Not Designated For Publication

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA08-92

BUBBA PROPERTIES, LLC APPELLLANT	**Opinion Delivered** January 14, 2009
V.	APPEAL FROM THE COLUMBIA COUNTY CIRCUIT COURT, [NO. CV2004-49]
RONNY BELL APPELLEE	HONORABLE DAVID F. GUTHRIE, JUDGE
	AFFIRMED

JOSEPHINE LINKER HART, Judge

Bubba Properties, LLC, appeals from a summary judgment in favor of attorney Ronny Bell. Bubba argues that the trial court erred in ruling: 1) that Bubba's legal-malpractice suit against Bell was barred by the statute of limitations, and 2) that Bell had no duty to perform the work that was the basis of the suit. We affirm on the statute-of-limitations ground, making it unnecessary to address the remaining argument.

The members of Bubba Properties, LLC, were also investors in a company called Quail Piping Products. Quail needed approximately one million dollars worth of equipment for a new manufacturing venture but could not obtain financing. Bubba agreed to buy the equipment, finance it through Farmers Bank, and lease it to Quail.

In November 1999, one of Bubba's members, T.J. Hammer, asked attorney Ronny

Bell to prepare the equipment lease. According to Bell, Hammer was a sophisticated former banker who gave him explicit drafting instructions. The final document provided that Bubba would lease the equipment to Quail for five years; that Quail would pay Bubba $1,288,750 in principal and interest over that period; that Bubba would retain title to the equipment; and that, at the end of five years, Quail could purchase the equipment for one dollar. The lease contained no provision for voluntary termination by Quail. Bell did not file a financing statement or advise Bubba that one was needed. An attorney would later state in an affidavit filed by Bubba that the document prepared by Bell created a secured sales transaction, for which a UCC financing statement was necessary to perfect Bubba's interest in the equipment.

In July 2003, Quail filed for Chapter 11 bankruptcy. The bankruptcy court found that Bubba and Farmers Bank failed to perfect a security interest in the equipment, and it ordered the equipment sold to pay Quail's other, secured creditors. Thereafter, Farmers sued Bubba and its members on January 27, 2004, to collect $450,000 due on the loan.[1] Bubba answered and filed a third-party complaint against Bell for legal malpractice. The complaint alleged that Bell failed to perfect Bubba's security interest in the equipment and that, had he done so, Bubba could have obtained a release of the equipment in bankruptcy, sold it, and applied the proceeds to the Farmers loan. Bell denied any wrongdoing and pled the statute of limitations as a defense.

On July 18, 2007, Bell moved for summary judgment. He argued that the malpractice claim should be dismissed because: 1) he had no duty beyond the scope of his instructions

[1] Farmers subsequently obtained consent judgments from Bubba and its members.

from T.J. Hammer; and 2) the three-year statute of limitations had run. The circuit court agreed on both counts, ruling with regard to the statute of limitations:

> The Statute of Limitations governing claims of legal malpractice is three years. The statute runs from the date of the last occurrence which is the basis of the claim. The last legal work performed by Ronny Bell for Bubba Properties was in November 1999, and there is no allegation of fraud or misrepresentation. This claim was filed in November 2004, five years after the occurrence, and is therefore time barred.

Bubba appeals from the summary judgment.

Summary judgment is to be granted only when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to judgment as a matter of law. *Nash v. Hendricks*, 369 Ark. 60, 250 S.W.3d 541 (2007). The purpose of summary judgment is not to try the issues but to determine whether there are any issues to be tried. *Id.*

Legal-malpractice actions are governed by a three-year statute of limitations. *See Parkerson v. Lincoln*, 347 Ark. 29, 61 S.W.3d 146 (2001). Our courts employ the occurrence rule in determining when the limitations period begins to run. *See Moix-McNutt v. Brown*, 348 Ark. 518, 74 S.W.3d 612 (2002); *Ragar v. Brown*, 332 Ark. 214, 964 S.W.2d 372 (1998); *Goldsby v. Fairley*, 309 Ark. 380, 831 S.W.2d 142 (1992); *Moore Inv. Co. v. Mitchell, Williams, Selig, Gates & Woodyard*, 91 Ark. App. 102, 208 S.W.3d 803 (2005). Under this rule, the limitations period commences when the attorney's negligent act occurs. *See, e.g., Goldsby*, *supra*; *Moore Inv. Co.*, *supra*. Here, Bell's negligence, if any, occurred in 1999 when he drafted the lease and allowed it to be executed without filing a financing statement or advising Bubba that one was needed. The 2004 complaint was therefore time-barred.

Bubba argues that the limitations period did not commence until April 2003, the last

date on which Bell could have filed a financing statement and perfected Bubba's security interest in the equipment. According to Bubba, Bell's negligence was not complete and caused no harm until that point. However, our supreme court has declined to accept the argument that the statute of limitations is not triggered until the plaintiff suffers injury. *See*, *e.g.*, *Moix-McNutt*, *supra*; *Flemens v. Harris*, 323 Ark. 421, 915 S.W.2d 685 (1996); *Morris v. McLemore*, 313 Ark. 53, 852 S.W.2d 135 (1993); *Ford's, Inc. v. Russell Brown & Co.*, 299 Ark. 426, 773 S.W.2d 90 (1989). The supreme court consistently holds that, for statute-of-limitations purposes, it is the date of the negligent act that controls. *See Moix-McNutt*, *supra*; *Flemens*, *supra*.

Bubba also points out that Bell had the opportunity to revisit the lease on several occasions after 1999 and correct his error. However, it is undisputed that Bell performed no additional work directly related to the lease after 1999. Thus, under these facts, the limitations period cannot be extended on that basis. *Compare Morrow Cash Heating & Air, Inc. v. Jackson*, 96 Ark. App. 105, 239 S.W.3d 8 (2006) (extending the onset of the limitations period where the defendant's erroneous advice was repeatedly urged until it was accepted). Further, Bell cannot be considered "intermittently and repeatedly negligent" between 1999 and 2003 by virtue of his continuing failure to file a financing statement or advise Bubba regarding one. *See Moore Inv. Co.*, 91 Ark. App. at 108, 208 S.W.3d at 806 (disavowing the continuing-representation rule, which provides that the statute of limitations does not begin to run until the relationship between the professional and the client has ended for a particular matter). Bell's alleged negligence occurred in 1999, and that is the year in which the statute of

limitations began to run.

Bubba additionally contends that our supreme court crafted exceptions to the occurrence rule in *Wright v. Compton, Prewett, Thomas & Hickey*, 315 Ark. 213, 866 S.W.2d 387 (1993); *Pope County v. Friday, Eldredge, & Clark*, 313 Ark. 83, 852 S.W.2d 114 (1993); and *Stroud v. Ryan*, 297 Ark. 472, 763 S.W.2d 76 (1989). However, the supreme court stated in *Ragar*, *supra*, that it applied the occurrence rule in *Wright*. Further, the court rejected arguments similar to Bubba's in *Ragar*, *supra*, and *Goldsby*, *supra*, based on the unique circumstances in *Pope County* and *Stroud*. We likewise hold that those cases do not require us to cast aside the occurrence rule here.

We therefore affirm the circuit court's order granting summary judgment.

Affirmed.

ROBBINS and BAKER, JJ., agree.