

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

JAMES E. BEASLEY, JR., and PAMELA J.	:	December Term 2010
BEASLEY, M.D., EXECUTORS AND	:	
TRUSTEES OF THE ESTATE OF JAMES	:	No. 1254
E. BEASLEY, THE BEASLEY FIRM LLC,	:	
JAMES E. BEASLEY, JR. and PAMELA J.	:	COMMERCE PROGRAM
BEASLEY, M.D.,	:	
Plaintiffs,	:	2873 EDA 2012
v.	:	
YOUNG, RICCHIUTI, CALDWELL & HELLER,	:	
LLC, NANCY A. BEASLEY and LYNN HAYES,	:	
Defendants.	:	

OPINION

The instant appeal arises from this court's order dated August 2, 2012 granting defendants joint motion for summary judgment. This action was instituted by plaintiffs James E. Beasley, Jr. and Pamela J. Beasley, M.D., Executors and Trustees of the Estate of James E. Beasley, the Beasley Firm LLC, James E. Beasley, Jr. and Pamela J. Beasley, M.D. (hereinafter "Plaintiffs") against defendants Young, Ricchiuti, Caldwell & Heller (hereinafter "Young"), Nancy A. Beasley ("Nancy") and Lynn Hayes ("Lynn") for civil conspiracy and abuse of process.

Plaintiffs James E. Beasley, Jr. and Pamela J. Beasley, M.D. are two of three children of the James E. Beasley, Esquire ("Decedent") and Helen Beasley. Kimberly Beasley Schumucki is the third child. James E. Beasley, Jr. ("James Jr."), Pamela J. Beasley, M.D. ("Pamela J.") and Kimberly Beasley Schumucki are contingent beneficiaries of the decedent's estate. Defendants Nancy and Lynn are children of decedent by his first marriage to Gloria Beasley and are contingent beneficiaries of the Decedent's Estate. Defendant Young is a law firm that employed



Keith S. Erbstein, Esquire (hereinafter “Erbstein”), as an attorney after he left decedent’s law firm (the “Beasley firm”) in November 2005.

Decedent passed away on September 18, 2004. The decedent’s will was admitted to probate by the Register of Wills of Montgomery County, the county in which the decedent resided prior to his death. Letters Testamentary were issued to James Jr., Pamela J. and Kimberly Beasley Schmucki¹ on October 1, 2004.

On January 14, 2008, Nancy and Lynn filed a Petition to Remove James, Jr. and Pamela J. as Executors of Decedent’s Estate and as Trustees of the Estate in the Montgomery County Orphans’ Court. At the time, Nancy and Lynn were represented by Erbstein and the Young firm. Erbstein previously worked at plaintiff, The Beasley Firm, LLC and had filed suit against the Beasley Firm for breach of contract on or about December 29, 2006.²

On or about February 27, 2008, James Jr. and Pamela J. filed a petition to disqualify Erbstein and the Young firm from participating as counsel for Nancy and Lynn regarding decedent’s estate. Among the matters raised in the petition to support disqualification was an alleged unwaivable conflict of interest existing between Nancy and Lynn, Erbstein and Young. Plaintiffs alleged Erbstein’s recovery in his own case would be with monies from the Beasley Firm which would otherwise be paid the Estate, decreasing the value of same.

On February 28, 2008, Nancy and Lynn executed an Affidavit. The Affidavit states Nancy and Lynn were fully informed of an alleged conflict of interest with Erbstein and Nancy and Lynn fully consented to the representation and waived any conflict of interest.

¹ Ms. Schmucki resigned as co-Executor of the Decedent’s Estate on or about June 16, 2005 and is not an individual party to this action.

² The matter captioned Erbstein v. the Beasley Firm, LLC, et. al., 0612-3625 has been transferred to binding arbitration based upon an agreement of the parties.

On February 29, 2008, Nancy and Lynn filed their response to the Petition to Disqualify attaching the affidavit. On March 13, 2008, Nancy and Lynn filed objections to the first and final accounting of James Jr. and Pamela J. in Orphan's Court. The Objections are still pending in Orphan's Court.

On or about March 31, 2008, James, Jr. and Pamela J. filed a Brief in Support of the Petition to Disqualify. James Jr. and Pamela J. averred Erbsstein and Young must be disqualified because the conflict of interest between Nancy and Lynn, Erbsstein and Young was unwaivable, there is insufficient evidence to conclude that Nancy and Lynn gave informed consent, Erbsstein was a necessary witness and Erbsstein's conflicts are imputed to Young which also has a direct conflict of interest. Plaintiffs retained the services of Professor Charles W. Wolfram on April 16, 2008. Professor Wolfram authored a report in which he opined that a Pennsylvania lawyer of ordinary care and prudence confronted with the instant situation would conclude that the representation was barred by several conflicts of interest. A copy of the report was forwarded to the Honorable Calvin S. Drayer, Jr. of Orphans Court on April 20, 2008.

On January 11, 2010, Erbsstein and Young withdrew as counsel for Nancy and Lynn and new counsel entered its appearance. New Counsel withdrew the Petition to Remove James, Jr. and Pamela J. At no time prior to Erbsstein and Young's withdrawal as counsel for Nancy and Lynn was a decision rendered on the Petition to Disqualify.

In December 2010, plaintiffs filed a complaint alleging claims for civil conspiracy and abuse of process. Defendants respectively filed preliminary objections to the complaint. On February 28, 2011 and March 14, 2011, the matter was placed on deferred status so that a motion pursuant to Pa. R. Civ. P. 213.1 Coordination of Actions in Different Counties could be filed in the Court of Common Pleas for Montgomery County Orphan Court Division.

On June 29, 2011, the matter was removed from deferred status after the Montgomery County Orphan's Court Division determined it did not have jurisdiction over the instant action. On November 11, 2011, the court overruled the pending preliminary objections. Defendants filed motions for reconsideration of the order overruling the preliminary objections which were denied. Defendants Nancy and Lynn filed a counterclaim. Plaintiffs filed preliminary objections to the counterclaim which were sustained in part and overruled in part. Defendants filed a joint motion for summary judgment which was granted by the court on August 2, 2012.

On August 24, 2012 Defendants Nancy and Lynn filed a praecipe for entry of final judgment pursuant to Pa. R. Civ. P. 227.4 (2). The praecipe discontinued the counter claim filed by Nancy and Lynn against plaintiffs. The discontinuance of the counterclaim rendered final and appealable this court's order dated August 2, 2012. On September 20, 2012, the instant appeal was filed.

DISCUSSION

Pennsylvania law recognizes that the statute of limitations for abuse of process and civil conspiracy requires plaintiff to bring suit within two years of the date of the accrual of the cause of action.³ The statute of limitations begins to run for abuse of process immediately upon the alleged improper use of process. Similarly when the overt act committed in furtherance of the alleged civil conspiracy is the abuse of process itself, the statute of limitations also begins to run when the alleged abuse of process initially occurs.⁴

Abuse of process results when a plaintiff can prove the defendant (1) used a legal process against the plaintiff, (2) primarily to accomplish a purpose for which the process was not

³ See 42 Pa. C. S. A. §5524 (1).

⁴ Stout v. Selective Way Insurance Company of South Carolina, 2010 Phila. Ct. Com. Pl. Lexis 95 (2010)(*quoting* Harvey v. Pincus, 549 F. Supp. 332, 340 (E.D. Pa. 1982)).

designed; and (3) harm has been caused to the plaintiff.⁵ Use of the legal process requires that a party actively seek and employ the legal process.⁶ The cause of action requires more than insinuations or mere possibilities of an illegal use of process.⁷ The word “process” is interpreted broadly, and encompasses the entire range of procedures incident to the litigation process.⁸

The time in which a matter must be commenced under the applicable statute of limitations shall be computed from the time the cause of action accrued.⁹ A cause of action accrues when the right to institute and maintain a suit arises.¹⁰ In the case *sub judice*, the alleged abuse of process is Erbstein and the Young firm’s entry of appearance in the Montgomery County Orphan’s Court matter on behalf of defendants Nancy and Lynn. Since plaintiffs’ claim for abuse of process concerns only the representation of Nancy and Lynn by Erbstein and Young and not the specific filings made by Erbstein and Young during their representation, the cause of action for abuse of process accrued when the allegedly conflicted representation commenced.

According to the record before this court, the alleged conflicted representation commenced on January 14, 2008, the date in which the Young firm filed a Petition to Remove James, Jr. and Pamela J. as Executors and Trustees of the Decedent’s estate on behalf of Nancy and Lynn. Consequently, January 14, 2008 began the running of the time in which to file any action. A timely action should have been filed by January 14, 2010. This action was

⁵ Werner v. Plater-Zuberk, 799 A.2d 776, 785 (Pa. Super. 2002).

⁶ Hart v. O’Malley, 436 Pa. Super. 151, 647 A.2d 542, 551 (1994).

⁷ Shaffer v. Stewart, 326 Pa. Super. 135, 473 A.2d 1017, 1019 (1984).

⁸ Rosen v. American Bank, 426 Pa. Super. 376, 627 A.2d 190, 192 (1993).

⁹ 42 Pa.C.S.A. § 5502.

¹⁰ Pocono International Raceway, Inc. v. Pocono Produce, Inc., 503 Pa. 80, 84, 468 A.2d 468, 471 (1983); Meehan v. Archdiocese, 870 A.2d 912, 919 (Pa. Super. 2005).

commenced on December 14, 2010. Based on the forgoing, plaintiffs cause of action for abuse of process is time barred.

The statute of limitations also bars plaintiffs claim for civil conspiracy. A civil conspiracy is a combination of two or more persons to do an unlawful act or criminal act or to do a lawful act by unlawful means or for an unlawful purpose.¹¹ With regard to causes of action for conspiracies in general alleged to have been committed over an extensive period of time, where there are repetitive acts committed as part of continuing conspiracy, the applicable statute begins to run until after the commission of the last overt act in furtherance of the conspiracy.¹²

In the case *sub judice*, however, the claim for conspiracy is based upon the alleged abuse of process. Hence, since the overt act committed in furtherance of the conspiracy is abuse of process itself, i.e. the entry of appearance by Erbstein and Young on behalf of Nancy and Lynn, the statute of limitations also begins to run when the alleged abuse of process occurred. As discussed supra, the alleged abuse of process occurred on January 14, 2008. Since this action was filed on December 14, 2010, the claim for civil conspiracy is also time barred.

In an attempt to overcome the statute of limitations as a bar to their claims, plaintiffs' rely upon the continuing violation doctrine to overcome the bar of the statute of limitations. Plaintiffs, reliance upon same is misplaced. The alleged abuse of process and the alleged basis for civil conspiracy is Young and Erbstein's entry of appearance in the Montgomery County Orphan's Court matter which occurred on January 14, 2008. The propriety of the actions taken during said representation is not the subject of the abuse of process or conspiracy. It is only the entry of appearance by Erbstein and Young on Nancy and Lynn's behalf that is at issue. As

¹¹ Baker v. Rangos, 229 Pa. Super. 333, 324 A.2d 498 (1974).

¹² *Id.*

such, the continuing violation doctrine is of no consequence since Young's entry occurred on January 14, 2008.

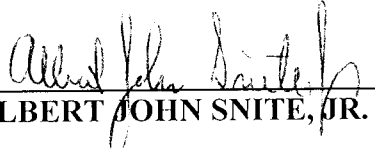
Moreover, continuing violation should not provide a means for relieving plaintiffs from their duty to exercise reasonable diligence in pursuing their claims.¹³ If prior events should have alerted a reasonable person to act at that time the continuing representation theory will not overcome the relevant statute of limitations.¹⁴ Merely because Erbstein and Young's representation of Hayes and Beasley continued does not excuse plaintiffs from taking any action at the time they became aware they were harmed, the date Erbstein and Young entered their appearance. It was at this time plaintiffs knew or should have known defendants were allegedly abusing the process or conspiring to abuse process by engaging counsel with an alleged conflict of interest.

CONCLUSION

For the forgoing reasons, this court's order dated August 2, 2012 should be affirmed.

Date: December 3, 2012

BY THE COURT,


ALBERT JOHN SNITE, JR. J.

¹³ Cowell v. Palmer Twp., 263 F. 3d 286, 295 (3d Cir. 2001).

¹⁴ King v. Township of E. Lambert, 17 F. Supp. 2d 394, 416 (E.D. Pa. 1998).