IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE LAN-DALE CO.,
Plaintiff/Appellant,

v.

JAMES SAKRISON AND JANE DOE SAKRISON, HUSBAND AND WIFE; SLUTES, SAKRISON & ROGERS, P.C.; NOAH VAN AMBURG AND JANE DOE VAN AMBURG, HUSBAND AND WIFE; VAN AMBURG LAW FIRM, PLLC,
Defendants/Appellees.

No. 2 CA-CV 2018-0156
Filed August 6, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20174829
The Honorable Brenden J. Griffin, Judge

AFFIRMED

COUNSEL

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and

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Chief Judge Vásquez and Judge Eckerstrom concurred.

B R E A R C L I F F E, Judge:

¶1 The Lan-Dale Co. appeals the trial court's grant of summary judgment on its legal malpractice claims in favor of James Sakrison, Noah Van Amburg, and their respective spouses and law firms. We affirm.

Issue

¶2 Lan-Dale argues that the trial court erred in granting summary judgment and dismissing its claims as time-barred because there was a genuine issue of material fact as to when its cause of action accrued. Appellees argue that there was no genuine dispute about when the cause of action accrued and that the court correctly dismissed the case. The issue is whether there existed a genuine issue of material fact as to when a reasonable person would have been put on notice of the legal malpractice claim such that the court erred in granting the motion for summary judgment and dismissing the case.

Factual and Procedural History[1]

¶3 On appeal of a grant of summary judgment, we view the facts in the light most favorable to the non-moving party. *Slaughter v. Maricopa County*, 227 Ariz. 323, ¶ 7 (App. 2011). A.J. D'Alessandris, now deceased

[1]For the purposes of this decision only, we will assume without deciding that both Sakrison's and Van Amburg's conduct before the respective courts described herein constituted legal malpractice.

but then President/CEO of Lan-Dale, hired James Sakrison and his firm to represent Lan-Dale in a dispute against the United States government relative to Lan-Dale's contract with the Marine Corps Air Ground Museum. On August 21, 2003, Sakrison, on behalf of Lan-Dale, filed a complaint against the United States in the United States Court of Federal Claims ("CFC") ("CFC Action I"). On the same day, Sakrison filed a complaint on behalf on Lan-Dale against the United States in the United States District Court, District of Arizona, raising claims based upon the same operative facts ("District Court Action I").[2]

¶4 According to the docket sheets attached as exhibits to the papers below, in November 2003, the United States filed a motion to dismiss the complaint in CFC Action I as to which Lan-Dale responded. In February 2004, because Lan-Dale had simultaneously filed CFC Action I and District Court Action I, the CFC dismissed Lan-Dale's claims under 28 U.S.C. § 1500. [3] On reconsideration, although the contract claims remained dismissed, the CFC transferred the claim for specific performance in count one of Lan-Dale's CFC complaint to the District of Arizona ("District Court Action II").[4]

¶5 Following the transfer, the United States filed a motion to dismiss District Court Action II, as to which Sakrison, on Lan-Dale's behalf, responded. By its order of December 13, 2006, the district court denied the motion to dismiss, but transferred the case back to the CFC by its order of December 13, 2006 ("2006 District Court Order"). The court concluded that, because the claim for specific performance was based on a contractual obligation, sovereign immunity barred the claim. Further, the court determined, because Lan-Dale's overall claim involved the transfer of personal property of the government, the federal Contracts Disputes Act confined exclusive jurisdiction to the CFC. The court concluded, however, because the government had not raised the Contract Disputes Act as a general defense to jurisdiction until after the case was first transferred to

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[2]Case number 4:03-cv-000435-DCB.

[3]Section 1500, "prohibits [the CFC] from exercising jurisdiction over a claim 'for or in respect to which' the plaintiff 'has [a suit or process] pending' in any other court." *Keene Corp. v. United States*, 508 U.S. 200, 200 (1993) (quoting 28 U.S.C. § 1500) (second alteration in *Keene*).

[4]Before that transfer, in February 2004, on Lan-Dale's request, the district court had dismissed the District Court Action I, and, upon transfer, a new case number was assigned, 4:04-cv-306-DCB.

the district court, and because Lan-Dale could possibly assert equitable defenses in the CFC, the case ought to be returned there.

¶6 The district court transferred the case even though, as it stated in its order, "the [CFC] may still be required to dismiss" the case "under 28 U.S.C. § 1500." Most relevant to this case, however, in the 2006 District Court Order, the court noted:

> It appears that Plaintiff's attorney may also have failed to address this complex jurisdictional law, resulting in the simultaneous filing of Plaintiff's claim in both the district and claims courts, which because of 28 U.S.C. § 1500 and the running of the statute of limitations, was a *disastrous procedural error*.

(Emphasis added.)

¶7 In 2008, after the re-transfer to the CFC ("CFC Action II"), Lan-Dale retained Noah Van Amburg and his law firm in place of Sakrison. In September 2008, the United States moved to dismiss the case for lack of subject matter jurisdiction. Van Amburg, for Lan-Dale, responded to the motion. In November 2008, by e-mail, Van Amburg updated A.J. D'Alessandris about the status of the case, and he responded that it was "very important" to him that he "be kept appraised of, and receive copies of, Defenses and the Court[']s actions."

¶8 In its January 2009 order on the motion to dismiss ("2009 CFC Order"), the CFC noted, "[t]his case presents yet another example of a potentially meritorious action negated by the workings of 28 U.S.C. § 1500 . . . ." The CFC also quoted the 2006 District Court Order: "To be sure, Lan-Dale's former counsel made a 'disastrous procedural error' in filing the two lawsuits simultaneously in different courts, in apparent ignorance of 28 U.S.C. § 1500." Further, the CFC noted that, with Van Amburg as its counsel, "Lan-Dale has at least twice declined an invitation to show that the [CFC] suit was filed before the Arizona District Court suit, leaving the Court with no alternative but to find that the suits were filed simultaneously on August 21, 2003." It then, by that order, finally dismissed the case.

¶9 On August 27, 2013, A.J. D'Alessandris died, and John D'Alessandris, his son, thereafter became the President/CEO and sole shareholder of Lan-Dale. Before that, John D'Alessandris "had been a director and officer in name only . . . and did not participate in corporate

governance or decision-making." John D'Alessandris did not know the specific details of the progress of the lawsuit through the court system and did not know the details of the suit, but knew that his father was aware of the dismissal, and reported that A.J. D'Alessandris had expressed "anger toward the judge who dismissed the case." Additionally, John D'Alessandris was "unaware of the existence" of the 2009 CFC Order, and only first learned of it when his Nevada attorney found a copy of the order.

¶10 In October 2017, Lan-Dale filed its complaint in Pima County Superior Court against Sakrison and Van Amburg alleging "professional negligence," that is, legal malpractice. In its complaint, as to Sakrison, Lan-Dale alleged:

> By their conduct set forth in this Complaint, including but not limited to Sakrison and his firm's filing of the CFC case and AZ Case simultaneously and Sakrison's failure to communicate to Lan-Dale about the case, Sakrison and his firm were negligent in the performance of their duties to Lan-Dale.

And as to Van Amburg:

> 49. Upon information and belief, after the CFC dismissed Lan-Dale's case, neither Van Amburg nor Sakrison filed any other documents in [the] CFC case or the AZ Case on behalf of Lan-Dale.
>
> 50. Upon information and belief, Van Amburg never transmitted to A.J. D'Alessandris a copy of the CFC's order dismissing the CFC case.
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> 51. Upon information and belief, Van Amburg never explained to A.J. D'Alessandris the reasons the court dismissed the CFC case.
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> 52. Upon information and belief, Van Amburg never advised A.J. D'Alessandris about his options to address the dismissal, including the possibility of seeking reconsideration of the CFC's dismissal,

> appealing the dismissal, or taking other action to preserve Lan-Dale's claims.
>
> 53. Upon information and belief, Van Amburg destroyed Lan-Dale's case files.

And

> By their conduct set forth in this Complaint, including but not limited [to] Van Amburg's actions and omissions stated in Paragraphs 49-53, Van Amburg and his firm were negligent in the performance of their duties to Lan-Dale.

¶11 In March 2018, Van Amburg filed a motion for summary judgment in which Sakrison later joined arguing that the "two year statute of limitations on [Lan-Dale's] claim expired in 2011." In support of the motion for summary judgment, Van Amburg principally cited to his disclosure statement in the case, which stated: "Mr. Van Amburg provided [A.J. D'Alessandris] with a copy of [the 2009 CFC Order] . . . explained the situation, options (appeal or don't appeal) and risks to [A.J. D'Alessandris,] who elected not to pursue an appeal. Mr. Van Amburg's engagement terminated at that point."[5] Noah Van Amburg had verified the disclosure statement as "true and correct" "under penalty of perjury." He further cited to a June 23, 2010, letter A.J. D'Alessandris drafted to Senator John McCain, stating, in part: "On 14 Jan 2009, after nearly six years of wrangling, the case was dismissed. It should be reiterated: our Claim was not *denied*; our case was *dismissed* for lack of subject matter jurisdiction."

¶12 Van Amburg argued that the 2009 CFC Order provided notice to Lan-Dale of the basis of any malpractice claim the company might have asserted and that the two-year statute of limitations began to run when the time to appeal that order passed in 2009. At the latest, Van Amburg argued, it accrued when A.J. D'Alessandris died in August 2013 and it expired two years thereafter in August 2015. As a consequence, he argues, by the time suit was actually filed in 2017 it was time-barred.

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[5]Although Van Amburg did not specify an exact date in which he gave A.J. D'Alessandris the 2009 CFC Order, from the context of his verified disclosure, we infer that it was before the last day on which Lan-Dale could have appealed that order. It could not have been, if true, however, any later than A.J. D'Alessandris's death on August 27, 2013.

¶13 In its response, Lan-Dale did "not dispute that [A.J. D'Alessandris], at the time the president of Lan-Dale, knew that the Arizona court dismissed part of the case and transferred the remainder back to the CFC in 2006," and "had received and reviewed" the 2006 District Court Order. Nor did Lan-Dale "dispute that [A.J. D'Alessandris] knew that the case was finally dismissed in 2009." Lan-Dale argued, however, that there were questions of fact as to whether A.J. D'Alessandris actually received the 2009 CFC Order and understood that Lan-Dale had a malpractice claim, and thus, a dispute as to when its claim first accrued.

¶14 In a signed affidavit in support of Lan-Dale's response, John D'Alessandris stated that, although his father kept voluminous records of the case, Lan-Dale's attorney was unable to find a copy of the 2009 CFC Order in the company files, nor was he able to find any documents authored by his father in which he mentioned any errors made by his attorneys. Lan-Dale additionally submitted affidavits from A.J. D'Alessandris's friends and associates each stating that he had discussed the case with them over the years but never mentioned malpractice of his attorneys. Lan-Dale asserted it "did not discover any of the facts giving rise to a malpractice claim until [its] Nevada counsel reviewed [court] records on October 19, 2015." It was only then that it

> discovered that the CFC's dismissal for lack of subject matter jurisdiction was based entirely on the erroneous filing of two complaints [one in the CFC and one in the District Court] simultaneously in 2003, and the subsequent failure of its counsel to address the issue in the District Court or to respond to the court's invitation to address the issue in the CFC.

It argued then, because of the dispute as to when Lan-Dale learned of the malpractice, summary judgment was inappropriate.

¶15 In July 2018, the trial court granted summary judgment for both Van Amburg and Sakrison stating:

> I'm finding as a matter of law that a reasonably diligent person would have been on inquiry notice of the potential malpractice claims at least by the time that the 2009 order became final. I think a reasonably diligent person would have gotten that order, would have read

> it, would have understood that they needed to inquire as to whether they had a malpractice claim. I think that's especially so in light of what the 2006 order says. And that the person in this case, [A.J. D'Alessandris] actually read that order.

This appeal followed. We have jurisdiction under A.R.S. § 12-2101(A)(1).

Analysis

¶16 We review a trial court's grant of summary judgment on the basis of the record made in the trial court, but determine *de novo* whether the entry of summary judgment was proper. *Modular Mining Sys., Inc. v. Jigsaw Techs., Inc.*, 221 Ariz. 515, ¶ 9 (App. 2009). A trial court must "grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a); *accord Orme School v. Reeves*, 166 Ariz. 301, 305 (1990). When the moving party meets this burden, the burden "shifts to the non-moving party to present sufficient evidence demonstrating the existence of a genuine factual dispute as to a material fact." *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, ¶ 26 (App. 2008). A party opposing a motion for summary judgment that makes such a showing cannot rest on his pleading, but "must . . . set forth specific facts showing a genuine issue for trial." Ariz. R. Civ. P. 56(e). Entry of summary judgment is proper, even if the opposing party has raised a "scintilla" of evidence or a slight doubt, if, at trial, no reasonable juror could find for the non-moving party and the court would be required to enter a directed verdict. *Orme School*, 166 Ariz. at 311; *see also State ex rel. Corbin v. Sabel*, 138 Ariz. 253, 256 (App. 1983) ("[T]he party opposing a motion for summary judgment must in some form present proof by admissible evidence to establish a genuine dispute as to a material fact.").

¶17 A legal malpractice claim sounds in the tort of negligence. *See Glaze v. Larsen*, 207 Ariz. 26, ¶ 12 (2004). A negligence claim requires the plaintiff to plead and prove the elements of duty, breach, causation, proximate causation, and damages. *Id.* As with other such tort actions, a legal malpractice claim must be filed within two years of the date the cause of action accrues and, if not, it is time-barred by the statute of limitations. A.R.S. § 12-542; *Hayenga v. Gilbert*, 236 Ariz. 539, ¶ 11 (App. 2015). Typically, a cause of action for negligence accrues when the legal injury occurs—that is, when the duty owed is breached and the plaintiff suffers an injury proximately caused by that breach. *See Gust, Rosenfeld & Henderson*

v. Prudential Ins. Co. of Am., 182 Ariz. 586, 588 (1995) ("The traditional construction of [when a claim accrues] has been that the period of limitations begins to run when the act upon which legal action is based took place."). Because a party to litigation may not suffer any concrete harm from legal malpractice until the litigation is at an end, a legal malpractice injury in a litigated matter generally accrues when "the underlying litigation is finally resolved by completion or waiver of the appellate process." *Hayenga*, 236 Ariz. 539, ¶ 1.

¶18 A well-recognized exception to the general rule that a legal malpractice claim accrues at the point of injury, also applicable to negligence cases generally, is the "discovery rule." *Gust, Rosenfeld & Henderson*, 182 Ariz. at 588 (stating courts have developed the discovery rule as an exception to the traditional rule); *see also Commercial Union Ins. Co. v. Lewis & Roca*, 183 Ariz. 250, 254 (App. 1995) (applying the discovery rule to legal malpractice). The discovery rule dictates that a "cause of action does not accrue until the plaintiff knows or should have known of both the *what* and *who* elements of causation." *Commercial Union Ins. Co.*, 183 Ariz. at 254 (quoting *Lawhon v. L.B.J. Institutional Supply, Inc.*, 159 Ariz. 179, 183 (App. 1998)); *Kopacz v. Banner Health*, 245 Ariz. 97, ¶ 9 (App. 2018) (claim accrues when plaintiff "has reason to connect" injury with "'causative agent' such that 'a reasonable person would be on notice to investigate whether the injury might result from fault.'" (quoting *Walk v. Ring*, 202 Ariz. 310, ¶¶ 22, 23 (2002))). "A plaintiff need not know all the facts underlying a cause of action to trigger accrual. But the plaintiff must at least possess a minimum requisite of knowledge sufficient to identify that a wrong occurred and caused injury." *Doe v. Roe*, 191 Ariz. 313, ¶ 32 (1998) (citation and emphasis omitted). Although we often find that application of the discovery rule delays accrual of a cause of action when the "injury or the act causing the injury . . . have been difficult to detect," *Gust, Rosenfeld & Henderson*, 182 Ariz. at 589 (quoting *April Enters., Inc. v. KTTV*, 195 Cal. Rptr. 421, 436 (Ct. App. 1983)), nonetheless, we hold a plaintiff to the obligation to investigate his claim "with reasonable diligence," *Doe*, 191 Ariz. 313, ¶ 29.

¶19 "When discovery occurs and a cause of action accrues are usually and necessarily questions of fact for the jury." *Id.* ¶ 32. Nonetheless, as with any question of fact, when the facts are undisputed or indisputable, even such questions may be determined by a court as a matter of law. *See, e.g.*, *Kopacz*, 245 Ariz. 97, ¶¶ 16-19 (plaintiff failed to offer evidence supporting tolling of accrual of claim; court properly determined accrual date as matter of law).

Lan-Dale Bore the Burden of Showing that the Discovery Rule Applied

¶20 Lan-Dale filed its legal malpractice complaint on October 5, 2017. It is undisputed that this was far more than two years after the time to appeal the 2009 CFC Order's final dismissal of the claim passed.[6] Lan-Dale, as the party claiming a discovery rule exception to the general rule of accrual of a legal malpractice claim, therefore bears the burden of showing the discovery rule applies and tolled the accrual of its claim and running of the statute of limitations. *See Kiley v. Jennings, Strouss & Salmon*, 187 Ariz. 136, 139 (App. 1996). Lan-Dale argued below and argues here that it presented evidence that A.J. D'Alessandris did not "know of such facts or was unable, due to lack of legal sophistication, to recognize the potential claim" within two years of the dismissal. Indeed, it claims, Lan-Dale did not know of the malpractice claim at all until October 19, 2015, when its Nevada attorney discovered the 2009 CFC Order.

¶21 Both below and on appeal, Lan-Dale acknowledged that A.J. D'Alessandris, "received and reviewed" the 2006 District Court Order and "knew that the District Court dismissed part of the case and transferred the remainder back to the CFC in 2006."[7] It similarly conceded that Lan-Dale "knew that the case was dismissed by the CFC in 2009." It was also undisputed that in 2013, A.J. D'Alessandris knew the case had been finally dismissed by the CFC on jurisdictional grounds. Despite this, Lan-Dale argues "[t]he question is whether [A.J. D'Alessandris] understood the CFC lacked jurisdiction *because* [Sakrison and Van Amburg] dealt the case the fatal blow."

¶22 As to that question, Lan-Dale asserts that a jury could infer from the evidence it presented that Van Amburg never gave A.J. D'Alessandris the 2009 CFC Order. Additionally, it argues, "even if, as the

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[6]An appeal from final judgment must be filed within sixty days of the entry of the judgment or the appeal is waived. Fed. R. App. P. 4(a)(1)(B). Here, the time to appeal the 2009 CFC Order would have passed by early March 2009.

[7]When evaluating the state of knowledge of a corporate entity, the knowledge of the entity's officers is imputed to the corporation. *Fridena v. Evans*, 127 Ariz. 516, 519 (1980) ("[A] corporation is bound by the knowledge acquired by, or notice given to, its agents or officers which is within the scope of their authority and which is in reference to a matter in which their authority extends."). At all relevant times before his death, A.J. D'Alessandris was President/CEO of Lan-Dale.

Superior Court concluded, [A.J. D'Alessandris] should have obtained a copy of the order and read it, the CFC Order did not, as a matter of law . . . put him on notice of a *malpractice* claim." Lan-Dale asserts it offered sufficient evidence on that latter point to support the inference that A.J. D'Alessandris simply did not comprehend that malpractice had occurred. This then, it claims, raised a question of fact as to when the cause of action accrued making the entry of summary judgment based on a substantially earlier accrual date improper.

Lan-Dale Failed to Carry Its Burden

¶23 If A.J. D'Alessandris received the 2009 CFC Order as asserted by Van Amburg, no further investigation needed to be done to establish the "who" and "what" of Lan-Dale's malpractice claim. As a matter of law, by reading that order, a reasonable person would have known or, through inquiry should have known, that he might have been the victim of legal malpractice. Van Amburg, by his verified disclosure in support of the motion below, asserted under penalty of perjury that he gave the 2009 CFC order to A.J. D'Alessandris. Once he did so, as stated above, Lan-Dale had the burden to come forward with admissible evidence that Van Amburg did not in fact do so. Lan-Dale attempted to do so by affidavit testimony, but the proffered, prospective testimony was second-hand, conclusory, and purely speculative. Even were it admissible, it did not create any genuine issue of material fact.

¶24 In its briefing and at oral argument, Lan-Dale asserts that the trial court improperly weighed the evidence. It is improper for a court on summary judgment to weigh competent evidence, that being the province of the jury at trial, and it is certainly not the function of this court on appeal to do so. *See Hall v. Motorists Ins. Corp.*, 109 Ariz. 334, 335-36 (1973) ("In determining whether summary judgment should have been granted, neither the trial court nor the appellate court weighs the evidence."). Here, neither the trial court below, nor this court in this decision, weighed the evidence bearing on whether A.J. D'Alessandris received a copy of the 2009 CFC Order from Van Amburg. Nonetheless, even if the trial court and this court were to wholly disregard Van Amburg's assertion that he gave A.J. D'Alessandris the 2009 CFC Order, the undisputed evidence demonstrates that Lan-Dale had sufficient evidence of its malpractice claim as early as 2013.

¶25 The district court's conclusion in footnote 2 to the 2006 District Court Order that Sakrison committed a "disastrous procedural error," was sufficient to inform a reasonable person, and therefore Lan-

Dale, of the "who" and "what" of a potential legal malpractice claim as to Sakrison regarding a jurisdictional defect in the case. Lan-Dale, of course, admits it received that order. Then, at some point between 2006 and June 2013, when A.J. D'Alessandris wrote his letter to Senator John McCain telling him the case had not been lost on the merits but had been dismissed on jurisdictional grounds, he equally indisputably had learned, at least broadly, why his case had been dismissed.

¶26 Here, a reasonable person knowing, as A.J. D'Alessandris did, that his substantial claim had been finally dismissed, even if his counsel had not given him the dismissal order, would have sought out and read the order.[8] Then, given the lack of ambiguity in the 2009 CFC Order, he would have understood its conclusions about Sakrison's conduct. And, on reading its statement that Van Amburg had failed to provide the court with any evidence that might have mitigated Sakrison's disastrous procedural error, Lan-Dale would also have been sufficiently informed of the "who" and "what" of any malpractice by Van Amburg.

¶27 To the extent A.J. D'Alessandris would still have been ignorant of the claim despite finding and reading the 2009 CFC Order, Lan-Dale cannot hide behind it. *See ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, ¶ 12 (App. 2010) ("The discovery rule, however, does not permit a party to hide behind its ignorance when reasonable investigation would have alerted it to the claim."). The relevant standard remains whether and when a *reasonable person*—not any plaintiff in particular—was put on notice to investigate, *see Walk*, 202 Ariz. 310, ¶ 22, and if, with reasonable diligence, he would have discovered sufficient facts underlying a claim, *see Doe*, 191 Ariz. 313, ¶ 29.

¶28 The harm to Lan-Dale—the dismissal—and the causative agents of its harm—first Sakrison, and then Van Amburg—were all revealed to Lan-Dale and known by no later than June 2013, but likely as early as 2009. Consequently, Lan-Dale's cause of action for legal

[8]To the extent Lan-Dale argues that, if A.J. D'Alessandris received the order he must not have read it, this is unavailing as well. A reasonable and diligent person, as the trial court concluded, would have. *Doe*, 191 Ariz. 313, ¶ 37 (plaintiff has duty to investigate). Indeed, it is fair to assume that even an especially derelict person, knowing that his substantially valuable claim had been dismissed, would have read such a consequential order.

malpractice accrued and the two-year statute of limitations under A.R.S. § 12-542 fully expired by the time Lan-Dale filed its complaint here in 2017.[9]

Disposition

¶29 Because the trial court correctly determined that Lan-Dale's legal malpractice claim was time-barred under A.R.S. § 12-542 as a matter of law, we affirm the judgment of the court. We further award each appellee its costs incurred on appeal under A.R.S. § 12-342 upon compliance with Rule 21(b), Ariz. R. Civ. App. P.

[9]Lan-Dale argues for the first time in its reply brief that a jury could reasonably conclude that Sakrison or Van Amburg concealed their malpractice. This argument is waived for failure to present it in the opening brief. *See Evans v. Fed. Sav. & Loan Ins. Corp.*, 11 Ariz. App. 421, 423 (1970) (refusing to consider arguments raised for the first time in reply brief).