



## Alerts

### Illinois Appellate Court Confirms That the Statute of Limitations Commences Once the Plaintiff Has Sufficient Evidence to Know of Her Injury

October 11, 2023

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*Malek v. Chuhak & Tecson, P.C., 2023 IL App (1st) 230723*

#### Brief Summary

Plaintiff, Nancy Malek (plaintiff), filed a complaint against her now ex-husband's counsel, Chuhak & Tecson, P.C. (defendant or C&T), alleging that the defendant aided and abetted a fraudulent transfer of \$13.6 million as part of a scheme to deprive the plaintiff of marital property. The statute of limitations for such a claim in Illinois is two years.

The court held that the statute of limitations for the plaintiff's claims against the defendant commenced once the plaintiff had sufficient evidence to know of her injury such that a reasonable person would know that further inquiry was required to identify whether a legal wrong had been committed.

Even if she did not know whether or how the defendant was involved, knowledge of her injury put her on inquiry notice that the defendant participated in the alleged wrongful conduct. She thus had duty to investigate and inquire further into the issue. Because the statute of limitations began once the plaintiff had knowledge of her injury in 2014, her complaint, which was filed in 2019, was time-barred.

#### Complete Summary

In 2009, the plaintiff and her now ex-husband, Michel Malek, separated. Michel Malek then retained the defendant. Michel Malek allegedly began to fraudulently backdate documents to justify a \$13.6 million transfer to Michel Malek's mother in Lebanon in 2012. In May 2014, the plaintiff filed a petition for the dissolution of marriage.

In December 2014, the plaintiff's divorce attorney filed a motion on behalf of the plaintiff, alleging that Michel Malek participated in a scheme to deplete the marital estate prior to the divorce petition. In December 2015, the defendant produced subpoenaed documents "detailing the events alleged in [plaintiff's] Complaint, along with documents needed to discover documents created by C&T had been backdated."

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In October 2017, the plaintiff received a memorandum from an attorney which advised her that the defendant may have injured her. In September 2019, the plaintiff filed her complaint against the defendant. Plaintiff's claims have a two-year statute of limitations, so the trial court dismissed the plaintiff's complaint as time-barred and the appellate court affirmed.

Plaintiff argued the statute of limitations did not commence until she received the memorandum in October 2017. She claimed that the defendant's wrongful conduct was inherently unknowable until that time because she, as a layperson, could not have been expected to be on notice of the "potentially sophisticated causes of her injuries." The court disagreed and held that the statute of limitations commenced at least in December 2014, when the plaintiff was on inquiry notice of the injury and wrongful conduct of the defendant.

## Case Analysis

In Illinois, knowledge of injury is sufficient to start the clock on the statute of limitations. In this case, the plaintiff's knowledge of Mitchel Malek's wrongful conduct which caused her injury was sufficient to put her on inquiry notice of the defendant's conduct when the conduct was so intertwined, and an investigation into one party should necessarily have revealed involvement of the other.

Additionally, the investigation did reveal the defendant's involvement through the documents produced by the defendant in December 2015. Those documents only needed to be reviewed to reveal the events that formed the basis of her complaint. The source of her injury was not inherently unknowable. Plaintiff simply failed to take the necessary steps to learn the information and undergo the minimal investigation required.

The court distinguished this case from cases where the information was found to be inherently unknowable. In one such case, the source of injury was still unknown to science at the time of injury and could thus not have been known to the plaintiff. In another distinct case, the plaintiff was only suspicious of injury, but could not know the source of the injury without consultation with a professional in the field.

This was also not a case of negligent representation – the plaintiff did not allege that she was negligently represented. In negligent representation cases, a plaintiff may be found to be presumptively unable to discern, as a layperson, the misapplication of legal expertise such that they would need to consult another professional before knowing their injury. In this case, by contrast, the plaintiff knew of her injury and knew it in 2014 when her lawyer filed a motion outlining the alleged scheme (a lawyer's knowledge is imputed to the client).

Plaintiff knew of her injury and was put on inquiry notice of the defendant's involvement in causing her injury. She was required, at the latest, in December 2014 to begin the investigation. And she did not do so. Her investigation provided her with documents detailing the events of the case that would have allowed further discovery of documents showing the defendant backdated documents.

This production occurred in December 2015, well before the statute of limitations lapsed. Plaintiff did not need a third-party professional to inform her of her injury; she and her attorney both knew she had been injured and a minimal investigation would have revealed the defendant as a party who caused her injury. Thus, the statute of limitations, which is two years, commenced in December 2014 and the plaintiff's complaint filed in September 2019 was time-barred.

## Significance of Decision

The statute of limitations commences when a plaintiff has sufficient evidence to have knowledge of her injury such that she is put on inquiry notice of a defendant's involvement. This is true even if the plaintiff does not know exactly how the defendant is involved – the plaintiff is required to investigate the sources of the injury once she has knowledge of the injury.

[1] The court additionally found that plaintiff released her claims against defendant pursuant to a provision in an amended judgment in her divorce proceedings. The court held that the provision unambiguously released all claims held against defendant and also acted as a covenant to not sue defendant in the future for these claims. To find otherwise, that the provision was only a covenant not to sue, would have made the language regarding the release of claims superfluous.