IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

KEITH W. DICKERSON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 00C-07-99-SCD
	:	
MICHAEL J. RICH, ESQ. and MORRIS, NICHOLS, ARSHT & TUNNELL,	:	
	:	
Defendant.	:	

Submitted: September 28, 2001
Decided: October 17, 2001

O R D E R

On this 17th day of October 2001, upon consideration of defendant's motion for summary judgment, it appears that:

(1) Defendant represented plaintiff in his mid-1980's divorce from his first wife. In that divorce, alimony was disputed and litigated.[1] Ultimately, plaintiff was not obligated to pay alimony to his first wife.[2] In July of 1988, plaintiff contacted defendant Rich ("defendant") concerning the possibility of acquiring a prenuptial agreement ("agreement") for his upcoming wedding to his prospective bride. Plaintiff then met with the defendant concerning the agreement. A short time later, defendant contacted plaintiff and told him that the agreement was prepared. Plaintiff briefly met with the defendant and took the agreement with him. The agreement does not contain a waiver of alimony provision. Plaintiff admitted to reading and understanding the agreement. Plaintiff did not ask defendant any questions or request that any modifications be made to the agreement. Plaintiff presented the agreement to his prospective

[1] Defendant's Mot. at Exhibit B 20-22.

bride. She declined the opportunity to review the agreement with an attorney. In July of 1988, before their wedding, plaintiff and his prospective bride executed the agreement. Plaintiff and his second wife developed marital problems in 1998. They separated on January 1, 2000. Pursuant to his divorce with his second wife, plaintiff had to pay alimony.

(2) This action was initiated on July 17, 2000. Plaintiff claims defendant committed legal malpractice by failing to discuss the issue of alimony with him in 1988. Plaintiff alleges that had such a discussion taken place, a waiver of alimony provision would have been placed in the agreement, and he would not have been obligated to pay alimony to his second wife. Defendant filed this motion asserting that the statute of limitations bars plaintiff's claim.

(3) The issue is whether plaintiff brought this action within the statute of limitations under 10 *Del. C.* § 8106.

(4) A grant of summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.[3] This Court must consider all facts in the light most favorable to the non-moving party.[4]

(5) "It is the settled law of this State that legal malpractice actions are governed by the three-year statute of limitations in 10 *Del. C.* § 8106."[5] The statute states no action "shall be brought after the expiration of 3 years from the accruing of the cause of such action."[6] "The statute of limitations begins to run from the date of the injury caused by the defendant, rather than from the date on which plaintiff became aware of the injury."[7] When an inherently unknowable injury is suffered by one blamelessly ignorant of the act or omission and injury, the

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[2] *Id.*
[3] *Emmons v. Hartford Underwriters Ins. Co.,* Del. Supr., 697 A.2d 742, 744-45 (1997).
[4] *National Union Fire Ins. Co. v. Fisher,* Del. Supr., 692 A.2d 892, 895 (1997).
[5] *Began v. Dixon,* Del. Super., 547 A.2d 620, 623 (1988).
[6] 10 *Del. C.* § 8106.
[7] *Cavalier Group v. Strescon Industries, Inc.,* 782 F. Supp. 946, 951 (D. Del. 1992).

injury is "sustained" when it first manifests itself.[8] This exception is narrowly confined to injuries, which are both (a) inherently unknowable; and (b) sustained by a blamelessly ignorant plaintiff.[9] "Application of the 'time of discovery rule' rule is limited and *each case must stand or fall on its own facts*."[10] Delaware courts have extended the "time of discovery" rule to different types of claims.[11]

(6) The application of the "time of discovery" rule to legal malpractice claims is unsettled. In *Began v. Dixon,* [12] the Superior Court did not go as far as to say that the time of discovery rule applied to legal malpractice claims. Instead, it stated that, "if the [time of discovery] rule were applicable" the plaintiff's case would have failed to meet the exception.[13] The time of discovery rule was applied to an attorney malpractice claim in *Pioneer Nat. Title Ins. Co. v. Child, Inc*.[14] But that case involved an attorney's alleged negligence in clearing a title defect. The exception was available for title defects because a client would not know of the title defect until a third party purchaser brought it to his attention.[15] "Dissatisfaction with an attorney's services or with an agreement is not 'inherently unknowable', as in the case of a title defect."[16]

(7) In the case at bar, plaintiff obtained the agreement in July of 1988. Therefore, the statute of limitations expired in July 1991, nine years before this action was commenced.

(8) Assuming, arguendo, that the time of discovery rule applies, the facts of this case show that plaintiff does not meet this narrowly confined exception to the statute of limitations.

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[8] *Layton v. Allen,* Del. Supr., 246 A.2d 794, 798 (1968).
[9] *David B. Lilly Co. v. Fisher, et. al.*, 18 F.3d 1112, 1117 (3d Cir. 1994).
[10] *Id.* at 1117, (citing *Isaacson, Stolper & Co. v. Artisan's Savings Bank,* Del. Supr., 330 A.2d 130, 133 (1974)) (emphasis added).
[11] *Cavalier Group,* 782 F. Supp. at 951.
[12] *Began,* 547 A.2d at 623.
[13] *Id.*
[14] *Pioneer Nat. Title Ins. Co. v. Child, Inc.,* Del. Supr., 401 A.2d 68 (1979).
[15] *Began,* 547 A.2d at 623.

Plaintiff went through a divorce, with alimony disputed, in his mid-1980's divorce from his first wife. A short time later, in July of 1988, he admits to meeting with defendant concerning a prenuptial agreement before his second marriage. Consequently, plaintiff cannot be considered someone who suffered an inherently unknowable injury because he was on notice from his first divorce that alimony is a possibility in a divorce. Next, plaintiff admits to reading and understanding the agreement that did not contain a waiver of alimony provision. Moreover, he did not ask defendant any questions or suggest any modifications regarding the agreement. Thus, plaintiff was not blamelessly ignorant of the omission of alimony from the agreement since he admits to reading and understanding it. Accordingly, defendant's motion for summary judgment is GRANTED.

IT IS SO ORDRED.

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Judge Susan C. Del Pesco

Original to Prothonotary
xc: Kevin W. Gibson, Esq.
Mason E. Turner, Jr., Esq.

[16] *Id.*