IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Christopher Berg,	)	
	)	
Plaintiff,	)	
v.	)	
	)	No. 13 L 1030
Scott Thomas Kamin,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Statutes of limitation begin to run when a party knows or should know of the injury. Christopher Berg claims that on November 23, 2010, he lost a $1.5 million judgment against the Village of Oak Lawn and its police officer because of Scott Kamin's legal malpractice. Since Berg filed this lawsuit on January 30, 2013 – 68 days after the statute expired – Kamin's motion to dismiss the first amended complaint must be granted with prejudice.

Facts

Following an incident that occurred on June 21, 2008, Berg filed suit in federal court against the Village of Oak Lawn and one of its officers. *See Berg v. Culhane*, 2011 U.S. App. LEXIS 25522 (7th Cir. Ill., Dec. 22, 2011). A trial in that case ended on August 31, 2010 with a verdict in favor of Oak Lawn and its officer. Amd. Cmplt. at ¶ 9. On November 23, 2010, Judge Virginia Kendall entered judgment on the verdict. *Id.*; Resp. Br. at ¶ 6. Berg alleges that Kamin's malpractice resulted in that loss, valued at $1.5 million, plus the imposition of costs and sanctions entered by Judge Kendall on February 10, 2011. Amd. Cmplt. at ¶¶ 8-11; Resp. Br. at ¶ 6.

On January 30, 2013, Berg's latest attorney filed a complaint for legal malpractice against Kamin. Kamin filed a motion to dismiss that complaint, which Judge Randye Kogan granted on June 28, 2013. Berg filed his first amended complaint on July 25, 2013. Kamin filed his latest motion to dismiss on September 3, 2013.

Analysis

This dispute requires the court to determine when the statute of limitations expired for Berg to file his legal malpractice claim against Kamin. That determination begins with the Code of Civil Procedure, which provides

that legal malpractice claims "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). A statute-of-limitations defense is affirmative matter that may authorize a dismissal with prejudice. 735 ILCS 5/2-619(a)(9).

The primary rule of statutory construction is to determine the legislature's intent and carry it out. *Boaden v. Department of Law Enforcement*, 171 Ill. 2d 230, 237 (1996). That determination begins with the statute itself, which is the most reliable indicator of the legislature's intent. *Nottage v. Jeka*, 172 Ill. 2d 386, 392 (1996). Statutory language is to be given its plain and ordinary meaning and, if it is clear and unambiguous, applied without resort to further rules of statutory construction. *Davis v. Toshiba Machine Co.*, 186 Ill. 2d 181, 184-85 (1999).

Berg claims that the dismissal of his amended complaint is unwarranted for two reasons. First, he argues that a legal malpractice claim does not accrue until the litigation from which the malpractice arose ends. Resp. Br. at ¶¶ 7-9. This argument cannot be correct for at least three reasons. First, the statute's plain language does not provide that a legal malpractice claim accrues when the litigation ends, but when the plaintiff "knew or should have known of the injury for which damages are sought." 735 ILCS 5/13-214.3(b). This court will not engraft a requirement omitted by the legislature.

Second, the cases on which Berg relies do not in any way support his concocted proposition, Resp. Br. at ¶¶ 7-9, and, even if they did, Berg would still be wrong for a third reason. Berg claims that Kamin's malpractice cost Berg a $1.5 million judgment plus costs and sanctions imposed by Judge Kendall. In other words, according to Berg's own reckoning, the "injury for which damages are sought," 735 ILCS 5/13-214.3(b), accrued on November 23, 2010 when he lost his chance at $1.5 million and Judge Kendall entered judgment for Oak Lawn and its officer. Amd. Cmplt. at ¶¶ 8-11; Resp. Br. at ¶ 6. Further, Berg's argument that the February 10, 2011 issuance of costs and sanctions is the date on which his cause of action accrued makes no sense. The costs and sanctions amounted to only approximately $5,000, and are plainly incidental to the $1.5 million lost judgment Berg claims. Further, Judge Kendall issued sanctions against Kamin, not Berg, thus, he cannot claim them as a pecuniary loss. In short, this court must take Berg at his word – his cause of action accrued on November 23, 2010. Since Berg filed his complaint on January 30, 2013, he was 68 days too late.

Berg's second argument is that the statute of limitation for his legal malpractice claim was equitably tolled from November 2010 to February

2011, the period in which he was incarcerated following the November 23, 2010 judgment. Berg cites no case law supporting his equitable-tolling argument. Even if he had, it would not matter. Berg did not need those 2½ months to learn of his injury. As indicated immediately above, Berg argues that Kamin's malpractice resulted in an adverse verdict costing Berg a $1.5 million judgment on November 23, 2010. Amd. Cmplt. at ¶¶ 8-11; Resp. Br. at ¶ 6. Berg would have better used his time in prison to retain an attorney who could have filed his legal malpractice complaint 68 days earlier.

Since this dispute is resolvable solely on statute-of-limitations grounds, this court need not address Kamin's second argument, brought under 735 ILCS 5/2-615, that Berg inadequately pleaded the first amended complaint.

IT IS ORDERED THAT:

1. Kamin's motion is granted;
2. Berg's first amended complaint is dismissed with prejudice; and
3. The January 6, 2014 hearing date at 11:00 a.m. is stricken.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JAN 03 2014

Circuit Court 2075