STATE OF MICHIGAN

COURT OF APPEALS

MARTIN I. LEVY and MARTIN I. LEVY, D.D.S., P.C.,

Plaintiffs-Appellants,

v

MARK L. MARTIN, GERALD HOSKOW and HOSKOW & MARTIN, P.C.,

Defendants-Appellees.

UNPUBLISHED
September 17, 1999

No. 207797
Oakland Circuit Court
LC No. 97-549352 NM

Before: Bandstra, C.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

This case involves plaintiffs' allegations of malpractice and misrepresentation arising from defendants' preparation of plaintiffs' 1991 and 1992 tax returns. Plaintiffs appeal as of right from the trial court's dismissal of their action. We affirm.

Plaintiffs first argue that the trial court erred in dismissing their malpractice claim because the claim accrued in 1996, and thus, the two-year statute of limitations had not expired when plaintiffs filed their case in 1997. We do not agree.

Actions for professional malpractice must be brought within two years of the date when the claim accrues, or within six months of the time the plaintiff discovered or should have discovered the existence of the claim, whichever is later. MCL 600.5805(4); MSA 27A.5805(4); MCL 600.5838; MSA 27A.5838. A non-medical malpractice claim accrues at the time the licensed professional discontinues serving the plaintiff in a professional or pseudo-professional capacity as to the matters out of which the claim for malpractice arose. MCL 600.5838(1); MSA 27A.5838(1).

In this case, plaintiffs argue that defendants performed continuing bookkeeping services for them until some time in 1996, and that their claim did not accrue until that time. Defendants argued below that any bookkeeping services performed after the tax returns were filed were unrelated to the alleged malpractice. Common sense suggests that this would be true. The preparation of yearly tax returns is

not analogous to the periodic eye examinations in *Morgan v Taylor,* 434 Mich 180; 451 NW2d 852 (1990),and we believe that the dissenting judge's reliance on that case is misplaced. Each individual tax return reflects the examination of a discrete, contained body of information. In the circumstances pled here, plaintiffs' 1996 tax information has no apparent relevance to plaintiffs' 1991 and 1992 tax returns. Plaintiffs presented no documentary evidence to support their claim to the contrary. The continuing care of one patient's set of eyes in *Morgan, supra,* presents a far different situation that the series of unrelated tax calculations in this case. Because the allegedly defective 1991 and 1992 tax returns form the basis of plaintiffs' malpractice claim in this case, we agree that those tax returns alone constitute the "matters out of which the malpractice claim arose," and that plaintiffs' cause of action accrued no later than some time in 1993.

Plaintiffs also argue that the alleged malpractice here arose out of an act of omission, rather than an act of commission and that, therefore, their claim accrued in December 1995, when they received the IRS notice of deficiency. This Court has held that, when the malpractice consists of a negligent omission, the accrual date is the date that negligence becomes irremediable in some sense. *Gambino v Cardamone,* 163 Mich App 574, 580; 414 NW2d 896 (1987). There is no merit to plaintiff's claim. The alleged malpractice in this case might have been considered an act of omission if the liability arose from defendants failure to file a tax return at all, but the act alleged here, that defendants completed the tax returns incorrectly, is clearly one of commission.

Even if not brought within the statutory two year limitations period, an action is not time barred if it is brought within six months after the plaintiff discovers or should have discovered the existence of the claim. MCL 600.5838(2); MSA 27A.5838(2). Plaintiffs argue that they did not discover their claim until March 1997, when they settled their case with the IRS. We do not agree. This Court has held that a tax loss is identifiable when a plaintiff receives a deficiency notice containing the maximum amount of damages he might suffer. *Adell v Sommers, Schwartz, Silver & Schwartz, PC,* 170 Mich App 196; 428 NW2d 26 (1988). Plaintiffs received their notice of deficiency in December 1995, and did not file this action until August 1997.

Finally, plaintiffs argue that the trial court erred in dismissing their misrepresentation claim because they stated a cause of action for misrepresentation with sufficient particularity to state a claim. We disagree.

It is well established in Michigan that general allegations of fraud without averment of specific facts are insufficient to state a cause of action. *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976). See also MCR 2.112(B)(1). Future promises are contractual and do not constitute fraud. *Hi-Way Motor Co, supra* at 336. A plaintiff must cite which statements were misrepresentations and who made them. *James v City of Burton*, 221 Mich App 130, 134; 560 NW2d 668 (1997).

In this case, plaintiffs do not cite any specific statement that they allege to be a material misrepresentation. Instead, their complaint alleges only that defendants "led Plaintiffs to believe that they would properly and accurately prepare tax return statements for submission to the government." Further, to the extent that plaintiffs allege misrepresentation, the allegation involves a future, rather than a

past or existing, fact. Any specific statements that defendants may have made to the effect that they would prepare accurate tax returns would necessarily have been representations of a future act, and would not have constituted fraud even if alleged. *Hi-Way Motor Co, supra* at 336. The trial court did not err in dismissing plaintiffs' misrepresentation claim pursuant to MCR 2.116(C)(8).

Affirmed.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot