**[Cite as *Davis v. Squire, Sanders & Dempsey, L.L.P.*, 2009-Ohio-3613.]**

# IN THE COURT OF APPEALS
# FIRST APPELLATE DISTRICT OF OHIO
# HAMILTON COUNTY, OHIO

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| ALLEN L. DAVIS, | : | APPEAL NO. C-080774<br>TRIAL NO. A-0506622 |
| Plaintiff-Appellant, | : | *D E C I S I O N.* |
| vs. | : | |
| SQUIRE, SANDERS & DEMPSEY, L.L.P., | : | |
| and | : | |
| MARK J. RUEHLMANN, | : | |
| Defendants-Appellees. | : | |

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: July 24, 2009

*William H. Blessing*, for Appellant,

*James E. Burke, Jennifer J. Morales*, and *Keating, Muething & Klekamp PLL*, for Appellees.

Please note: This case has been removed from the accelerated calendar.

**HILDEBRANDT, Judge.**

**{¶1}** Plaintiff-appellant, Allen L. Davis, appeals the summary judgment entered by the Hamilton County Court of Common Pleas in favor of defendants-appellees, Squire, Sanders & Dempsey, L.L.P., ("Squire Sanders") and Mark J. Ruehlmann, in a legal-malpractice action. In addition, Squire Sanders and Ruehlmann have filed a cross-appeal concerning the basis of the trial court's grant of summary judgment.

**{¶2}** Davis and a number of his family members were shareholders in a corporation called CNG. The company was engaged in payday loans and had a very large volume of business. Ruehlmann, an attorney with the Squire Sanders law firm, had previously counseled Davis in business matters when Davis had been the president of Provident Bank. Thereafter, he also represented CNG.

**{¶3}** At some point in 2000, it became apparent that Davis and his wife would divorce. Because the shares in CNG were the largest assets in the marital estate, negotiations involving ownership of the shares became entangled with negotiations surrounding the divorce.

**{¶4}** Davis retained counsel for the divorce proceedings. Nonetheless, it was his position that Ruehlmann was serving as his personal attorney in the negotiations involving his equity in CNG.

**{¶5}** Davis maintained that belief despite a number of communications from Ruehlmann stating that he was representing only CNG and that his role as the corporate attorney prevented him from representing Davis individually in matters directly relating to corporate affairs. Davis himself produced a number of bills from Ruehlmann addressed only to CNG and paid from corporate funds.

**{¶6}** The divorce proceedings continued through the end of 2002. In early 2004, a conflict arose concerning Davis's exercise of an option to purchase CNG

stock. The major point of contention was whether CNG would treat as compensation the stock that Davis was to receive through the option.

**{¶7}** When it became apparent that Davis and Ruehlmann had reached an impasse concerning Ruehlmann's ability to represent Davis individually, Ruehlmann informed Davis that he would no longer represent him in any capacity. That communication occurred no later than the end of April 2004.

**{¶8}** Still, Ruehlmann continued to counsel CNG with respect to the option matter, and Davis exercised the option in August 2004. In early 2005, Davis learned that CNG had reported the stock as compensation for tax purposes.

**{¶9}** On August 15, 2005, Davis filed suit against Squire Sanders and Ruehlmann, arguing that Ruehlmann had breached his fiduciary duty by continuing to represent CNG after he had terminated his relationship with Davis. The trial court granted the motion for summary judgment filed by Squire Sanders and Ruehlmann, holding that the suit had been filed after the expiration of the applicable statute of limitations.

**{¶10}** In his first assignment of error, Davis now argues that the trial court erred in granting summary judgment in favor of Squire Sanders and Ruehlmann. Specifically, he contends that the court erred in holding that he had filed the complaint after the expiration of the limitations period.

**{¶11}** Under Civ.R. 56(C), a motion for summary judgment may be granted only when no genuine issue of material fact remains to be litigated, the moving party is entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence construed most strongly in favor of the nonmoving party, that conclusion is adverse to that party.[1] This court reviews the granting of summary judgment de novo.[2]

[1] See *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.

**{¶12}** Under R.C. 2305.11(A), a legal-malpractice action must be brought within one year of the accrual of the action. An action for legal malpractice accrues either (1) when there is a cognizable event by which the plaintiff discovers or should discover the injury underlying the claim and is put on notice of the need to pursue potential remedies against the attorney; or (2) when the attorney-client relationship for the transaction in question ends, whichever occurs later.[3]

**{¶13}** In the case at bar, it is undisputed that the attorney-client relationship terminated in April 2004, when Ruehlmann explicitly stated that he could no longer represent Davis. Because the action would have been time-barred using the date of termination, we must determine if a cognizable event had occurred after the attorney-client relationship had ended.

**{¶14}** A plaintiff need not be aware of the full extent of his damages for a cognizable event to have occurred.[4] It is enough that some noteworthy event has occurred that would alert a reasonable person that an impropriety has occurred.[5]

**{¶15}** In *Cundall v. U.S. Bank*,[6] the Supreme Court of Ohio recently revisited the issue of when a "cognizable event" is deemed to have occurred. In *Cundall*, the plaintiff sued the defendant trustees, arguing that they had coerced him to sell shares of stock in a corporation and had misrepresented the value of the stock.[7] Quoting this court, the *Cundall* court emphasized that the discovery rule "does not require the victim of the alleged fraud to possess concrete and detailed knowledge, down to the exact penny of damages, of the alleged fraud; rather, the standard requires only facts

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[2] *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, 792 N.E.2d 781, ¶6.
[3] *Roberts v. Maichl*, 1st Dist. No. C-040002, 2004-Ohio-4665, ¶20.
[4] *Zimmie v. Calfee, Halter & Griswold* (1989), 43 Ohio St.3d 54, 58, 538 N.E.2d 398.
[5] Id.
[6] __ Ohio St.3d__, 2009-Ohio-2523, __N.E.2d __.
[7] Id. at ¶15.

sufficient to alert a reasonable person of the *possibility* of fraud" or other wrongdoing on the part of a fiduciary.[8]

**{¶16}** Here, Ruehlmann's alleged breach of duty to Davis was apparent when Ruehlmann informed him that he would continue to represent CNG instead of Davis's personal interests in the stock-purchase negotiation. As Davis himself testified, Ruehlmann informed him in explicit terms no later than the end of April 2004 that he would thenceforth represent solely the interests of the corporation. Davis was therefore aware of the possibility of wrongdoing at that time.

**{¶17}** And Davis failed to demonstrate any event that had occurred after April 2004 that could be construed as a cognizable event. In fact, other than Ruehlmann's continued representation of CNG, Davis failed to offer *any* instance of alleged wrongdoing on the part of Ruehlmann or Squire Sanders. Accordingly, the trial court's grant of summary judgment was correct, and the first assignment of error is overruled.

**{¶18}** In his remaining four assignments of error, Davis argues that the trial court erred by (1) ignoring his affidavit alleging that Ruehlmann and other Squire Sanders attorneys had represented him in his individual capacity; (2) prohibiting depositions of Squire Sanders attorneys on the issue of individual representation; (3) overruling his motion to compel the production of records relating to the same issue; and (4) granting summary judgment on the basis that he had failed to prove damages. Because we have held that summary judgment was properly entered on the basis that the limitations period had expired, Davis's remaining assignments of error are moot.

**{¶19}** We turn now to the cross-appeal. In the first of two assignments of error, Squire Sanders and Ruehlmann argue that the trial court erred in holding that

[8] Id. at ¶30, quoting *Palm Beach Co. v. Dun & Bradstreet* (1995), 106 Ohio App.3d 167, 171, 665 N.E.2d 718 (emphasis added in *Cundall*).

there were genuine issues of fact about whether they had represented Davis in his individual capacity. In the second assignment of error, they argue that the trial court erred in not holding that Davis had failed to demonstrate damages resulting from the alleged malpractice. Once again, our holding with respect to the limitations issue renders these assignments moot, and we need not address them on their merits.

**{¶20}** We affirm the judgment of the trial court.

Judgment affirmed.

**HENDON, P.J.,** and **SUNDERMANN, J.,** concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.