STATE OF MICHIGAN

COURT OF APPEALS

NICHOLAS FARANSO, RALPH FARANSO, OMNI FOOD & BEVERAGE, INC., AND FARANSO ENTERPRISES, INC.

Plaintiffs-Appellants/ Cross-Appellees,

v

GENE J. ESSHAKI, NORBERT T. MADISON JR., and ABBOTT, NICHOLSON, QUILTER, ESSHAKI, & YOUNGBLOOD, PC,

Defendants-Appellees/ Cross/Appellants.

UNPUBLISHED

No. 172663
LC No. 93-321664-NM

Before: Murphy, and Markman and Karl V. Fink,* JJ.

MARKMAN, J. (concurring in part and dissenting in part).

I respectfully dissent on the question of the applicability of the medical malpractice statute of limitations. Plaintiffs commenced this action three years and four months after defendant missed the appellate filing deadline on plaintiff's property tax assessment; three years and two months after defendants notified the Detroit City Council in writing that the Board of Review had refused to accept the appeal[1]; approximately three years after plaintiffs were apprised that defendants were pursuing "alternative" avenues of reducing plaintiff's tax assessment; two years and seven months after plaintiffs may have been notified by another attorney they had hired that defendants had failed to undertake the necessary actions for an appeal of their assessment[2]; and two years and three months after plaintiffs terminated their relationship with defendants and received the entirety of defendant's files on the appeal of the assessment, including the letter to the city council and a memorandum concerning the other attorney's communications to plaintiffs.

*Circuit judge sitting on the Court of Appeals by assignment.

On the basis of these facts, I do not agree that the trial court erred in finding that plaintiffs "discover[ed] or should have discovered" the existence of the cause of action at least two years prior to the time that plaintiffs filed suit in the instant matter. MCL 600.5805(4); MSA 27A.5805(4). Even if it is assumed that defendants attempted fraudulently to conceal their failure to pursue the tax appeal properly, I believe that plaintiffs "discover[ed] or should have discovered" the cause of action at least two years prior to the suit. MCL 600.5855; MSA 27A.5855. A plaintiff need only be aware of a "possible" cause of action, rather than a certain or a likely one, in order to be sufficiently apprised for statutes of limitations purposes. *Gebhardt v O'Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994); *Moll v Abbott Laboratories*, 444 Mich 1, 23-4; 490 NW2d 305 (1993). Nor is it necessary that defendant be fully cognizant of the precise nature of his legal claim at the time he learns of conduct but merely that he be aware of such conduct and that a reasonable person would likely inquire further into the conduct in order to determine whether he has suffered a legal wrong. *Buszek v Harper Hospital*, 116 Mich App 650, 653; 323 NW2d 330 (1982). A plaintiff will be held to know what he ought to know by the exercise of ordinary diligence. *Eschenbacher v Hier*, 363 Mich 676, 681; 110 NW2d 731 (1961); *Stroud v Ward*, 169 Mich App 1, 7-8; 425 NW2d 490 (1988).

As a result, I would affirm the lower court on all counts.

/s/ Stephen J. Markman

[1] Cf. *Heap v Heap*, 258 Mich 250, 263; 242 NW 252 (1932) (Generally, there can be no tolling of the limitations period if the plaintiff could have discovered the fraud from public records.)

[2] While the fact of the other attorney's conversation with plaintiffs is in dispute, there is no dispute that defendant's memorandum relating the conversation was contained in the files turned over from defendants to plaintiffs' new lawyers.