

STATE OF MICHIGAN
COURT OF APPEALS

CHICAGO-WYOMING REAL ESTATE
CORPORATION,

UNPUBLISHED
November 30, 1999

Plaintiff-Appellant,

v

No. 206376
Wayne Circuit Court
LC No. 96-636147 NM

ROBERT LITT, MYLES HOFFERT, and
HOFFERT, LITT, SOLWAY & DAITCH, P.C.,

Defendants-Appellees.

Before: Collins, P.J., and Jansen and White, JJ.

JANSEN, J. (dissenting).

I respectfully dissent because I believe there is a question of fact regarding whether Rodney Shaw, as plaintiff's president, knew or should have known of the injury (the unpaid taxes on all of the property initially purchased) before February 6, 1996. I would find that there is a genuine issue of a material fact concerning the six-month discovery rule and that summary disposition was improperly granted in favor of defendants.

In 1991, plaintiff-corporation was formed by two doctors, Rodney Shaw, D.O., and Asfandiar Shukri, M.D., to purchase the site of the former Northwest General Hospital. Defendants assisted in the purchase and the sale was completed on June 9, 1991, for a price of \$50,000. On September 12, 1991, plaintiff donated eighty percent of the site to the Barton-McFarlane Neighborhood Association (a tax exempt association) for one dollar. Plaintiff used the remaining twenty percent of the site for a medical clinic. Even though Northwest General Hospital had ceased to exist, the city of Detroit continued to assess the property on its tax rolls at \$1,423,250. This assessment was discovered by defendants who advised plaintiff that the assessment and resulting taxes should be reduced. According to plaintiff, defendant Hoffert was to handle the assessment and tax reduction with the city.

It is undisputed that plaintiff never received a tax bill from the city of Detroit. According to Dr. Shaw's affidavit, which must be accepted as true for purposes of the motion for summary disposition, he did not know until February 23, 1996, when attorney Montie Labadie researched the matter because of AT&T's decision to not lease the property due to back taxes, that a lot split was necessary

in order to allow for a proper apportionment of the property taxes. Dr. Shaw further averred that he was unaware that such a lot split should have been recorded with the city (or other notification appropriately given to the tax authorities) to allow for a proper apportionment of the taxes.

Further, in response to Dr. Shukri's affidavit, Dr. Shaw averred that although he was aware that plaintiff owed taxes on plaintiff's portion of the lot (twenty percent), he was not aware that plaintiff could or did owe taxes on the entire lot. Consequently, Dr. Shaw's affidavits create a question of fact as to whether he knew or should have known of the amount of taxes owed on the entire lot. According to Dr. Shaw, he did not know of the injury until February 23, 1996, when he was informed by Montie Labadie of the tax consequences of the failure to record the lot split. Therefore, the legal malpractice claim, which was filed on August 6, 1996, was timely filed within the six-month discovery period, MCL 600.5838; MSA 27A.5838, when accepting Dr. Shaw's affidavits as true. Summary disposition under MCR 2.116(C)(7) and (10) is therefore inappropriate as a jury will have to determine whether Dr. Shaw actually knew or should have known of the injury before February 1996.

I would reverse.

/s/ Kathleen Jansen