

STATE OF MICHIGAN
COURT OF APPEALS

PROTO-CAM, INC.,

Plaintiff-Appellant,

v

WARNER NORCROSS & JUDD, L.L.P.,

Defendant-Appellee.

UNPUBLISHED

December 23, 2008

No. 281689

Kent Circuit Court

LC No. 07-006218-NM

Before: Murray, P.J., and Markey and Wilder, JJ.

MEMORANDUM.

Plaintiff appeals by right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) based on the expiration of the statute of limitations in this legal malpractice case. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Plaintiff acknowledges that the two-year limitations period on legal malpractice lawsuits had expired when this suit was filed, see MCL 600.5805(5), but argues that the suit was timely under MCL 600.5838(2). This statute provides that a claim may be commenced within the standard limitations period or "within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later." A plaintiff need only be aware that a possible cause of action exists, not that a likely cause of action exists. *Gebhardt v O'Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994).

Plaintiff first maintains that defendant committed malpractice in preparing a warranty deed which allegedly failed to include a legal description of part of a property that plaintiff acquired. Plaintiff further asserts that defendant knew plaintiff intended to sell the property to an affiliate, but negotiated a title insurance policy with Transamerica Title Insurance Company that did not provide coverage once plaintiff sold the property. Plaintiff sued Transamerica challenging the denial of its claim. Plaintiff asserts that if Transamerica's denial had been improper, there would have been no malpractice and accordingly, there was no discovery of the claim against defendant until a court ruled on December 15, 2006, that Transamerica's denial was proper. Since the present lawsuit was filed within six months of summary disposition to Transamerica, plaintiff claims that this lawsuit was timely. But, in a December 8, 2005, letter,

Transamerica explained the reasons for the denial. These reasons were ultimately the basis for plaintiff's legal malpractice case. At that point, plaintiff should have known that it was *possible* the denial of its claim would be upheld. Thus, plaintiff's claim was not filed within six months of discovery, and was properly barred on statute of limitations grounds.

Plaintiff also argues that summary disposition should not have been granted on that aspect of its legal malpractice claim that was based on a conflict of interest; however, plaintiff has not made an allegation that negligence based on the conflict was the proximate cause of an injury. See *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). Moreover, defendant established, by reference to a letter from plaintiff's chief executive officer to defendant, that defendant terminated the relationship in 1996 because of questions of a conflict of interest. It follows that plaintiff should have been aware of a possible claim based on the conflict in 1996. A legal malpractice claim based on this conflict is therefore barred.

We affirm.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Kurtis T. Wilder