IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

TAYLOR A. DOEBLER, III	:	
Plaintiff	:	NO: 08-02288
vs.	:	
	:	
	:	
TUCKER ARENSBERG, P.C.	:	CIVIL ACTION
Defendant	:	

O P I N I O N
Issued Pursuant to Pa.R.A.P. 1925(a)

This is a legal malpractice action arising out of the Defendant's representation of the Plaintiff and his company, Doebler Seeds, LLC (hereinafter "Doebler"). Plaintiff alleges that the Defendant gave him improper advice with regard to his separation from Doebler's Pennsylvania Hybrids, Inc. (hereinafter "DPH") and failed to provide the Plaintiff with proper advice related to the legal implications of Doebler competing in the retail corn seed market against his former employer, DPH.

On August 20, 2010, this Court granted summary judgment in favor of the Defendant. On November 4, 2010, this Court denied the Plaintiff's Motion for Reconsideration. On November 30, 2010, the Plaintiff filed his Notice of Appeal. In his Concise Statement of Errors Complained of on Appeal, the Plaintiff raises two (2) issues. The Plaintiff contends that the trial court committed reversible error when it determined, as a matter of law, that "Appellant's negligence claim is barred by the statute of limitations." Plaintiff also contends that this Court erred when it determined, "that Appellant could not prove an undertaking by Appellee that caused harm relative to the sale of Appellant's stock in Doebler's Pennsylvania Hybrids, Inc."

The Superior Court has articulated the standard in reviewing a challenge to an order granting summary judgment as follows:

> We may reverse if there has been an error of law or an abuse of discretion. Our standard of review is de novo, and our scope plenary. We must view the record in the light most favorable to the nonmoving party and all doubts as to the existence of a genuine issue of material fact must also be resolved against the moving party. Executive Risk Indemnity Inc. v. CIGNA Corp., 976 A.2d 1170, 1172 (Pa.Super. 2009).
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> Furthermore,
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> [i]n evaluating the trial court's decision to enter summary judgment, we focus on the legal standard articulated in the summary judgment rule. See Pa.R.C.P. 1035.2. The rule states that where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law, summary judgment may be entered. Where the nonmoving party bears the burden of proof on an issue, he may not merely rely on his pleadings or answers in order to survive summary judgment. Failure of a non-moving party to adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof establishes the entitlement of the moving party to a judgment as a matter of law.

Shephard v. Temple University, 948 A.2d 852, 856 (Pa.Super. 2008)(citations omitted).

Statute of Limitations

The elements of a legal malpractice action, sounding in negligence, include: (1) employment of the attorney or other basis for a duty; (2) failure of the attorney to exercise ordinary skill and knowledge; and (3) that such failure was the proximate cause of the harm to the plaintiff. Wachovia Bank, N.A. v. Ferritti, 935 A.2d 565, 570-571 (Pa.Super. 2007), *citing* Bailey v. Tucker, 621 A.2d 108, 112 (Pa. 1993). Count I of Plaintiff's Complaint includes a claim for negligence. The statute of limitations for legal malpractice actions sounding in negligence is two (2) years. See 42 Pa.C.S.A. § 5524. In Wachovia, *supra*, the Superior Court analyzed the issue of

when the statute of limitations begins to run, or is "triggered" in a legal malpractice action. The Superior Court concluded as follows:

> [T]he trigger for the accrual of a legal malpractice action, for statute of limitations purposes, is **not the realization of actual loss, but the occurrence of a breach of duty**. Pennsylvania law provides that:
>
> > the occurrence rule is used to determine when the statute of limitations begins to run in a legal malpractice action. **Under the occurrence rule, the statutory period commences upon the happening of the alleged breach of duty.** Bailey v. Tucker, 533 Pa.237, 251, 621 A.2d 108, 115 (1993). An exception to this rule is the equitable discovery rule which will be applied when the injured party is unable, despite the exercise of due diligence, to know of the injury or its cause. Pocono Raceway v. Pocono Produce, Inc., 503 Pa. 80, 85, 468 A.2d 468, 471 (1983). Lack of knowledge, mistake or misunderstanding, will not toll the running of the statute. Id. 503 Pa. at 85, 468 A.2d at 471.
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> Robbins & Seventko Orthopedic Surgeons, Inc. v. Geisenberger, 449 Pa.Super. 367, 674 A.2d 244, 246-47 (Pa.Super. 1996)(emphasis added). Id. at 572-73. (Emphasis added).

In the present action, the Plaintiff alleged that he consulted with the Defendant in January of 2003. Advice was sought concerning the Plaintiff's plan to expand Doebler Seeds business operations in competition with DPH. (Amended Complaint, ¶ 21). Advice sought included whether "any legal impediments or issues" existed relative to Plaintiff's competition with DPH. (Amended Complaint, ¶ 23). In reliance upon legal advice received, the Plaintiff alleged that he sold his stock. Subsequently on June 27, 2003, DPH initiated litigation against the Plaintiff and Doebler Seeds for common law unfair competition, breach of the board member confidentiality agreement, misappropriation of trade secrets, and breach of fiduciary duty. (Amended Complaint, ¶ 40). The Plaintiff sought damages relative to alleged deficient legal advice received which resulted in injuries and damages in the form of

legal fees and costs and loss of the value of the DPH stock. According to Plaintiff's expert witness, David J. Wolfsohn, the Defendant failed to properly advise the Plaintiff "with respect to how best to lower the risk of litigation" relative to the use of a surname, and failed to properly advise the Plaintiff "regarding how best to avoid litigation over misappropriation of trade secrets…" (Report of David J. Wolfsohn, p. 6).

As set forth above, the "trigger" for the accrual of a legal malpractice action is not when actual losses are realized, but the occurrence of a breach of a duty. Pennsylvania favors strict application of the statutes of limitation. Glenbrook Leasing Co. v. Beausang, 2003 Pa.Super. 489, 839 A.2d 437, 441 (Pa.Super. 2003). Although the equitable discovery rule applies to legal malpractice actions, it is applied only when "the injured party is **unable**, despite the exercise of due diligence, to know of the injury or its cause." Wachovia, *supra*, p. 572 (Emphasis added). Lack of knowledge, mistake or misunderstanding does not toll the running of the statute.

In the present action, the Plaintiff received a letter from counsel for DPH advising him that of litigation risks associated with the use of the Doebler name, and potential litigation relative to his use of trade secret information. This letter was received by the Plaintiff on April 25, 2003. The Plaintiff's testimony regarding this letter was as follows:

> Q: I am going to show you what I will mark as Exhibit 28, it is an April 25 fax from you to Mr. Silverman?
>
> Q: It encloses a letter from an attorney on behalf of DPH?
>
> A: Okay.
>
> Q: You read this letter when you received it on the 25th?

A: Yes.

Q: When you read it, you understood, did you not, that the letter was objecting to Doebler Seeds competing with Doebler's Pennsylvania Hybrids, Inc.?

A: Yes.

Q: You understood that they were objecting to your using the name Doebler?

A: Yes.

Q: You understood that they were objecting to you hiring employees away from them who had confidential information?

A: That is what they were objecting to, yes.

Q: You also understood that they were telling you that if you didn't do certain things they were going to sue you?

A: Yes.

Q: And they identified the things that they wanted you to do to avoid being sued?

A: They identified, say that again.

Q: They identified the things that they wanted you to do to avoid being sued?

A: Yeah. Yeah. I guess. That is in here. Yes. Yeah.

Q: Okay. It is in the -- in Page 2. They were also objecting to the fact that confidential information had been taken, correct?

A: Correct.

Q: And they told you that in order to avoid being sued, they wanted you not to compete; correct?

A: Correct.

Q: Not use the name Doebler?

A: Right.

Q: Not use their confidential information; correct?

A: Correct.

Q: Not take their employees?

A: Correct.

(Taylor A. Doebler, III Dep. 344-346, May 21, 2010).

The Plaintiff alleges that he consulted with the Defendants in order to avoid litigation. Pursuant to the Plaintiff's testimony, it is clear that Plaintiff was aware as early as April 25, 2003 that litigation was imminent. Even if this was insufficient to place the Defendant on notice, suit was filed against the Plaintiff and Doebler Seeds on June 27, 2003. On July 24, 2003, DPH moved for a preliminary injunction against the Plaintiff and Doebler Seeds, LLC.

Plaintiff initiated the instant legal malpractice action by writ of summons filed on September 2, 2005, clearly following the expiration of the statute of limitations period. Accordingly, this Court dismissed Count I of Plaintiff's Amended Complaint alleging negligence.

Causation

The Defendants final argument relates to the speculative nature of claims made and the Plaintiff's inability to prove an undertaking by the Defendants, or causation. The Plaintiff specifically contends that the trial court committed reversible error when it determined that he could not prove an undertaking by the Defendant that caused harm – relative to the sale of the Plaintiff's stock in Doebler Pennyslvania Hybrids, Inc.

The Plaintiff tendered his stock to DPH and DPH shareholders on December 18, 2002. (Taylor A. Doebler, III Dep. 91-93, May 21, 2010). On January 15, 2003, DPH accepted Plaintiff's December 18, 2002 offer to sell his stock to DPH and proposed a stock redemption agreement. (Id. at 123-4). On January 15, 2003, Plaintiff sought deletion of certain sections of the proposed stock redemption agreement. (Id. at 127-8). On January 16, 2003, all of the Plaintiff's proposed changes to the stock redemption agreement were accepted. (Id. at 129). Although causation would normally be a question of fact for the jury, this Court held that there were no triable issues of fact, as it was clear that the Plaintiff's actions involving the stock redemption agreement preceded any involvement by the Defendants. Plaintiff's testimony on this issue was as follows:

> Q: Okay. I want to – I want to go to the third page of this document, it is the January 17, '03 fax; correct?
>
> A: Third page. Okay. Got you. Yep.
>
> Q: It is correct, is it not, that this is the first time you communicated with Dennis Sheaffer regarding Doebler's Pennsylvania Hybrids or any of the issues you wre encountering with respect to Doebler's Pennsylvania Hybrids?
>
> Mr. Haines: Objection to the form of the question.
>
> Q: You may answer.
> A: As far as I am concerned, yes.
>
> * * * * * * * * * * *
> Q: As far as you are concerned, Taylor Doebler, this is the first communication you have with anyone at Tucker Arensberg about Doebler's Pennsylvania Hybrids; correct?
>
> Mr. Haines: Objection, asked and answered.
>
> The Witness: Yes.
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> (Taylor A. Doebler, III Dep. 141-3, May 21, 2010).

As it was clear from the Plaintiff's testimony that the decision to sell his DPH stock and the subsequent negotiations relative to that sale did not involve the Defendants, there was no undertaking by the Defendants to advise the Plaintiff and accordingly, the Defendants claim for damages relative to losses associated with the sale of stock as set forth in Plaintiff's Amended Complaint, Paragraph 61(e) was dismissed.

For the reasons set forth above, and for the reasons set forth in this Court's Orders of August 20, 2010 and November 4, 2010 this Court respectfully requests affirmance of its Order granting summary judgment in favor of the Defendant.

BY THE COURT,

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Richard A. Gray, J.

cc: James A. Wells
1835 Market Street, Suite 2420
Philadelphia, PA 19103

Scott R. Eberle, Esquire
429 Fourth Avenue, Suite 602
Pittsburgh, PA 15219

Gary Weber, Esquire