2017 IL App (1st) 163429-U
No. 1-16-3429
Order filed December 15, 2017

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

RICHARD M. KILLIAN, PROSPECT EQUITIES, INC. and INFINITY CAPITAL HOLDING CORPORATION, Plaintiffs-Appellants, v. ERICA CROHN MINCHELLA, MINCHELLA & ASSOCIATES, LTD., JOHN A. ZRNICH, THE ZRNICH LAW GROUP, P.C., and JODY B. ROSENBAUM, Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 15 L 10464 Honorable Patrick J. Sherlock, Judge, presiding.

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

ORDER

¶ 1 *Held*: Trial court properly dismissed plaintiffs' amended complaint for failing to properly allege a claim for legal malpractice and did not err in denying plaintiffs' motion to file an amended second amended complaint that did not fix the pleading errors.

¶ 2 Richard Killian, the owner of two real estate companies, Prospect Equities, Inc., and Infinity Capital Holding Corporation, sued his former attorneys alleging professional negligence

in their representation of him and the companies in several foreclosure actions. Defendants moved to dismiss the complaint under section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)) for failing to state a claim, and under section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2014)), asserting the claims were untimely. The trial court granted the motions to dismiss without prejudice. Later, after denying plaintiffs' motion to reconsider and their request for leave to file a second amended complaint, the trial court dismissed the case with prejudice. Plaintiffs appeal, arguing the trial court erred in: (1) dismissing their complaint and amended complaint for failing to state a cause of action, (2) finding that the statute of limitations on the legal malpractice claims commenced when the trial court in the foreclosure cases entered summary judgments against the plaintiffs, and (3) denying them leave to file a second amended complaint.

¶ 3 For the reasons that follow, we affirm.

¶ 4 Background

¶ 5 Richard Killian was the principal officer and sole shareholder of two single purpose, limited liability real estate companies, Prospect Equities, Inc. and Infinity Capital Holding Corporation. Killian and the two companies were indebted to several banks through a series of loans secured by real estate held by each LLC. Killian personally guaranteed the loans. In September 2010, one of the lenders, Amcore Bank, failed and was placed in receivership. Amcore's assets, including the loans issued to Killian's LLCs, were assigned to BMO Harris Bank. Killian claims BMO Harris improperly calculated the amounts due and owing on the loans. When the LLCs failed to pay the amounts BMO Harris claimed were due, BMO Harris

declared the loans to be in default and filed four foreclosure cases against the LLCs and Killian, as guarantor, in Cook, DuPage, and Will counties.

¶ 6 In 2012, Killian retained John Zrnich and his law firm, The Zrnich Law Group, P.C., Erica Crohn Minchella, and her firm, Minchella & Associates, Ltd., and Jody Rosenbaum to represent them in defending the foreclosure actions.[1]

¶ 7 All four of the foreclosure cases proceeded in a nearly identical manner. BMO Harris filed motions for summary judgment, which the trial courts granted between December 6, 2012, and October 4, 2013. Final judgments were entered between November 2013 and April 2014. In the midst of the foreclosure litigation, on May 2, 2013, Killian sent an email to Zrnich and Minchella informing them they retained new counsel. The new law firm filed motions for leave to substitute counsel on June 18, 2013.

¶ 8 On October 14, 2015, Killian sued Zrnich and Minchella for professional negligence in their representation in the foreclosure cases. Killian alleged the defendants breached their professional duties of care by, among other things, not preserving purported defenses to BMO Harris's foreclosure actions, "contesting personal jurisdiction when the record revealed good service," not keeping them reasonably informed about the status of the cases, abandoning the cases, and not completing the assignments. Killian alleged that as a result of the defendants'

[1] Rosenbaum was not a member of Minchella's firm, but appeared from time to time for the firm. Minchella, her firm, and Rosenbaum will be referred to as "Minchella." Zrnich and his law firm will be referred to as "Zrnich." The plaintiffs, Richard Killian and his two companies, will be referred to as "Killian."

purported negligence, BMO Harris recovered judgments against them in the foreclosure cases, the LLCs lost interests in real estate that had been posted as security for the loans, his personal credit score declined and other banks' "evaluation of his [personal] creditworthiness suffered," resulting in additional foreclosures on other properties owned by some of his other LLCs.

¶ 9 Zrnich filed a motion to dismiss the complaint under section 2-619(a)(5) of the Code of Civil Procedure (735 ILCS 5/2-619(1)(5) (West 2014)), arguing all of the claims were filed beyond the two-year statute of limitations for claims against attorneys and therefore were time-barred. Minchella also moved to dismiss under section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)), asserting the complaint contained numerous pleading errors. Specifically, Minchella contended the complaint was improperly vague as to the specific conduct of each defendant that constituted a breach of duty, failed to allege how the purported breaches proximately caused damage, and failed to allege specific dates when the breaches occurred, making it impossible to determine if the complaint was timely filed. Zrnich later joined Minchella's motion to dismiss.

¶ 10 The trial court granted Minchella's 2-615 motion to dismiss on March 15, 2016, while denying Zrnich's 2-619 motion, without prejudice. The trial court found the complaint was patently deficient under section 2-615 as it failed to (1) identify the loans and foreclosure cases, (2) describe the connection of the named plaintiffs to those loans, and (3) describe the roles and conduct of each of the attorney defendants. The court noted the complaint did not allege facts showing an attorney-client relationship between the corporate plaintiffs and the defendants, failed to properly state how each defendant allegedly breached his or her duty, did not indicate

how the breaches of duty proximately caused damages, and did not allege facts showing that "but for" the defendants' alleged negligence Killian would have won the foreclosure cases.

¶ 11 On the issue of damages, the trial court noted that Killian acknowledged they owe money to BMO Harris but contended the foreclosure judgments were for more money than they owed. The court advised Killian that the complaint must allege the amount of those excess judgments and must allege how the corporate plaintiffs suffered damages. Killian was granted leave to file an amended complaint to address those deficiencies.

¶ 12 Killian's amended complaint, filed on April 5, 2016, included additional details regarding defendants' purported negligence and, unlike the initial complaint, was divided into five counts, with each of the first four counts addressing a specific property lost to foreclosure. The allegations in counts I through IV were nearly identical. These counts alleged Richard Killian hired defendants to represent him in connection with the foreclosure litigation, that BMO Harris filed a motion for summary judgment, the defendants failed to properly oppose the motion or offer evidence that BMO Harris miscalculated the amounts owed, BMO Harris obtained a summary judgment, and then a final judgment was entered against them. Killian alleged the defendants breached their duties of care by failing to present or preserve "meritorious" defenses to the foreclosure action, failing to keep them reasonably informed of the status of the case, and failing to file counterclaims against BMO Harris and the loan servicing company. Richard Killian further alleged he was personally damaged because BMO Harris recovered a money judgment against him, and that the LLC lost the real estate that secured the loans in question. Count V was directed solely toward Minchella's representation of Richard Killian in his personal efforts to sell one of the foreclosed properties.

¶ 13 Defendants again moved to dismiss. Minchella's motion, under section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)), asserted the amended complaint failed to cure the pleading defects as it did not properly allege proximate cause and improperly grouped the conduct of the five defendants into each count, without delineating how each defendant breached his or her duty. The motion also asserted the allegations regarding the attorney-client relationship between Killian and defendant Rosenbaum were conclusory. Zrnich's motion to dismiss again argued the complaint was untimely under section 2-619.1 of the Code (735 ILCS 5.2-619.1 (West 2014)). Zrnich also adopted the arguments raised in Minchella's motion to dismiss.

¶ 14 After briefing, the trial court granted both motions and entered a written order on July 6, 2016, dismissing counts I through IV of the amended complaint under section 2-615. The trial court found Killian's amended complaint had "[n]umerous deficiencies, of varying degrees of seriousness," but that the one of "crucial importance" was damages. Specifically, the court found that despite direct language in the prior dismissal order regarding damages, Killian's amended complaint did not provide either the amount of the foreclosure judgments or the amount of the "excess" judgments. As for Killian's contention they were damaged by defendants' failure to assert counterclaims, the amended complaint failed to set forth any facts describing the nature of the counterclaims or the amount of damages resulting from the loss of those counterclaims. Other claimed elements of damages, including Killian's personally reduced credit score and damages from lawsuits filed against other LLCs, were too speculative to state a cause of action.

¶ 15 The trial court also found that some of the alleged conduct in the amended complaint could not, as a matter of law, have proximately caused damage, including defendants' recommendation that Richard Killian personally file for bankruptcy and their failure to keep

Killian reasonably informed of the status of the foreclosure cases. The court also again found the allegations against Rosenbaum were vague and failed to properly allege breach of duty, proximate cause, or damages.

¶ 16 On the statute of limitations issue, the trial court stated that under the discovery rule, the two year statute of limitations on Killian's legal malpractice case started to run when they knew or reasonably should have known of the injury for which damages were sought. The court concluded that Killian knew or should have known of their injuries when summary judgment orders were entered in the foreclosure cases and not, as Killian contended, when the foreclosure courts entered final orders confirming sale of the properties and ordering distribution of the proceeds. The court found, however, that Killian failed to properly plead the discovery rule and thus, would not dismiss with prejudice on statute of limitations ground.

¶ 17 Accordingly, the trial court dismissed counts I through IV of the amended complaint without prejudice, advising Killian that if they opted to file a second amended complaint they must plead recoverable damages, namely the amount of any judgments they paid as well as the date of discovery of the summary judgment orders for statute of limitations purposes. The motions to dismiss did not address count V of the amended complaint, and the court stated that if Killian chose not to replead, the case would proceed on that count alone.

¶ 18 Rather than file a second amended complaint, Killian filed a motion to reconsider the trial court's July 6, 2016, order. Killian did not assert that new evidence or a change in the law warranted reconsideration of the trial court's order, but instead, argued solely that the trial court erred in its application of the law. Killian contended the complaint properly alleged damages and proximate cause, and that the claims were timely filed as the causes of action did not begin to

accrue until final judgments were entered in the foreclosure cases, which was less than two years from when they filed their original complaint.

¶ 19 The trial court denied the motion to reconsider. On the issue of damages, the court stated that Killian failed to set forth with specificity the amount of any excess judgments entered as a result of the foreclosure actions, and "critically" failed to allege whether they ever paid those judgments. The court also found Killian failed to properly allege damages related to the reduction in value of the LLCs, as any reduction in value was unrelated to Richard Killian's personal status as guarantor of the LLCs, and failed to cite a single case permitting the recovery of consequential damages in an attorney malpractice case. The court decided the statute of limitations issue was moot, as Killian did not file a second amended complaint alleging when he learned of the foreclosure judgments.

¶ 20 Killian filed a motion for leave to file a second amended complaint, along with a motion to voluntarily dismissal count V of the amended complaint. After a hearing on the motions, the trial court granted the voluntary dismissal of count V of the amended complaint, but found that the proposed second amended complaint failed to cure any of the defects previously identified in the amended complaint and denied the motion for leave to file. In light of the voluntary dismissal and the inadequacies of the proposed second amended complaint, the court dismissed the case with prejudice.

¶ 21 ANALYSIS

¶ 22 As a preliminary matter, we address Minchella's contention that the statement of facts in Killian's brief violates Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016) and should be disregarded or stricken. Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016) requires a

brief's statement of facts to be "stated accurately and fairly without argument or comment, and with appropriate reference to the pages of record on appeal."

¶ 23 Minchella contends Killian's statement of facts improperly includes legal argument and fails to properly cite to the record and, thus, must be disregarded or stricken. We agree that the statement of facts is deficient in some respects. Where a brief fails to comply with Rule 341(h)(6), we may strike the statement of facts or dismiss the appeal if the circumstances warrant. *Hall v. Naper Gold Hospitality LLC,* 2012 IL App (2d) 111151, ¶ 9. But as Killian's violations do not hinder our review, we will not strike the statement of facts (*McMackin v. Weberpal Roofing, Inc.*, 2011 IL App (2d) 100461, ¶ 3); we will, however, disregard any noncompliant portions. We also admonish counsel to carefully adhere to the requirements of the supreme court rules in future submissions.

¶ 24 Dismissal of Complaint and Amended Complaint

¶ 25 Turning to the merits, Killian first contends the trial court erred in dismissing their original complaint under section 2-615 for failing to properly state a cause of action. The defendants argue Killian abandoned those claims when they filed an amended complaint and failed to reference or incorporate the claims from the original complaints. Whether a dismissed claim has been preserved for review is a question of law that we review *de novo*. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 17.

¶ 26 "[A] party who files an amended pleading waives any objection to the trial court's ruling on the former complaints," and " '[w]here an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn.' " *Bonhomme,* 2012 IL 112393, ¶ 17

(quoting *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill.2d 150, 153-54 (1983) and *Bowman v. County of Lake*, 29 Ill.2d 268, 272 (1963)). Because Killian filed an amended complaint without referring to or adopting their earlier complaint, we need not consider their argument on the dismissal of the original complaint. See *Bonhomme*, 2012 IL 112393, ¶ 31. We thus turn our attention to the trial court's dismissal of the amended complaint.

¶ 27 To successfully proceed with a legal malpractice claim, a plaintiff must establish: (1) the existence of an attorney-client relationship; (2) a duty arising from that relationship; (3) a breach of that duty by the defendant-attorney; (4) proximate cause; and (5) damages. *Paulsen v. Cochran*, 356 Ill. App. 3d 354, 358 (2005).

¶ 28 A section 2-615 motion to dismiss attacks "the legal sufficiency of a complaint based on defects apparent on its face." *Pooh–Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). A trial court should grant a section 2-615 motion to dismiss only if "it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Id*. When ruling on a section 2-615 motion to dismiss, a circuit court may consider only the "facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record." *Id*. A court must accept as "true all well-pleaded facts and all reasonable inferences that may be drawn from those facts." *Id*. Mere conclusions of law or facts unsupported by specific factual allegations in a complaint are insufficient to withstand a section 2–615 motion to dismiss. *Id*. This court reviews the circuit court's granting of a section 2-615 motion to dismiss *de novo*. *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 54 (2011).

¶ 29 In dismissing the amended complaint, the trial court found Killian's failure to properly plead damages of "crucial importance." In a legal malpractice action, actual damages are never

presumed. *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306-07 (2005). Damages must be affirmatively established by the aggrieved client. *Id.* (citing *Eastman v. Messner*, 188 Ill. 2d 404, 411(1999)). Unless the client can demonstrate that he or she has sustained a monetary loss as the result of some negligent act on the lawyer's part, the cause of action cannot succeed. *Id.* (citing *Farm Credit Bank of St. Louis v. Gamble*, 197 Ill. App. 3d 101, 103 (1990)). Making that demonstration requires more than supposition or conjecture. Where the mere possibility of harm exists or damages are otherwise speculative, actual damages are absent and no cause of action for malpractice yet exists. See *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349, 353 (1998). Damages are considered to be speculative, however, only if their existence itself is uncertain, not if the amount is uncertain or yet to be fully determined. *Profit Management Development, Inc. v. Jacobson, Brandvik & Anderson, Ltd.*, 309 Ill. App. 3d 289, 309 (1999).

¶ 30 Killian contends the complaint adequately alleged damages, namely the amounts owed to BMO Harris in the foreclosure cases, and they did not need to have already paid those judgments to establish the damages element of their cause of action. For support, Killian relies on *Fox v. Seiden*, 382 Ill. App. 3d 288 (2008) and *Gruse v. Belline*, 138 Ill. App. 3d 689, 698 (1985), which held that where malpractice was alleged, the entry of judgment in that underlying case is sufficient to establish the element of damages to state a legal malpractice claim even if the judgment was not yet paid.

¶ 31 Killian's reliance on *Fox* and *Gruse* is misplaced, however. Although we agree that an underlying judgment need not be paid to establish the element of damages, non-payment alone was not the basis for the trial court's dismissal. The trial court found Killian's complaint failed to

provide sufficient facts to determine whether any of the claimed damages were incurred as a result of any alleged negligence on defendants' part. As the trial court noted, to the extent Killian or any plaintiff alleged they were guarantors of the BMO Harris loans, they conceded they owed BMO Harris money under the various loan agreements once the LLCs were found to be in default. And, although the complaint alleged the amounts of those foreclosure judgments it failed to allege facts that would allow a court to determine whether those judgments were in "excess" of the amounts Killian personally owed as guarantor of the loans.

¶ 32 *Sterling Radio Stations Inc. v. Weinstine*, 328 Ill. App. 3d 58, 63 (2002), which the trial court relied on, is instructive. In *Sterling*, Alex Seith, a shareholder of a corporation he controlled, guaranteed the corporation's promissory note to purchase a radio station. *Id*. at 60. When the corporation stopped making payments, Seith refused to pay as guarantor. The radio station sued Seith and the corporation, and Seith hired a law firm to defend himself and the corporation separately. Both were found liable. Eventually, the parties entered a settlement agreement to pay the judgment with corporate assets. Seith and the corporation then sued the law firm for legal malpractice arising from the underlying case. *Id*. at 61. The trial court entered summary judgment against Seith, finding he had not suffered any actual damages. *Id*. at 61-62. The appellate court affirmed, finding that as the judgment was paid from the assets of the corporation and not from Seith's individual assets, he only suffered "a diminution of the value of his shares and not a loss of his personal funds." *Id*. at 63.

¶ 33 Although *Sterling Radio*, involved summary judgment, it is applicable to the facts here, because, like Seith who did not have to pay any damages, Killian has not alleged facts showing he has had to pay or will ever have to pay money in excess of what he is personally required to

pay as guarantor on the loans. Although as Killian correctly notes, the amended complaint, unlike the original complaint, specifies the amounts of each of the four foreclosure judgments, it does not include facts specifying what amounts, if any, Richard Killian is personally required to pay on those loans "but for" defendants' alleged negligence.

¶ 34 Moreover, some of Richard Killian's other alleged damages, a diminution of his personal creditworthiness and damages to his other LLCs, are not recoverable, as the *Sterling Radio* court found.

¶ 35 In dismissing the original complaint, the trial court explicitly noted that Killian needed to allege how much was due and owing to BMO Harris on the LLC notes, whether and if any of the foreclosure judgments were in "excess" of the amount due and owing, whether the judgments had been paid, and whether Killian had spent any money attempting to rectify the defendants' alleged malpractice. Killian failed to satisfy those requirements, so the trial court did not err in dismissing the amended complaint.

¶ 36 Statute of Limitations

¶ 37 Killian next contends the trial court erred in dismissing the amended complaint on statute of limitations grounds.

¶ 38 Legal malpractice claims are subject to a two-year statute of limitations. A party must bring a legal malpractice action within two years from the time he or she "knew or reasonably should have known of the injury for which damages are sought." *Preferred Personnel Services, Inc., v. Meltzer, Purtill and Stelle, LLC*, 387 Ill. App. 3d 933, 940 (2009); 735 ILCS 5/13-214.3(b) (West 2014)). Significantly, actual knowledge of the alleged malpractice is not a necessary condition to trigger the running of the statute of limitations. *SK Partners I, LP v.*

Metro Consultants, Inc., 408 Ill. App. 3d 127, 130 (2011) ("under the discovery rule, a statute of limitations may run despite the *lack* of actual knowledge of negligent conduct" (emphasis in original)). A statute of limitations begins to run when the purportedly injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Dancor International Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 673 (1997). Knowledge that an injury has been wrongfully caused "does not mean knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action." (Emphasis and internal quotation marks omitted.) *Castello v. Kalis*, 352 Ill. App. 3d 736, 744 (2004). A person knows or reasonably should know an injury is "wrongfully caused" when he or she possesses sufficient information concerning an injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved. *Hoffman v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004, 1011 (2002).

¶ 39 The law is well settled that once a party knows or reasonably should know both of his injury and that it was wrongfully caused, "the burden is upon the injured person to inquire further as to the existence of a cause of action." (Internal quotation marks omitted.) *Castello*, 352 Ill. App. 3d at 745. "A case may be involuntarily dismissed if it "was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2014). Whether a cause of action was properly dismissed under section 2-619(a)(5) of the Code based on the statute of limitations is a matter we review *de novo*. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 99 (2004).

¶ 40 Killian contends the existence of damages was not ascertainable and the statute of limitations did not begin to run until the judgment orders were final and appealable and not, as the trial court found, at the time of the entry of the summary judgment orders. Killian asserts

they filed their complaint less than two years after the first of the four final judgment orders was entered in the foreclosure cases, thereby satisfying the two year statute of limitations for attorney malpractice claims.

¶ 41 As our supreme court has explained, "[t]he injury in a legal malpractice action is not a personal injury [citation] nor is it 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. [Citations.] For 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." *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306–07 (2005). "It is the realized injury to the client, not the attorney's misapplication of his legal expertise, that marks the point for measuring compliance with a statute of limitations." (Internal quotation marks omitted). *Preferred Personnel Services*, 387 Ill. App. 3d at 940. "Where the mere possibility of harm exists or damages are otherwise speculative, actual damages are absent and no cause of action for malpractice yet exists. [Citation.] Damages are considered to be speculative, however, only if their existence itself is uncertain, not if the amount is uncertain or yet to be fully determined." *Northern Illinois Emergency Physicians*, 216 Ill. 2d at 307. Stated another way, "[w]hen uncertainty exists as to the very fact of damages, as opposed to the amount of damages, damages are speculative, and no cause of action for malpractice can be said to exist." *Preferred Personnel Services*, 387 Ill. App. 3d at 939. A plaintiff's "identification of one wrongful cause of his injuries initiate[d] his limitations period as to all other causes, particularly when *** those claims are inseparable." *Carlson*, 2015 IL App (1st) 140526, ¶ 39.

¶ 42 Killian contends they suffered no injury, and thus their claims for legal malpractice accrued when the judgment orders in the foreclosure cases were final and appealable. Killian asserts that at the time the summary judgment orders were entered, they had not been injured as they had not yet lost the property securing the loans, and Richard Killian still had good credit and a profitable business. Nevertheless, not long after the loans were assigned, Killian knew BMO Harris had allegedly miscalculated the amount owed by LLCs. Thus, they knew they were not in default under the loan agreements, and not liable on BMO Harris's foreclosure claims at that time. Killian asserts they provided the defendants with relevant facts and documents from which defendants should have been able to mount meritorious defenses to the foreclosure complaints. Given these allegations, a summary judgment ruling in favor of BMO Harris foreclosure claims put Killian on notice of wrongful conduct on the part of their attorneys as they had not defaulted on their loans. The final judgment in the foreclosure litigation merely served to confirm the amount of damages.

¶ 43 We also note that during the foreclosure litigation, after the entry of the summary judgment orders, Killian fired the defendants and retained new counsel. In *Barratt v. Goldberg*, 298 Ill. App. 3d 252, 256 (1998), this court held that a legal malpractice cause of action began to accrue when the plaintiff met with a second attorney to discuss the possibility of vacating or modifying a judgment in the underlying case, as at that point she knew or reasonably should have known of her injury and that it was wrongfully caused. Similarly, Killian opted to hire new counsel to represent them in the foreclosure cases. That decision, along with their assertion that BMO Harris miscalculated amounts owed on the loans, was evidence that Killian knew or should have known they were injured when the summary judgment orders were entered. Accordingly,

we agree with the trial court that the malpractice claim accrued against the defendants when the summary judgments were entered in the foreclosure cases.

¶ 44 Killian asks us to follow the holding in *Lucey v. Law Offices of Pretzel & Stouffer*, 301 Ill. App. 3d 349 (1998). In *Lucey*, the plaintiff sought advice from the defendant law firm regarding whether he could solicit clients from his current employer before resigning to start his own company. *Id*. at 351. After following the defendant law firm's advice, the plaintiff was sued by the former employer. *Id*. at 352. The defendant law firm initially represented the plaintiff and assured him that he had a valid defense, but the plaintiff eventually hired other counsel. *Id*. While the lawsuit by the former employer was pending, the plaintiff filed suit against the defendant law firm for malpractice. *Id*. The trial court dismissed the malpractice complaint, finding that it was premature because the plaintiff had not yet sustained damages, as the underlying lawsuit by the former employer remained pending. *Id*. The *Lucey* court held that the legal malpractice action did not accrue until the former employer's lawsuit against the plaintiff concluded. *Id*. at 355. It was possible the plaintiff could prevail against the former employer, so the damages were "entirely speculative until a judgment is entered against the former client or he is forced to settle." *Id*. The *Lucey* court observed that "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." *Id*. at 356. The court reasoned that requiring a client to bring a provisional malpractice suit would undermine judicial economy and the attorney-client relationship. *Id*. at 357. Thus, the trial court correctly dismissed the malpractice claim as premature; the plaintiff would not sustain

any "actual damages" unless and until the former employer's lawsuit was resolved adversely to him. *Id*. at 357-59.

¶ 45 Killian's reliance on *Lucey* is misplaced, however, as adverse judgments, namely the summary judgment orders, had been entered in the underlying case. Even if the precise amount of damages were unknown at that time, plaintiffs knew they had sustained "actual damages." As this court has observed, "[a] legal malpractice claim can accrue before the client suffers a final, adverse judgment in the underlying action where it is 'plainly obvious, prior to any adverse ruling against the plaintiff, that he has been injured as the result of professional negligence' or where an attorney's neglect is a direct cause of the legal expense incurred by the plaintiff." *Estate of Bass ex rel. Bass v. Katten*, 375 Ill. App. 3d 62, 70 (2007) (quoting *Lucey*, 301 Ill. App.3d at 355). Killian knew or should have known whether BMO Harris had miscalculated the amounts owed on the loans and would have discovered the alleged negligence by their attorneys in the foreclosure cases as soon as the summary judgments were entered, even if the precise amount of damages was unknown.

¶ 46 In light of Killian's allegations they had not defaulted on their loans, the adverse summary judgments in BMO Harris's favor not only injured them but would have put them on notice that the injury was wrongfully caused. The statute of limitations began to run and they were under an obligation to inquire further to determine whether an actionable wrong had been committed. *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 170-71 (1981). Thus, the trial court correctly found that the statute of limitations began to run when the summary judgment orders were entered.

¶ 47 Second Amended Complaint

¶ 48 Lastly, Killian contends the trial court erred in denying them leave to file a second amended complaint.

¶ 49 Section 2-616(a) of the Code (735 ILCS 5/2-616(a)(West 2014)) provides that at any time before final judgment, the court may permit amendments on just and reasonable terms to enable the plaintiff to sustain the claim brought in the suit. In considering whether a circuit court abused its discretion in ruling on a motion for leave to file an amended complaint, the reviewing court considers the following factors: "(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleadings could be identified." *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992). "Whether to allow an amendment of a complaint is a matter within the sound discretion of the trial court, and, absent an abuse of that discretion, the court's determination will not be overturned on review." *Compton v. Country Mutual Insurance Co*., 382 Ill. App. 3d 323, 331 (2008). An abuse of discretion will only be found where no reasonable person would take the view adopted by the trial court. *Id*. at 331-32.

¶ 50 Here, the proposed second amended complaint failed to cure those elements of the amended complaint the trial court previously found defective. The trial court granted Killian leave to file a second amended complaint to allege additional facts concerning the alleged counterclaims, and directing them to replead recoverable damages, including the amount of any judgments they paid, and the date of discovery of the relevant summary judgment orders. The proposed second amended complaint presented by plaintiffs did not address those issues.

Moreover, the proposed second amended complaint was virtually identical to the previously dismissed amended complaint, except for the addition of two introductory paragraphs and the elimination of count V, the only count the trial court did not dismiss.

¶ 51 We note that our review of the issue is hampered by Killian's failure to provide a transcript of the proceeding in which the trial court denied leave to file the proposed second amended complaint. The trial court's December 21, 2016 order specifically states "the Court having heard argument upon Plaintiff's Motion for Leave to File their Second Amended Complaint at Law, and being otherwise fully advised in the premises," the motion was nevertheless denied. As the appellant, Killian must present a record that is adequate for determination of the issues, and in the absence of a transcript we have no basis for holding that the trial court abused its discretion in denying the motion. *Compton*, 382 Ill. App. 3d at 330, 333 (quoting *In re Estate of Hayden*, 361 Ill. App. 3d 1021, 1030 (2005)). In the absence of a transcript, we must assume the trial court heard sufficient evidence to support its decision, unless the record indicates otherwise. *Webster*, 195 Ill. 2d at 433. Thus, as the second amended complaint failed to address the errors noted by the trial court and Killian failed to provide a transcript showing otherwise, the court did not abuse its discretion by denying his motion for leave to file a second amended complaint.

¶ 52 CONCLUSION

¶ 53 Plaintiffs' amended complaint failed to properly allege damages proximately caused by defendants' alleged negligence and the proposed second amended complaint was similarly deficient. Further, the statute of limitations began to run when the trial court entered summary

judgment orders against them in the foreclosure cases, as that is when the plaintiffs knew or should have known of their injuries.

¶ 54 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 55 Affirmed.