whenever it found itself threatened with a lawsuit.' [Citation.]" *Lucey*, 301 Ill. App. 3d at 357.

¶ 28 The court in *Lucey* acknowledged only one possible exception to the rule requiring a judgment, settlement, or dismissal of the underlying action prior to the accrual of a malpractice claim, *i.e.*, "when it is plainly obvious, prior to any advance ruling against the plaintiff, that he has been injured as the result of professional negligence." *Lucey*, 301 Ill. App. 3d at 358.

¶ 29 Thus, in *Lucey*, since the adverse judgment had not yet been entered in The Chicago Corporation litigation, the court concluded that the plaintiff's damages were speculative and that he did not know if the damages he incurred were directly attributable to the defendant law firm's advice. *Lucey*, 301 Ill. App. 3d at 356. As such, the court held that the statute of limitations had not yet begun to run. *Lucey*, 301 Ill. App. 3d at 356.

¶ 30 Similarly, in *Warnock*, the plaintiffs filed a legal malpractice suit against the law firm of Karm Winand & Patterson as a result of an underlying real estate transaction, wherein the defendant law firm represented them in the sale of their property in Winnetka. *Warnock*, 376 Ill. App. 3d at 365. The real estate transaction did not close and the buyers filed a suit against the plaintiffs. *Warnock*, 376 Ill. App. 3d at 365. The plaintiffs then retained different counsel (the law firm of Arnstein & Lehr) to represent them in the suit brought by the buyers. *Warnock*, 376 Ill. App. 3d at 365. The result of this litigation was the circuit court's grant of the buyers' motion for judgment on the pleadings and an award of damages in favor of the buyers in the amount of nearly $350,000. *Warnock*, 376 Ill. App. 3d at 365. The plaintiffs initially appealed, but then settled with the buyers while the appeal was pending for $325,000. *Warnock*, 376 Ill. App. 3d at 365.

¶ 31 Nine months after the adverse judgment was entered by the circuit court, the plaintiffs filed a legal malpractice suit against the defendant law firm that had represented them in the real estate transaction. *Warnock*, 376 Ill. App. 3d at 365. In their complaint, the plaintiffs alleged that the defendant law firm had failed to properly draft certain letter agreements during the sale of their property, which ultimately resulted in the adverse judgment in the litigation with the

buyers. *Warnock*, 376 Ill. App. 3d at 365. Specifically, they alleged that the letters drafted by their attorneys reserved the plaintiffs' legal and equitable rights rendering the liquidated damages clause in their real estate contract unenforceable. *Warnock*, 376 Ill. App. 3d at 367. After discovery concluded, the defendant law firm filed a motion for summary judgment, arguing that the two year statute of limitations in section 13-214.3(a) of the Code (735 ILCS 5/13–214.3(a) (West 2008)) had expired barring the plaintiffs' claim. *Warnock*, 376 Ill. App. 3d at 365. The circuit court agreed and granted the defendant's motion for summary judgment.

¶ 32 The appellate court, however, disagreed and reversed the judgment of the circuit court. Relying on the holding in *Lucey*, the *Warnock* court reiterated that in Illinois " 'a cause of action for legal malpractice will rarely accrue prior to the entry of an adverse judgment, settlement , or dismissal of the underlying action in which plaintiff has become entangled due to the purportedly negligent advice of his attorney.' " *Warnock*, 376 Ill. App. 3d at 369 (quoting *Lucey*, 301 Ill. App. 3d at 356). The *Warnock* court then found that in that case, when the buyers initiated the litigation against the plaintiffs, the plaintiffs could not have known with certainty whether that litigation was frivolous or whether the letter agreements drafted by the defendant law firm, allegedly including both a liquidated damages provision and language reserving all legal and equitable rights in the event of the buyers' default, were in fact drafted in contravention of Illinois law. *Warnock*, 376 Ill. App. 3d at 369. In fact, the court noted that "plaintiffs could not have known that [these] letter agreements were faulty" until the circuit court granted the buyers motion on the pleadings. *Warnock*, 376 Ill. App. 3d at 369. As the court explained:

"while the filing of the [buyers'] lawsuit may have alerted the plaintiffs to the possibility

> that [the defendant law firm's] letter agreements were incorrectly drafted and motivated plaintiffs to hire Arnstein & Lehr, plaintiffs had no actionable damages prior to the adverse judgment from the circuit court, which occurred *** when the circuit court granted the [buyers'] motion for judgment on the pleadings." *Warnock*, 376 Ill. App. 3d at 372.

Accordingly, the *Warnock* court concluded that the statute of limitations did not begin to run until that adverse judgment was entered by the court. *Warnock*, 376 Ill. App. 3d at 372.

¶ 33 We agree with the rationale of *Lucey* and *Warnock* and find that they apply to the facts of this case. Just as in *Lucey* and *Warnock*, the plaintiffs here could not have known with certainty whether the Siegel litigation was frivolous or whether the contract provisions drafted by Lattas, allegedly including language which failed to protect them from certain unqualified warranties in the real estate contract, were in fact drafted in contravention of Illinois law. While the Siegel law suit alerted the plaintiffs to the possibility that those warranties in the sales contract were poorly drafted and motivated them to hire the P&H defendants to defend against that suit, the plaintiffs had no actionable damages prior to an adverse ruling against them, *i.e.*, the settlement with the Siegels. Contrary to the plaintiffs' contention, the fact that Lattas agreed to come to the settlement mediation conference and "indicated a willingness to contribute to any settlement" does not alter this conclusion, since until that settlement was finalized, the plaintiffs could not have known whether they would incur any damages at all or whether they would have to proceed to trial to determine whether Lattas' drafting of the warranties was in fact negligent. Accordingly, this is not a situation, as the circuit court below improperly characterized as one

where "it is plainly obvious, prior to any adverse ruling against the plaintiff, that [the plaintiff] has been injured as a result of professional negligence." *Lucey*, 301 Ill. App. 3d at 358.

¶ 34 In that respect, we reiterate that the court in *Lucey* "found such a situation to be the exception to the frequently recognized rule that a cause of action for legal malpractice rarely will accrue prior to the entry of an adverse judgment, settlement, or dismissal of the underlying action in which the plaintiff had become entangled due to the alleged negligence of his attorney." *Romano*, 326 Ill. App. 3d at 30 (citing *Lucey*, 301 Ill. App. 3d at 356-57). As already articulated above, in *Lucey*, the plaintiff's cause of action did not arise when he was alerted to the possibility that he had received incorrect legal advice. Rather the plaintiff's tentative damages did not become actionable "unless and until" the litigation that resulted from that advice ended adversely to him. See *Lucey*, 301 Ill. App.3d at 359; see also *Romano*, 326 Ill. App. 3d at 30.

¶ 35 The plaintiffs nevertheless argue that they paid the P&H defendants attorneys fees to defend the Siegel law suit arising from the alleged malpractice of Lattas and that these fees themselves constitute the requisite actual damages that would have triggered the running of the statue of limitations as early as February 2007 when they retained the P&H defendants. In support of this position, the plaintiffs cite to our decision in *Goran v. Glieberman*, 276 Ill. App. 3d 590. We disagree, and find that case inapposite.

¶ 36 In *Goran*, the defendant attorney represented the plaintiff in an appeal from an adjudication of marriage dissolution and child custody. *Goran*, 276 Ill. App. 3d at 591-92. The defendant attorney filed an appellant's brief on the plaintiff's behalf, but the defendant attorney then withdrew from the appeal. *Goran*, 276 Ill. App. 3d at 591. The plaintiff subsequently hired

another law firm to represent her, and the appellate court ordered the new law firm to redraft the brief that had been filed by the defendant attorney because the defendant attorney's brief did not comply with appellate court rules. *Goran*, 276 Ill. App. 3d at 591. The plaintiff ultimately lost her appeal and filed a legal malpractice claim against the defendant attorney, alleging that the defendant attorney was negligent in representing her. *Goran*, 276 Ill. App. 3d at 592. The defendant attorney argued that the plaintiff's cause of action for legal malpractice arose when the appellate court required the plaintiff's new attorney to redraft the appellate brief that the defendant attorney had prepared in contravention of appellate court rules, which immediately caused the plaintiff to incur legal fees in the amount of $1,297. *Goran*, 276 Ill. App. 3d at 595. The defendant attorney stated that when the plaintiff had to pay her new attorney $1,297 to bring the defendant attorney's brief into compliance, she knew or reasonably should have known that she was injured by the defendant attorney's malpractice. *Goran*, 276 Ill. App. 3d at 596.

¶ 37 The appellate court confirmed that, in Illinois, a cause of action for legal malpractice accrues when the plaintiff knows or reasonably should know of his injury and that it was caused wrongfully. *Goran*, 276 Ill. App.3d at 596. The court further held that the statute of limitations began to run when the appellate court required the new firm to duplicate the defendant attorney's efforts. *Goran*, 276 Ill. App. 3d at 596. As a result, the *Goran* court concluded that the statute of limitations had expired. *Goran*, 276 Ill. App. 3d at 596.

¶ 38 Unlike *Goran*, in the present case, there is nothing in the plaintiffs' complaint to suggest that the plaintiffs incurred the attorneys fees prior to their settlement with Siegel, or that when they initially hired the P&H defendants to defend against the Siegel suit they knew that they

would incur attorneys fees in pursuing a claim against Lattas. Unlike here, in *Goran*, the appellate court explicitly ordered the new law firm to redraft the brief that had been filed by the defendant attorney because the defendant attorney's brief did not comply with appellate court rules. As a result of this order by the appellate court, the plaintiff immediately incurred legal fees in the amount of $1,297, and was placed on notice of the defendant attorney's mistake. By contrast, here, prior to an adverse judgment against them, *i.e.*, the settlement of the Siegel suit, the plaintiffs could not have known that they were going to incur any damages as a result of that suit. It was equally possible that the plaintiffs would successfully defend against that suit and owe no damages to the Siegels.

¶ 39 Moreover, the same argument brought by the plaintiffs here, regarding *Goran*, has already been raised and rejected by this appellate court in *Warnock*. Therein, in an attempt to establish that the statute of limitations began to run in October of 2000, when the plaintiffs hired Arnstein & Lehr to defend the buyer's suit against them, the defendant law firm argued that the *Goran* decision stood for the proposition that "subsequently incurred attorney fees automatically give rise to a cause of action for legal malpractice against a former attorney." *Warnock*, 376 Ill. App. 3d at 371. The court in *Warnock* rejected this argument outright, explaining:

> "While we believe that *Goran* was correctly decided, we cannot agree with defendant's broad reading of that case. Indeed, in *Lucey*, we clarified that 'the *Goran* holding is a limited one: the incurring of additional attorney fees may trigger the running of the statute of limitations for legal malpractice purposes, but only where it is clear, at the time the additional fees are incurred, that the fees are directly attributable to former counsel's

neglect (such as through a ruling adverse to the client to that effect).' (Emphasis added.) *Lucey*, 301 Ill. App.3d at 355 ***. Indeed, in *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill.2d 240 ***, our supreme court recognized the problem with defendant's position, which, if adopted, would require a client to file a provisional malpractice action against his attorney whenever the attorney's legal advice has been challenged." *Warnock*, 376 Ill. App. 3d at 371.

¶ 40 We agree with the rationale of *Warnock*, and reject the plaintiffs' contention that their subsequently incurred attorney fees automatically give rise to their cause of action for legal malpractice against Lattas. In that respect, we continue to adhere to the principle that "a cause of action for legal malpractice will not accrue prior to the entry of an adverse judgment, settlement, or dismissal of the underlying action in which plaintiff has become entangled due to the purportedly negligent advice of his attorney." *Warnock*, 376 Ill. App. 3d at 372; see also *Lucey*, 301 Ill. App. 3d at 356; see also, *e.g.*, *Hermitage Corp. V. Contractors Adjustment Co.*, 166 Ill.2d 72, 84-87 (1995) (where plaintiffs alleged defect in mechanics lien prepared by defendants, statute of limitations began running when circuit court first entered order reducing the amount of the lien); *Jackson Jordan*, 158 Ill.2d at 253 (mere filing of a lawsuit against client insufficient to trigger running of statute of limitations); *Bartholomew v. Crockett*, 131 Ill. App. 3d 456, 465 (1985) (where attorney's negligence resulted in dismissal of one of two tortfeasors in plaintiff's suit, malpractice action properly dismissed as premature since actual damages would occur only if plaintiff failed to recover or failed to fully recover against remaining tortfeasor); *Bronstein v. Kalcheim & Kalcheim, Ltd.*, 90 Ill. App. 3d 957, 959-60 (1980) (dismissing as premature

plaintiff's malpractice complaint against attorneys for negligent tax advice, since issuance of a Notice of Deficiency did not establish plaintiff had suffered a loss; plaintiff would have actionable damages only after a liability determination was made by Tax Court); But see *Goran*, 276 Ill. App. 3d at 595-96 (attorney fees incurred after court order finding defendant had negligently performed legal work triggered cause of action).

¶ 41 Since the plaintiffs in this case could not have reasonably discovered that the warranties in the sales contract were negligently prepared until February 1, 2010, when a settlement was reached in the underlying lawsuit with the buyers, the two-year statute of limitations on their legal malpractice action against Lattas did not begin to run until that date. Accordingly, the plaintiffs malpractice claim against Lattas, filed on August 12, 2010, is not time-barred.[3]

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[3]We note that the plaintiffs also cite to *Palmros v. Barcelona*, 284 Ill. App. 3d 642 (1996) and *Bass v. Katten*, 375 Ill. App. 3d 62 (2007) for the proposition that incurring attorneys fees is in and of itself sufficient to trigger the running of the two-year statute of limitations on malpractice actions. However, both of these cases are inapplicable to the facts at bar as they rely upon a completely different section of the Code, namely section 13-214.3(d), which deals exclusively with probate claims. See 735 ILCS 5/13-214.3(d) (West 2008) ("when the injury caused by the act or omission does not occur until the death of the person for whom the professional services were rendered, the action may be commenced within two years of the date of the person's death unless letters of office are issued or the person's will is admitted to probate within that two year period, in which case the action must be commenced within the time for filing claims against the estate, or a petition contesting the validity of the will of the deceased

¶ 42 Since the plaintiffs' cause of action for malpractice against the P&H defendants and against Lattas are mutually exclusive, if their cause of action against Lattas is still viable, their cause of action against the P&H defendants must be dismissed. For these reasons, we find that the circuit court's order simultaneously granting Lattas' motion to dismiss the plaintiffs' claim against him with prejudice, while denying the P&H defendants' motion to dismiss was made in error.

¶ 43 III. CONCLUSION

¶ 44 Accordingly, we reverse the judgment of the circuit court and remand for further proceedings.

¶ 45 Reversed and remanded.

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person). Our courts have explicitly recognized that this is a "special limitation period" (see *Palmros*, 284 Ill. App. 3d at 645) that "may shorten the limitation period for legal malpractice complaints and may mean that a plaintiff's action is barred before she learns of her injury" (see *Wackrow v. Niemi*, 231 Ill. 2d 418, 427 (2008)). This exception exists only in the probate context so as to address "the need for closure with respect to matters related to a decedent's estate as necessitated by the Probate Act." *Poulette v. Silverstein*, 328 Ill. App. 3d 791, 797 (2002).