

Illinois Appellate Court Affirms Summary Judgment For Defendant in Legal Malpractice Action Based on No Duty and No Causation

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Sep 13, 2021

[*Carlson v. Michael Best & Friedrich, LLP*, 2021 IL App \(1st\) 191961 \(July 15, 2021\)](#)

Brief Summary

An Illinois appellate court held that: (1) plaintiffs' motion to amend their complaint was properly denied where the six-year statute of repose (735 ILCS 5/13-214.3(c)) barred the proposed amended claims based (in part) on plaintiffs' judicial admission that they did not retain defendant in 2008, (2) summary judgment was properly granted in defendant's favor because plaintiffs' underlying legal malpractice action (against prior counsel) was time-barred before plaintiffs retained defendant in 2010, and (3) defendant owed no duty to disclose to plaintiffs that they may have a legal malpractice against defendant.

Complete Summary

This ruling was the latest installment in a series of appeals by the plaintiffs. In early 2007, plaintiffs engaged counsel ("Fish & Collins") to represent plaintiffs (Carlson and his company, Willis Capital, LLC) in a dispute with Carlson's former partners in an options trading firm. In March 2008, the dispute was resolved through mediation and resulted in a settlement agreement.

Shortly after the settlement, Carlson came to believe his former partners may have defrauded him into accepting a price well below market value for his share of Willis Capital, and he began to investigate whether he could sue his former partners for fraud. In June 2008, plaintiffs' accountant reviewed the settlement agreement and told Carlson: "I don't know what happened here . . . but you left \$12 million on the table. You should be able to go back and get it."

In November 2008, Carlson spoke to Chris, a college friend and attorney at defendant's firm, about the settlement agreement and "express[ed] dissatisfaction" with Fish & Collins' legal representation. Carlson testified at his deposition, however, that he "[d]id not engage [defendant] in 2008." Instead, Carlson consulted with yet another law firm ("DB"), whose attorneys "raised questions" about whether the legal services rendered by Fish & Collins had been substandard. Carlson claimed this was the first time he became aware of possible claims against Fish & Collins.

In August 2010, Carlson officially retained defendant for consultation regarding a potential legal malpractice action against Fish & Collins. Defendant advised Carlson that a legal malpractice action "may be tough in the face of the statute of limitations." Defendant's engagement ended in September 2010. In November 2010, Carlson retained a new law firm ("C&C") to pursue legal malpractice claims against Fish & Collins, and C&C filed a complaint against Fish & Collins within a week of being retained.

After plaintiffs' alleged claims against Fish & Collins were dismissed based on the 2-year statute of limitations governing legal malpractice claims in January 2014, plaintiffs (Carlson) appealed. In [Carlson v. Fish, 2015 IL App \(1st\) 140526 \(Apr. 22, 2015\)](#) ("*Carlson I*"), the appellate court affirmed and held that plaintiffs' legal malpractice action against Fish & Collins was time-barred, as a matter of law, because Carlson knew that he was injured and knew or reasonably should have known that his injuries were wrongfully caused more than two years before he filed suit in November 2010. The court relied, in part, on Carlson's knowledge that the "wrongful cause" was that of his former partners. Our Lawyers for the Profession® alert summary of *Carlson I* is available [here](#).

On March 26, 2012, Carlson, again through subsequent counsel C&C, filed a Section 2-1401 petition for relief that sought to "reopen a 2008 settlement agreement and judgment," which was dismissed. In [Willis Capital, LLC v. Belvedere Trading, LLC, 2015 IL App \(1st\) 132183 \(Mar. 16, 2015\)](#) ("*Willis*"), the Illinois appellate court held that plaintiff's Section 2-1401 petition was properly dismissed because, *inter alia*, Carlson had a duty to exercise due diligence before settling the underlying matter.

On February 27, 2014, Carlson again engaged defendant. This time, plaintiffs engaged defendant to act as a consultant regarding the then pending appeals in *Willis* and *Carlson I*. Defendant's second engagement ended in May of 2015 after plaintiffs declined to appeal the decisions to the Supreme Court of Illinois.

In September 2015, plaintiffs retained yet another new lawyer.

On January 13, 2016, plaintiffs filed the legal malpractice action at issue here ("*Carlson II*") against the defendant, C&C, and other attorneys that represented plaintiffs in *Willis* and *Carlson I*. Count I alleged that defendant breached the standard of care by failing to advise plaintiffs: (1) when the statute of limitations would expire on the malpractice claims against Fish & Collins; (2) that plaintiffs had a malpractice claim against defendant; and (3) that plaintiffs had a malpractice claim against DB, the counsel plaintiffs retained after Fish & Collins.

Defendant filed a motion for summary judgment asserting that: (1) no breach occurred because plaintiffs' claim against Fish & Collins was time-barred before defendant was engaged in 2010; (2) defendant owed no duty to advise plaintiffs they had a malpractice claim against defendant; and (3) no causation existed because plaintiffs

subsequently engaged other counsel while the malpractice claim against DB, which was retained in November 2008 and October 2009, was still viable. In response, plaintiffs sought leave to amend the complaint to add allegations that defendant had a duty to advise plaintiffs of the statute of limitations during Carlson's initial discussions with Chris in 2008.

The trial court denied plaintiffs leave to file an amended complaint and granted summary judgment in defendant's favor. The appellate court affirmed. In affirming the trial court's ruling, the appellate court held that the trial court properly denied plaintiffs' motion to amend the complaint. First, the court found the six-year statute of repose applicable to claims against attorneys (735 ILCS 5/13-214.3(b)) extinguished any cause of action arising out of Carlson's 2008 discussions with Chris, Carlson's college friend and an attorney at defendant's firm. The court reasoned that the last culpable act or omission occurred in November 2008, more than six years before plaintiffs' filing on January 13, 2016, because an attorney owes no duty to advise a client that he or she may have a legal malpractice against him. The appellate court rejected plaintiffs' arguments on continuous representation and equitable estoppel.

Second, the appellate court found that the amendment was futile because Carlson's deposition testimony — that he "[d]id not engage [defendant] in 2008" — constituted a judicial admission that could not be contradicted by contrary evidence. The court rejected plaintiffs' argument that this statement constituted a legal conclusion.

Plaintiffs also argued that the term "engaged" is not dispositive of whether an attorney-client relationship existed. The appellate court found that "mutual subjective intent between a potential client and attorney is required to create an attorney-client relationship" and determined that no attorney-client relationship was ever formed between plaintiffs and defendant in 2008 because there was no meeting of the minds. The court noted that in addition to Carlson's judicial admission, defendant specifically denied an attorney-client relationship existed in 2008.

Finally, the appellate court held that the trial court properly granted defendant's motion for summary judgment, finding that the statements made by plaintiffs' accountant in June 2008 put him on inquiry notice of the claims against Fish & Collins and, therefore, the statute of limitations expired before plaintiffs first officially engaged defendant in August of 2010. With respect to plaintiffs' alleged claim of the lost claims against DB, the court found that plaintiffs retained subsequent counsel in 2015 before the statute of repose expired on such claims in October 2015, thereby breaking the chain of causation in relation to defendant's alleged conduct.

Significance of Decision

This decision illustrates, once again, that as soon as a client knows (or reasonably should have known, including through their business dealings) that they were injured and that the injury was wrongfully caused, the client must act promptly to pursue possible claims or be forever time-barred, even against unknown participants. See, e.g., *Carlson I*, 2015 IL App (1st) 140526, ¶ 39 (April 22, 2015) ("identification of one wrongful cause of [plaintiff's] injuries initiates [the] limitations period as to all other causes").

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