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

COMMUNICATIONS NETWORK	:	DECEMBER TERM, 2014
INTERNATIONAL, LTD,	:	
	:	NO. 01519
Plaintiff,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No.: 16063413
WILLIAM MARK MULLINEAUX,	:	
ESQUIRE, et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 18th day of August, 2016, upon consideration of defendant Ratner & Prestia, P.C.'s ("R&P") Motion for Judgment on the Pleadings, the response thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that said Motion is **GRANTED** and **JUDGMENT** is **ENTERED** in favor of R&P and against plaintiff on all claims asserted by plaintiff against R&P in the Third Amended Complaint.

BY THE COURT


PATRICIA A. McINERNEY, J.

Communications Network -ORDOP



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R. POSTELL
COMMERCE PROGRAM

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OPINION

Plaintiff Communications Network International, Ltd. (“CNI”) brought this legal malpractice action against an attorney and several different law firms that represented CNI during the course of federal court litigation that lasted from 2001 until 2013. Defendant Ratner & Prestia, P.C. (“R&P”), the first of the law firms to represent CNI, filed a Motion for Judgment on the Pleadings based on the running of the statute of limitations. The following allegations of fact in the Third Amended Complaint are relevant to decide R&P’s Motion.

In February, 2001, MCI WorldCom Communications, Inc. (“WorldCom”) sued CNI for breach of contract in the United States District Court for the Eastern District of Pennsylvania.¹ In March, 2001, CNI “hired defendant [William Mark] Mullineaux to represent CNI in [the] litigation with MCI WorldCom Communications, Inc.”² Mullineaux was at that time employed by R&P.³

¹ Third Amended Complaint, ¶ 38.

² *Id.*, ¶ 39.

³ *See id.*, Ex. 1.

In April, 2001, Mullineaux and R&P filed an Answer and Counterclaims on behalf of CNI in the WorldCom litigation. They asserted a claim for “slamming,” as well as several other state law counts.⁴ Shortly thereafter, WorldCom moved to dismiss CNI’s counterclaims.⁵

In August 2001, the District Court, pursuant to the doctrine of primary jurisdiction, denied the motion, stayed the Pennsylvania Action, and referred it to the Federal Communications Commission (“FCC”). Neither party, however, pursued the matter with the FCC. In May 2002, CNI moved to lift the stay on the district court case. The motion was granted and the Pennsylvania Action resumed[.]⁶

In July 2002, WorldCom filed for bankruptcy protection and the dispute between WorldCom and CNI was subsequently adjudicated in bankruptcy court.⁷

CNI filed a timely proof of claim, reasserting the counterclaims that CNI had filed in the Pennsylvania Action. WorldCom objected to the claim and initiated an adversary proceeding against CNI, reasserting the complaint that WorldCom had filed in the Pennsylvania Action. CNI filed an answer, again only responding to the contract count of the complaint. WorldCom moved for judgment on the pleadings dismissing all of CNI’s claims and in favor of WorldCom on the issue of CNI’s liability. CNI moved to file responses *nunc pro tune* to the negotiable instrument, *quantum meruit*, and unjust enrichment counts of the complaint. CNI also filed a cross-motion for judgment on the pleadings if the Court denied the motion to file responses.⁸

In April, 2003, Mullineaux ceased to be employed by R&P and instead became a partner at defendant Flamm Walton P.C. (“Flamm”).⁹ At that time, CNI entered into a retainer agreement with Flamm, and Flamm, CNI, and R&P entered into an agreement to transfer the

⁴ *Id.*, ¶ 49.

⁵ *Id.*, ¶ 50.

⁶ *Id.*, Ex. 9.

⁷ *Id.*, ¶ 56.

⁸ *Id.*, Ex. 9.

⁹ *Id.*, Ftnt 5.

case to Flamm and to reimburse R&P in the future if CNI recovered any monies in the WorldCom litigation.¹⁰

On March 13, 2006, the bankruptcy court granted WorldCom's Motion for Judgment on the Pleadings and dismissed "all of CNI's state law slamming claims finding that no facts were pled to support the claims, and finding that the fraud and the remaining claims were barred by the Filed Rate Doctrine."¹¹ "At no point following the court's dismissal of [CNI's] slamming claims due to Defendant Attorneys' grossly negligent pleading did Defendant Attorneys inform [CNI] that its slamming claims had been dismissed because of improper pleading."¹²

CNI did not fare any better during the rest of the WorldCom litigation, nor in the appeals filed by Mullineaux while at Flamm, nor subsequently at his new firm, defendant Astor Weiss Kaplan & Mandel, LLP ("Astor Weiss"). However, such travails are not relevant in deciding R&P's Motion for Judgment on the Pleadings in this action.

CNI filed this action on December 9, 2014, asserting claims for legal malpractice against R&P, as well as against Mullineaux, Flamm, and Astor Weiss, which claims are for both breach of contract and negligence. In its Motion, R&P asks this court to dismiss all the malpractice claims asserted against it by CNI based on the running of the four year contract statute of limitations, as well as the two year negligence statute of limitations.

As a matter of general rule, a party asserting a cause of 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. Thus, the statute of limitations begins to run as soon as the right to institute and maintain a suit arises; lack of knowledge, mistake or misunderstanding do not toll the running of the statute of limitations, even though a person may not discover his injury until it is too late to

¹⁰ *Id.*, Ex. 2.

¹¹ *Id.*, ¶ 57; Ex. 9.

¹² *Id.*, ¶ 63.

take advantage of the appropriate remedy, this is incident to a law arbitrarily making legal remedies contingent on mere lapse of time. Once the prescribed statutory period has expired, the party is barred from bringing suit unless it is established that an exception to the general rule applies which acts to toll the running of the statute.¹³

In this case the statute began to run, at the latest, when the bankruptcy court ruled against CNI in 2006, more than 8 years before this case was filed. At that time, CNI's right to institute and maintain a suit against R&P arose. "Pennsylvania has never adopted the approach [advocated by CNI of] tolling the statute of limitations in a legal malpractice claim until the appeals of the underlying claim have been exhausted."¹⁴

CNI also argues that the statute should be tolled due to Mullineaux's fraudulent concealment of the bankruptcy court's 2006 finding that he and R&P inadequately pled CNI's Counterclaims in 2001:

RatnerPrestia's motion conclusorily asserts that the statute started running in 2006 or 2008 under the occurrence rule, when the Bankruptcy Court dismissed the slamming claims and Defendant Mullineaux informed CNI that the claims had been dismissed. But RatnerPrestia ignores what Mullineaux actually told CNI: that the slamming claims were dismissed because of the Filed Rate Doctrine. This was plainly incorrect. This extraordinarily erroneous piece of advice had the effect of relaxing CNI's vigilance, especially given the close fiduciary relationship attorneys share with their clients. CNI was entitled to rely on its attorney's advice and assurances. CNI was never informed by its attorneys in 2006—or at any time thereafter—that the claims were dismissed because RatnerPrestia had failed to include supporting facts in the counterclaims. CNI simply had no reason to suspect it had been deficiently represented, until it obtained a review of the litigation in 2013 following Mullineaux's botching of the appeal.¹⁵

If Mullineaux had still been employed by R&P at the time he allegedly concealed from CNI the findings in the 2006 bankruptcy court opinion, then this argument would have some

¹³ Pocono Intern. Raceway, Inc. v. Pocono Produce, Inc., 468 A.2d 468, 471 (Pa. 1983).

¹⁴ Robbins & Seventko Orthopedic Surgeons, Inc. v. Geisenberger, 674 A.2d 244, 247 (Pa. Super. 1996).

¹⁵ CNI's Memorandum of Law in Response to R&P's Motion for Judgment on the Pleadings, p. 15.

merit. However, Mullineaux was no longer R&P's agent at that time, and his misrepresentations cannot be attributed to R&P. Instead, Mullineaux was an agent of Flamm, and also of his client CNI, at the time of the misrepresentations.

Upon the publication of the bankruptcy court's opinion dismissing CNI's counterclaims in 2006, CNI knew or should have known that it had a claim against R&P for improperly pleading the slamming claim in 2001. According to CNI's allegations in this action, but for the alleged misrepresentations of CNI's own agent, Mullineaux, CNI would have known about its injury in 2006. However, CNI may not use Mullineaux's purported malfeasance to toll the statute of limitations against R&P¹⁶ when R&P had no control over, and was not liable for the actions of, Mullineaux at the time he committed that malfeasance.

Since R&P itself is not alleged to have misled CNI as to the import of the bankruptcy court's ruling, R&P is not estopped from raising the defense of the statute of limitations against CNI, and the statute is not tolled against R&P as a result of such misrepresentations.¹⁷ The statute began to run vis-à-vis R&P in 2006, and CNI's contract claim against R&P should have been filed in 2010, at the latest.¹⁸ Since CNI's claims against R&P were not filed until 2014, they must be dismissed as time barred.

¹⁶ These alleged misrepresentations, if proved true, may toll the running of the statute on CNI's claims against Mullineaux.

¹⁷ See Montanya v. McGonegal, 757 A.2d 947, 951 (Pa. Super. 2000) ("In order for fraudulent concealment to toll the statute of limitations, **the defendant** must have committed some affirmative independent act of concealment upon which the plaintiffs justifiably relied.") (emphasis supplied).

¹⁸ Similarly, CNI's negligence claim should have been filed in 2008, at the latest.

CONCLUSION

For all the foregoing reasons, R&P's Motion for Judgment on the Pleadings is granted and judgment is entered in favor of R&P on all of CNI's claims against R&P.

BY THE COURT



PATRICIA A. McINERNEY, J.