STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1007

James Leach, et al.,
Appellants,

vs.

Turman & Lang, Ltd., et al.,
Respondents

Filed March 27, 2017
Affirmed
Worke, Judge

Clay County District Court
File No. 14-CV-15-2664

Paul A. Sortland, Sortland Law Office, PLLC, Minneapolis, Minnesota (for appellants)

Richard J. Thomas, Chad J. Hintz, Burke & Thomas, PLLP, Arden Hills, Minnesota (for respondents)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Jesson, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellants challenge the dismissal of their legal-malpractice claim, asserting that the district court erred by interpreting allegations in their complaint as admissions defeating their claim and by applying the North Dakota statute of limitations. We affirm.

FACTS

In July 2011, respondent-attorney Joseph A. Turman prepared a stock purchase agreement for the sale of appellants James and Elizabeth Leach's company, IDA of Moorhead Corporation, to SNAPS Holding Company. At the time of the sale, the Leaches were defending a wrongful-termination lawsuit brought by a former employee, Reed Danuser. The purchase agreement provided that SNAPS was aware of the litigation, and, subject to the indemnity provision in the purchase agreement, agreed to indemnify and pay the expenses and judgment associated with the lawsuit. The indemnification provision in the purchase agreement stated: "[SNAPS] shall hold and indemnify [the Leaches] harmless from the claims of Reed Danuser up to the sum of $100,000.00. In the event the amount necessary to resolve the issues with Reed Danuser exceed[s] $100,000.00 [the Leaches] shall be responsible for that portion."

On October 19, 2012, an $823,717.59 judgment was entered in Danuser's favor. In October 2013, IDA transferred its holdings to SNAPS pursuant to the purchase agreement. SNAPS then reached a settlement with Danuser. On December 10, 2014, SNAPS brought an action in North Dakota seeking indemnification from the Leaches in the amount of $318,946.02. The Leaches moved to dismiss. On March 13, 2015, a North Dakota district court denied the motion to dismiss, concluding that the indemnification provision in the purchase agreement was not ambiguous and that the Leaches would be responsible for any amount that exceeded $100,000 owed to Danuser.

In July 2015, the Leaches filed this legal-malpractice lawsuit against Turman and his law firm, respondent Turman & Lang Ltd. On October 15, 2015, the Leaches filed the

first amended complaint, claiming, among other things, that the indemnification provision made no sense because it exposed them to unlimited liability and appeared to be "a scrivener's mistake" that Turman should have noticed. In paragraph 18 of the first amended complaint, the Leaches claimed that Turman assured them that the indemnification clause meant that

> (1) [SNAPS] would indemnify [the Leaches] for liability to [Danuser] up to $100,000.00, (2) if the liability exceeded $100,000.00 then [SNAPS] would not indemnify [the Leaches] for the excess amount – rather, [the Leaches] would be "responsible" for bearing such liability to [Danuser] themselves, with no indemnification for [SNAPS], and (3) [the Leaches] did not have any duty to hold and indemnify [SNAPS] from any claim. need to hold and indemnify [the Leaches] from any claims by the former employee of the company above $100,000.00, or that the provision was otherwise irrelevant [sic].

Respondents moved to dismiss pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted. At a hearing on the motion, the Leaches argued that they did not believe that they were required to indemnify SNAPS because, according to the indemnification provision, they were "responsible" to Danuser, not SNAPS, for any amount over $100,000. Following the hearing, the Leaches filed a supplemental memorandum, asserting that they should be allowed to amend the first amended complaint due to "obvious typographical errors" in paragraph 18.

The district court granted the motion to dismiss, stating that paragraph 18 of the first amended complaint showed that the Leaches understood that they would be responsible to Danuser for any amount in excess of $100,000. The district court concluded: "The admission in paragraph 18 clearly establishes that the [Leaches] have not been damaged"

and "[w]ithout any damages, the [Leaches] have failed to state a cause of action upon which relief can be granted." The district court also stated that the Leaches' request to amend the first amended complaint was not properly before the court because they failed to file a written motion, and that even if the amendment were allowed, their claim would still fail because it is barred by North Dakota's two-year statute of limitations. This appeal followed.

D E C I S I O N

Generally, in order to survive a rule 12 motion, a plaintiff need only set forth in the complaint "a legally sufficient claim for relief." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). On review of a rule 12 dismissal, this court will not uphold the dismissal "if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739-40 (Minn. 2000) (quotation omitted).

The Leaches first argue that the district court should have permitted them to amend the first amended complaint. After a pleading has once been amended, as it was here, "a party may amend a pleading only by leave of court or by written consent of the adverse party." Minn. R. Civ. P. 15.01. "An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Minn. R. Civ. P. 7.02(a). Turman did not consent to an amendment and the district court stated that the Leaches failed to file a written motion requesting leave to amend the first amended complaint. Accordingly, the district court did not err by declining to allow the amendment.

Additionally, the amendment proposed by the Leaches reflected a significant substantive change. The Leaches suggested in their supplemental memorandum that, because of "obvious typographical errors," "[i]t would be probably best if . . . [p]aragraph 18 . . . was simply shortened." But a comparison between paragraph 18 of the first amended complaint and the suggested amendment shows that the Leaches sought to do more than correct typographical errors. Paragraph 18 of the first amended complaint stated that Turman assured the Leaches that the indemnification clause meant that

> (1) [SNAPS] would indemnify [the Leaches] for liability to [Danuser] up to $100,000.00, (2) if the liability exceeded $100,000.00 then [SNAPS] would not indemnify [the Leaches] for the excess amount – rather, [the Leaches] would be "responsible" for bearing such liability to [Danuser] themselves, with no indemnification for [SNAPS], and (3) [the Leaches] did not have any duty to hold and indemnify [SNAPS] from any claim. need to hold and indemnify [the Leaches] from any claims by the former employee of the company above $100,000.00, or that the provision was otherwise irrelevant [sic].

The suggested amendment stated:

> [Turman] failed to properly advise the [Leaches] about what the contract for the sale actually meant, and otherwise provided bad advice. [Turman] assured [the Leaches] that the paragraph did not mean that they were subject to substantial amounts of liability in the event that there was a large judgment in favor of Danuser.

The only actual "typographical error" in paragraph 18 of the first amended complaint is the last phrase. But omitting the last phrase does not change what the Leaches intended to convey, which was their belief that they would not have to indemnify SNAPS, but rather, be "responsible" directly to Danuser for liability exceeding $100,000. The suggested

amendment alters the meaning by stating that the Leaches believed that they would not be responsible for any substantial liability.

Next, the Leaches argue that the district court erred by dismissing their complaint after concluding that they failed to show damages. Generally, to succeed on a legal-malpractice claim, a plaintiff must show: "(1) the existence of an attorney-client relationship; (2) acts constituting negligence or breach of contract; (3) that such acts were the proximate cause of the plaintiff's damages; [and] (4) that but for defendant's conduct the plaintiff would have been successful in the prosecution or defense of the action." *Blue Water Corp. v. O'Toole*, 336 N.W.2d 279, 281 (Minn. 1983).[1] The claim fails if the plaintiff fails to establish all four elements. *Noske v. Friedberg*, 670 N.W.2d 740, 743 (Minn. 2003).

Paragraph 18 of the first amended complaint stated the Leaches' understanding of the indemnification provision. The district court concluded that paragraph 18 "clearly shows that the [Leaches] understood they would be responsible for any damages to Reed Danuser in excess of $100,000. . . . Without any damages, the [Leaches] have failed to state a cause of action upon which relief can be granted."

The district court properly interpreted paragraph 18 to mean that the Leaches understood that they would assume financial liability, but that their liability was owed

[1] The district court cited a North Dakota case, which states that in order to prevail in a legal-malpractice action for negligence, a plaintiff must establish: (1) the existence of an attorney-client relationship; (2) a duty by the attorney to the client; (3) a breach of that duty by the attorney; and (4) damages to the client proximately caused by the breach. *See Wastvedt v. Vaaler*, 430 N.W.2d 561, 564-65 (N.D. 1988). *Wastvedt* cites *O'Toole*; thus, the analysis is the same under both Minnesota and North Dakota law. *See id.*

directly to Danuser and not to SNAPS. The Leaches argued such at the motion hearing when their attorney stated that the Leaches did not believe that they were required to indemnify SNAPS because they believed that they were "responsible" to Danuser for any amount over $100,000. The Leaches' attorney stated: "But at best my argument is that [the indemnification provision] says the seller should be responsible. That is to Reed Danuser. It doesn't say anything about [the Leaches] being responsible to SNAPS."

Therefore, regardless of how Turman explained indemnification to the Leaches, they understood that they would be responsible for any amount in excess of $100,000 owed to Danuser. Because the Leaches understood their potential liability, they have failed to show damages and their legal-malpractice claim fails. The district court did not err by granting the motion to dismiss for failure to state a claim upon which relief may be granted.

Because we conclude that the Leaches failed to establish damages, and that the district court appropriately granted respondents' motion to dismiss, we decline to reach the statute-of-limitations argument.

Affirmed.