

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

CROWN CORK & SEAL CO., INC,	:	DECEMBER TERM 2002
	:	
Plaintiff,	:	No. 03185
	:	
v.	:	
	:	
MONTGOMERY, McCRACKEN,	:	
WALKER & RHODES, LLP,	:	
	:	
Defendant.	:	

CROWN, CORK & SEAL CO., INC.,	:	DECEMBER TERM, 2002
	:	
Plaintiff,	:	No. 03192
	:	
v.	:	Control No. 111978
	:	
NINA SEGRE, ESQ., KAREN SENSER,	:	
ESQ., and SEGRE & SENSER, P.C.,	:	
	:	
Defendants/Third	:	
Party Plaintiffs.	:	

ORDER AND MEMORANDUM

AND NOW, this 25th day of May, 2005, upon consideration of the Second Motion for Summary Judgment on Statute of Limitations Grounds of defendants, Karen Senser, Esq. and Segre & Senser, P.C., plaintiff's response thereto, the briefs in support and opposition, and all other matters of record, and in accordance with the Memorandum Opinion issued contemporaneously herewith, it is hereby

ORDERED that said Motion is **GRANTED** in part and plaintiff's claims against defendants for professional negligence and breach of fiduciary duty are **DISMISSED** as time barred.

The remainder of the motion is **DENIED** because there are disputed issues of material fact as to when plaintiff knew or should have known that it had a breach of contract claim against defendants.

BY THE COURT:

C. DARNELL JONES, II, J.

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MEMORANDUM OPINION

Now that discovery has closed, defendants Karen Senser, Esquire and Segre & Senser, P.C. (“S&S”) renew their motion to dismiss Crown Cork and Seal’s (“CC&S”) malpractice claims against them on the basis that such claims are time barred.¹ S&S claims that, at the very least, CC&S should have discovered S&S’ alleged malpractice when litigation concerning the meaning of the terms of the Lease that S&S drafted was commenced and, therefore, that the statute should have begun to run then, if not when the Lease was drafted. CC&S argues that the statute of limitations should be tolled due to S&S’ fraudulent concealment of their alleged malpractice.

¹ The relevant facts of this case are set forth in the court’s December, 29, 2003, Opinion on the issue of the statute of limitations, as well as in the court’s several Opinions issued contemporaneously herewith resolving the parties’ other Motions for Summary Judgment.

In support of this claim, CC&S offers the testimony of Edward Kropp, CC&S's Corporate Manager of Real Estate, and Timothy Donahue, Vice-President and Controller of CC&S. They testified that Senser repeatedly advised them, from 1997 through 2002, that Universal's claim, that CC&S could not sell the Property to anyone but Home Depot, was "ridiculous," "ludicrous," and "bullshit." See CC&S Appendix I(b), Exs. N, O & P. CC&S argues that it was reasonable for it to rely on this advice of counsel and, therefore, that counsel is now estopped from invoking the bar of the statute of limitations.

As the Supreme Court recently reiterated,

In addition to the discovery rule, the doctrine of fraudulent concealment serves to toll the running of the statute of limitations. The doctrine is based on a theory of estoppel, and provides that the defendant may not invoke the statute of limitations if, through fraud or concealment, he causes the plaintiff to relax his vigilance or deviate from his right of inquiry into the facts. The doctrine does not require fraud in the strictest sense encompassing an intent to deceive, but rather, fraud in the broadest sense, which includes an unintentional deception. The plaintiff has the burden of proving fraudulent concealment by clear, precise, and convincing evidence. While it is for the court to determine whether an estoppel results from established facts, it is for the jury to say whether the remarks that are alleged to constitute the fraud or concealment were made. . . . [A] statute of limitations that is tolled by virtue of fraudulent concealment begins to run when the injured party knows or reasonably should know of his injury and its cause.

Fine v. Checcio, 870 A.2d 850, 2005 Pa. LEXIS 596, *23-25 (Pa. 2005).

Under this standard, it is for the finder of fact to adjudge Kropp's and Donahue's credibility and to determine if Senser did in fact make such representations to them. Only then can this court determine whether those representations amount to fraudulent concealment. However, the court now finds, as a matter of law, that even if S&S did fraudulently conceal their malpractice during the course of the California Action, once the California trial court indicated that Universal's claims had merit, by finding the language of the Lease to be ambiguous, CC&S "knew or should have known through the diligence that a reasonable person would have

exercised under the circumstances” that it had been injured. *Id.* See Brodie v. Morgan Lewis & Bockius, LLP, 2005 Phila. Ct. Com. Pl. LEXIS 22 (Phila. Co. 2005); FirstSouth Savings Assoc. v. Goldberg & Vergotz, P.C., 45 Pa. D&C 4th 309 (Allegheny Co. 1999), *aff’d*, 799 A.2d 179 (Pa. Super. 2002).

It may have been reasonable for CC&S to believe S&S’ assertions, that Universal’s claims were specious, when the only authority espousing such claims was Universal’s counsel. However, it was not reasonable for CC&S to continue to do so when the California trial court gave credence to those claims in its February 10, 2000, ruling on summary judgment. Therefore, the statute of limitations began to run at that point, if not before. Since the trial court’s summary judgment decision was rendered more than two years, but less than four years before this action was filed, CC&S’ tort and breach of fiduciary duty claims premised on the drafting and interpretation of the Lease are time barred, but its contract claims are not.² See 42 Pa. C. S. §§ 5524, 5525.

CONCLUSION

For all of the foregoing reasons, defendants’ Second Motion for Summary Judgment on Statute of Limitations Grounds is granted in part and denied in part.

BY THE COURT:

C. DARNELL JONES, II, J.

² Of course, if the finder of fact finds that Senser did not make such representations after December 20, 1998, then the contract claims may be barred as well.