

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

_____	:	OCTOBER TERM, 2012
JOSEPH REIFEN and RIVKA REIFEN	:	
	:	NO. 03379
v.	:	
	:	COMMERCE PROGRAM
JAMES HARTZ	:	
_____	:	Control No. 12092403

ORDER

AND NOW, this 7th day of November, 2012, upon consideration of the Motion for Summary Judgment of defendant, James Hartz, and any response thereto, it is hereby

ORDERED

that the said Motion is **GRANTED**.

BY THE COURT:

GLAZER, J.

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

**JOSEPH REIFEN and RIVKA
REIFEN**

v.

JAMES HARTZ

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OCTOBER TERM, 2010

NO. 03379

COMMERCE PROGRAM

Control No. 12092403

OPINION

GLAZER, J.

November 7, 2012

Plaintiffs, Joseph and Rivka Reifen, brought the instant suit against defendant, James Hartz, for legal malpractice, fraud and misrepresentation, and negligent misrepresentation. Joseph and Rivka Reifen are husband and wife. See Plaintiffs' Memorandum in Response to Defendant's Motion for Summary Judgment, p. 31. On or about May 6, 2003, plaintiffs signed an "Agreement for Sale and Management of Real Estate" (hereinafter "the Agreement") to sell and present title to eight (8) commercial and residential properties (hereinafter "the Properties") to LIG, a Pennsylvania limited partnership owned and controlled by Leehe Goldfarb (plaintiffs' daughter) and Ira Goldfarb (plaintiffs' son-in-law). Id.

At the time of the Agreement, plaintiffs were represented by defendant, James Hartz, Esquire. Id. Defendant drafted the agreement, provided legal advice, and was present when the Agreement was executed. Id. at 31. Plaintiffs allege that defendant had a conflict of interest when representing them. Id. at 31-32. Plaintiffs further assert that defendant Hartz, "read portions of [the agreement] to plaintiffs and represented to plaintiffs that it was not a final contract, but only a 'memorandum of understanding,' and that a contract would be executed at a later time. Id. at 32. Moreover, plaintiffs allege that Hartz did not explain that the Agreement

extinguished their rights as owners of the properties, misrepresented terms that they had the right to terminate the Agreement if they were not satisfied, misrepresented that, in case of a death or divorce, the properties would be distributed among their four daughters, did not give them full market price for the subject properties, and deprived the Reifens of the rental profits from the Properties. See 3rd Am. Compl. At ¶¶ 49-50. At the time of the Agreement, plaintiffs did not look at the contract nor were they provided with a copy of the contract. (R. Reifen Dep. at 30).

Plaintiffs received and read a copy of the document in or around February 4, 2004. (J. Reifen Dep. at 96). Moreover, upon reading the document, plaintiff Rivka Reifen stated in her deposition that was when, “reality set in.” (R. Reifen Dep. at 135). Upon receipt of the Agreement she stated, “[W]hen I—when I finally got it and I saw that I signed an agreement and I was stuck with this and I tried to call Jim Hantz and I called so many people that are lawyers.” Id. at 65.

Plaintiffs commenced this action in October of 2010. Defendant now brings a motion for summary judgment asserting that the claims are time barred.

DISCUSSION

The court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Pa.R.C.P. 1035.2(1). A motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. Note to Pa.R.C.P. 1035.2. When considering the merits for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Jones v. SEPTA, 565 Pa. 211, 772 A.2d 435, 438 (Pa. 2001). Further, the court may grant summary judgment only where the right to

such a judgment is clear and free from doubt. Marks v. Tasman, 527 Pa. 132, 589 A.2d 205, 206 (Pa. 1991).

In Pennsylvania, the statute of limitations begins to run as soon as the right to institute and maintain a suit arises. Pocono International Raceway, Inc. v. Pocono Produce, Inc., 503 Pa. 80, 468 A.2d 468, 471 (Pa. 1983). The limitations period applicable to lawyer's malpractice actions based on professional negligence, fraud and misrepresentation claims, and negligent misrepresentation claims is two years. 42 Pa. C.S.A. § 5524(7). Once a cause of action has accrued and the statutory period has run, the injured party cannot bring a cause of action. Id.

There are exceptions that toll the running of a statute of limitations. The discovery rule, which is when the injury is not known or reasonably knowable, tolls the statute of limitation. Fine v. Checcio, 582 Pa. 253, 266 (Pa. 2005). However, "a party asserting an action is under a duty to use all reasonable diligence to be properly informed of the facts and circumstances upon which a potential right of recovery is based and to institute suit within the prescribed statutory period." Pocono International Raceway, 503 Pa. at 84. "There are [very] few facts which diligence cannot discover, but there must be some reason to awaken inquiry and direct diligence in the channel in which it would be successful. This is what is meant by reasonable diligence." Crouse v. Cyclops Industries, 560 Pa. 394, 745 A.2d 606, 611 (Pa. 2000) (quoting Deemer v. Weaver, 324 Pa. 85, 187 A. 215, 217 (Pa. 1936)(citation omitted)). Mistake, misunderstanding, or lack of knowledge in themselves do not toll the running of the statute. Nesbitt v. Erie Coach Co., 416 Pa. 89, 204 A.2d 473, 475 (Pa. 1964).

In addition to the discovery rule, the doctrine of fraudulent concealment tolls the running of the statute of limitations. Fine, 582 Pa. at 270-71. The standard of reasonable diligence also applies in order to toll the statute of limitations under this doctrine. Id. at 71. Therefore, the

statute of limitations by virtue of fraudulent concealment begins to run when the injured party knows or reasonably should know of his injury and its cause. Id.

Plaintiffs knew of their injury when they received the Agreement from defendant in or around February 2004. Plaintiffs read over the Agreement that they thought was a memorandum and discovered that it was a binding contract. Further, they discovered that the terms they discussed with defendant were not present in the contract. Therefore, they were aware of their injury at the point they read the contract. Plaintiffs did not file their action until October of 2010, more than six years after the discovered injury. Therefore, summary judgment is granted in favor of the defendant as the statute of limitations on this action has long expired.

BY THE COURT:

GLAZER, J.