2018 IL App (1st) 171597-U

FOURTH DIVISION
December 31, 2018

Nos. 1-17-1597 & 1-17-1942 (cons.)

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARY M. SHANNON, Individually and As Successor Executor of the Estate of Eileen A. O'Malley, DANIEL L. O'MALLEY, PATRICK O'MALLEY, EILEEN M. O'MALLEY, PAUL S. O'MALLEY, REV. TIMOTHY J. O'MALLEY, and TERRENCE A. O'MALLEY, Plaintiffs-Appellants, v. WILLIAM O'MALLEY, THOMAS O'MALLEY, JOAN O'MALLEY GROSS, FRANK K. NEIDHART, JR., MCCARTHY DUFFY, LLP, MICHAEL P. RHOADES, KOVITZ SHIFRIN & NESBIT, P.C., SMART & ASSOCIATES, CORNELIUS MURPHY, FGMK, LLC, MARQUETTE BANK and THOMAS MONTGOMERY, Defendants, (Michael P. Rhoades, Kovitz Shifrin & Nesbit, P.C., Cornelius Murphy, & FGMK, LLC, Defendants-Appellees).	)	Appeal from the Circuit Court of Cook County Nos. 11 L 2261 11 L 0914 Honorable Patrick J. Sherlock, Judges Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County dismissing the claims against certain defendants pursuant to section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (2014)) where plaintiffs' causes of action were not timely filed.

¶ 2 Plaintiffs Mary M. Shannon, individually and as successor executor of the estate of Eileen A. O'Malley, along with Daniel L. O'Malley, Patrick O'Malley, Eileen M. O'Malley, Paul S. O'Malley, Timothy J. O'Malley, and Terrence A. O'Malley (collectively plaintiffs) appeal from two orders of the circuit court of Cook County dismissing their legal malpractice claim against Michael P. Rhoades (Rhoades) and Kovitz Shifrin & Nesbit, P.C. (KSN) (collectively the Rhoades defendants) and their accounting malpractice claim against Cornelius Murphy (Murphy) and FGMK, LLC (FGMK) (collectively the Murphy defendants) pursuant to section 2-619(a)(5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2014)). On appeal, plaintiffs contend the circuit court erred when it determined both claims were untimely filed and dismissed the claims as time-barred pursuant to the two-year statute of limitations in subsection 13-214.2(a) of the Code (735 ILCS 5/13-214.2(a) (West 2012) (accounting malpractice)) and subsection 13-214.3(d) of the Code (735 ILCS 5/13-214(d) (West 2012) (legal malpractice)). For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The current matter is one of many lawsuits filed by certain O'Malley children following

the death of their mother, Mrs. O'Malley on February 27, 2009.[1] The plaintiffs here are seven of Mrs. O'Malley's children who have alleged that they were essentially disinherited from their mother's estate. The defendants are three of Mrs. O'Malley's other children, William, Thomas, and Joan (the O'Malley defendants), who plaintiffs allege conspired with various banking, legal, and accounting professionals to effect a series of transactions that provided them with a disproportionate share of their mother's estate. On June 27, 2012, plaintiffs filed the "consolidated amended complaint" (CAC) that named the Rhoades defendants and the Murphy defendants who are specifically the subject of this appeal. This complaint was subsequently amended and filed as the "consolidated third amended complaint" (CTAC) on July 20, 2015.

¶ 5 Allegations as to the Rhoades and Murphy Defendants

¶ 6 Of particular importance to the allegations against the Rhoades and Murphy defendants was Mrs. O'Malley's ownership of Palos Country Club (club) located in Orland Park, Illinois. In 2006, during the course of her ownership, a majority of the club's land was sold to Pulte Homes for residential real estate development. Meanwhile, defendants William and Thomas managed the club but were operating it at a loss. According to plaintiffs' allegations, the sale to Pulte Homes was "disastrous" in terms of its effect on the remaining property of the club because it was encumbered with a restrictive covenant that destroyed the development potential of the property and imposed an "impossible" financial burden on the club.

¶ 7 Rhoades is an attorney who, at the time of the events in question, was a partner at KSN. In 2006, after the sale to Pulte Homes, the Rhoades defendants were approached by William in

[1] The other causes of action filed in the circuit court of Cook County include: *Palos CC, LLC v. Palos Country Club, Inc.* (2009 CH 38883); *O'Malley v. First Midwest Bank Corp.* (2010 L 13574); *O'Malley v. Heller & Associates* (2011 L 12470); *O'Malley v. Desmond & Ahern* (2011 L 10734 and 2011 L 10760); *O'Malley v. Cloister Development* (2011 CH 9415); *O'Malley v. Neidhart, et al.* (2013 L 1084); *Mary Shannon v. Desmond & Ahern, et al.* (2014 L 5249); and *O'Malley v. O'Malley* (2014 L 2104).

his capacity as the club's president, and were retained to provide estate-planning and transactional services related to the assets of the club. The clients of the Rhoades defendants were specifically the club and Mrs. O'Malley. Plaintiffs alleged that the Rhoades defendants, with the assistance of the O'Malley defendants, fraudulently induced Mrs. O'Malley to gift the club to William and Thomas. Mrs. O'Malley had previously loaned $9 million to the club which was to be repaid to Mrs. O'Malley. After obtaining ownership of the club, the O'Malley defendants then converted the loan to a $9 million capital contribution so that the club would not have to repay the $9 million loan to Mrs. O'Malley. The O'Malley defendants then helped themselves to the loan proceeds after which the Rhoades defendants created two limited liability companies, Palos CC, LLC (which took over the management of the club) and Southmoor, LLC (which was formed to receive the land interests of the club). The O'Malley defendants then purchased Southmoor, LLC for $10,000, for a fraction of its fair market value.

¶ 8 Plaintiffs filed claims of attorney malpractice and accounting malpractice against the Rhoades and Murphy defendants. In regards to the attorney malpractice claim filed against the Rhoades defendants, plaintiffs alleged that they (1) failed to meet or speak with Mrs. O'Malley directly, (2) took direction regarding her estate planning from the O'Malley defendants, (3) failed to investigate her susceptibility to undue influence, (4) failed to take steps to preserve documentary evidence, (5) failed to recognize improper lending practices, and (6) failed to recognize improper representation of Mrs. O'Malley in regards to her other attorneys and accountants.

¶ 9 While the complaint contained fifteen counts against all of the defendants, only nine pertained to the Rhoades defendants as set forth in the CTAC: tortious interference with testamentary expectancies (count I); breach of fiduciary duties (count II); fraud (count III);

conversion (count V); negligent legal malpractice (count VII); spoliation (count IX); aiding and abetting (count XI); civil conspiracy (count XIV); and unjust enrichment (count XV).

¶ 10 The Murphy defendants provided accounting and estate planning services to Mrs. O'Malley and also assisted in the transfer of Mrs. O'Malley's assets and tax return filings. The plaintiffs specifically alleged the Murphy defendants prepared the 2006 tax return for the club as well as gift tax returns for 2007. According to plaintiffs' allegations, these tax returns reflected the fact that Mrs. O'Malley's previous loan was converted to paid-in capital of the club. Plaintiffs further alleged that the Murphy defendants prepared these tax returns "having discussed this theft strategy" with the O'Malley defendants and were "complicit" in allowing William and Thomas to take $9 million from Mrs. O'Malley. In addition to the preparation of the tax returns, plaintiffs alleged that the Murphy defendants were complicit in the establishment of the two LLCs and the transfer of land from Palos CC, LLC to Southmoor, LLC.

¶ 11 Only eight of the fifteen counts pertained to the Murphy defendants as set forth in the CTAC: tortious interference with testamentary expectancies (count I); breach of fiduciary duties (count II); fraud (count III); conversion (count V); negligent accounting malpractice (count VIII); aiding and abetting (count XII); civil conspiracy (count XIV); and unjust enrichment (count XV).

¶ 12 Relevant Legal Proceedings Subsequent to Mrs. O'Malley's Death

¶ 13 Upon Mrs. O'Malley's death in February 2009, her will was admitted to probate on June 15, 2009. On July 2, 2009, several of the plaintiffs herein, namely Patrick, Eileen, Daniel, and Paul, filed a will contest challenging the validity of certain amendments to Mrs. O'Malley's 2009 estate plan. In that proceeding, it was alleged that Mrs. O'Malley was ill for several years before her death and was mentally incapacitated at the time she executed the 2009 amendment. It was

further alleged that the O'Malley defendants entered into a conspiracy to assert undue influence over Mrs. O'Malley and that William breached his fiduciary duties to Mrs. O'Malley in connection with the transfer of numerous assets from Mrs. O'Malley to the O'Malley defendants.

¶ 14 On August 21, 2009, William executed an affidavit in which he purported to "set the record straight" regarding the circumstances related to his mother's estate. In the affidavit, William averred that the gift of the club was a "complete fraud" and that Mrs. O'Malley was not aware of the contents of the documents "related to the 2007 gift of Palos Country Club, including but not limited to [the] operating agreement of Southmoor, LLC, the operating agreement of Palos CC, LLC, the US 709 gift tax return for 2007 and the ABI of the land trust holding title to the land of Palos Country Club." Notably, William's affidavit did not name the Rhoades or Murphy defendants, but did name other defendants who are not parties to this appeal. This affidavit was later attached to the CAC and CTAC, which are the subject of this appeal.

¶ 15 Commencing in October 2009, each of the plaintiffs litigated a matter in the chancery division of the circuit court of Cook County in which they claimed that William and Thomas wrongfully obtained ownership and control of the club (*Palos CC, LLC v. Palos Country Club, Inc., et al.*, 2009 CH 38883) (chancery litigation). In the chancery litigation, Thomas claimed that he was the rightful owner and manager of the club while plaintiffs contended they were. The transactional and estate planning documents prepared by the Rhoades defendants were produced, attached, and litigated in the chancery action. Rhoades was identified as Mrs. O'Malley's attorney in these documents.

¶ 16 On February 12, 2010, William gave a deposition related to the chancery litigation in which he testified that Rhoades was one of the attorneys who advised Mrs. O'Malley concerning the gift of the club. He testified regarding the circumstances of the transaction and that Rhoades

prepared the documents that created the gift of a majority interest in the club to him. He also testified regarding the extent of Rhoades' interactions with Mrs. O'Malley and the extent of her input on the estate plan.

¶ 17 The Procedural History of the Current Litigation

¶ 18 The original complaint in this action was filed on January 25, 2011, but they did not name the Rhoades or Murphy defendants until the CAC was filed on June 27, 2012. Subsequently the Rhoades defendants filed a motion to dismiss the CAC pursuant to sections 2-615 and 2-619(a)(5) of the Code and the Murphy defendants filed a motion to dismiss the CAC pursuant to section 2-615 of the Code. On January 22, 2014, the trial court denied the Rhoades defendants' motion and granted the Murphy defendants' motion. Thereafter, the matter was transferred to a different judge who, upon motion, reconsidered the trial court's January 22, 2014, ruling.

¶ 19 Pertinent to this appeal is the trial court's reconsideration of the January 22, 2014, order with respect to the Rhoades defendants. In granting the motion to reconsider, the trial court concluded the legal malpractice claim against the Rhoades defendants was barred by the statute of limitations set forth in subsection 13-214.3(d) of the Code and dismissed that count with prejudice. Specifically, the trial court determined that the injury at issue here occurred upon the death of Mrs. O'Malley and therefore plaintiffs had two years from February 27, 2009 to file suit against the Rhoades defendants and they did not timely file the action. In a separate order entered the same day, the trial court stated that "[a]ll of plaintiffs' allegations that any attorney defendant committed professional malfeasance or negligence have been dismissed with prejudice and shall not be a part of the CTAC except to preserve the dismissal of those allegations for appeal." The trial court further dismissed the conspiracy to defraud, civil conspiracy, breach of

fiduciary duty, and aiding and abetting claims against the Rhoades defendants under section 2-615 of the Code as lacking the requisite specificity. The trial court, however, granted plaintiffs leave to amend these four claims.

¶ 20 Subsequently, plaintiffs moved for the trial court to reconsider, in pertinent part, its March 17, 2015, order dismissing the legal malpractice claim against the attorney defendants (which included the Rhoades defendants) on statute of limitations grounds. In an order dated June 22, 2015, the trial court denied plaintiffs' motion to reconsider finding that subsection 13-214.3(d) of the Code applied and barred their claims. In its order, the trial court stated, "[t]he plaintiffs' own allegations are that they were injured when Mrs. O'Malley died and (thanks to defendants' alleged malpractice) left a seriously depleted estate for them to inherit." Consequently, based on the factual circumstances of the case, plaintiffs had two years from the date of their mother's death to file claims against the Rhoades defendants.

¶ 21 On July 20, 2015, plaintiffs filed the CTAC which set forth more facts as requested by the trial court. Notably, in regard to the legal malpractice claim against the Rhoades defendants, plaintiffs added allegations regarding the "theft" of the club and spoliation of evidence. The Rhoades and Murphy defendants moved to dismiss the CTAC. After the matter was fully briefed and argued, the trial court granted their motions. As to the Rhoades defendants, the trial court concluded that the CTAC lacked specificity to support the claims made in counts I, II, III, V, VII, XIV, and XV. The trial court further stood on its prior finding that the CTAC was untimely as to the Rhoades defendants pursuant to subsection 13-214.3(d) and dismissed count VII (legal malpractice). Regarding the Murphy defendants, the trial court determined that the claims of the CTAC were untimely pursuant to subsection 13-214.2(a) of the Code where plaintiffs knew or should have known by 2009 of the alleged malpractice (based on the will contest and William's

affidavit) and that triggered an obligation for them to investigate further into the 2007 gift tax return prepared by the Murphy defendants.

¶ 22 Subsequently, the Rhoades defendants requested clarification of the November 10, 2015, order due to the fact the order was inconsistent in the number of counts that were dismissed. On December 21, 2015, the trial court entered a new order granting the Rhoades defendants' motion to dismiss which clearly indicated that all nine counts against them were dismissed with prejudice for the same reasons set forth in the November 10, 2015, order.

¶ 23 The litigation between the parties continued. Then, on May 24, 2017, the Murphy defendants requested and were granted an Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) finding for the November 10, 2015, order. Plaintiffs then requested a Rule 304(a) finding for the trial court's December 21, 2015,[2] order regarding the Rhoades defendants, which was granted on July 6, 2017.

¶ 24 Plaintiffs filed two separate notices of appeal in this case: (1) No. 1-17-1597 was directed towards the Murphy defendants challenging the orders of January 22, 2014, March 17, 2015, and November 10, 2015; and (2) No. 1-17-1942 was directed toward the Rhoades defendants challenging the orders of January 22, 2014, March 17, 2015, June 22, 2015, and July 6, 2017. We consolidated these appeals for our review.

¶ 25 ANALYSIS

¶ 26 On appeal, plaintiffs contend that the trial court erred when it dismissed as untimely its claims as to the Rhoades and Murphy defendants. For the reasons that follow, we affirm the judgment of the trial court.

[2] Plaintiffs' motion seeks a Rule 304(a) finding on the "December 22, 2015" order. Since no December 22, 2015, order exists in the record, we presume this was a typographical error.

¶ 27 Jurisdiction

¶ 28 Prior to addressing the merits of plaintiffs' appeal, we address our jurisdiction. The Rhoades defendants maintain that plaintiffs' appeal of the June 22, 2015, order is untimely. According to the Rhoades defendants, this order was a nonfinal order as it did not finally determine the litigation against them on the merits and it did not dismiss all claims against all defendants. In addition, the Rhoades defendants assert that following the June 22, 2015, order plaintiffs requested and were granted leave to replead. The CTAC was subsequently filed on July 20, 2015, and dismissed with prejudice on December 21, 2015. Then, on July 6, 2017, plaintiffs' motion for a 304(a) finding regarding the December 21, 2015, order was granted. Defendants observe, however, that this Rule 304(a) finding related only to the December 21, 2015, order and not the June 22, 2015, order plaintiffs now contest on appeal. Accordingly, defendants maintain this court lacks jurisdiction over plaintiffs' arguments regarding the June 22, 2015, order.

¶ 29 The filing of a notice of appeal is the jurisdictional step that initiates appellate review. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011). "Unless there is a properly filed notice of appeal, the appellate court lacks jurisdiction over the matter and is obliged to dismiss the appeal." *Id.* at 176. Illinois Supreme Court Rule 303(b) (eff. July 1, 2017) provides that a notice of appeal "shall specify the judgment or part thereof or other orders appealed from." "A notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal." *General Motors Corp.*, 242 Ill. 2d at 176.

¶ 30 The purpose of the notice of appeal is to notify the prevailing party that the other party seeks review of the trial court's decision. *Id.* The notice of appeal is to be considered as a whole and will be found sufficient to confer jurisdiction on a reviewing court when it fairly and

adequately sets out the judgment complained of and the relief sought, thus informing the prevailing party of the nature of the appeal. *Id.* Therefore, if the deficiency in notice is one of form, and not substance, and the appellee is not prejudiced, failure to strictly comply with the form of notice is not fatal. *Id.*

¶ 31 Here, plantiffs' notice of appeal provides, in pertinent part, as follows:

> "[plantiffs] pursuant to Illinois Supreme Court Rules 301, 303, and 304(a) hereby appeal to the Appellate Court of Illinois, First District, from the following Orders:
>
> 1. Order entered on January 22, 2014, which granted Defendants-Appellees FGMK, LLC and Con Murphy's Motion to Dismiss Plaintiffs' Complaint [ ];
>
> 2. Order entered March 17, 2015, striking Plaintiffs-Appellants' Consolidated Amended Complaint [ ];
>
> 3. Order entered March 17, 2015, dismissing Plaintiffs-Appellants' Consolidated Amended Complaint [ ];
>
> 4. Order entered June 22, 2015 dismissing with prejudice Defendants-Appellees, Michael Rhoades and Kovitz Shifrin & Nesbit, P.C. [ ]; and
>
> 5. On July 6, 2017, the trial court entered an order granting plaintiffs [*sic*] motion for 304(a) finding, finding no just reason to delay appeal of the dismissal of Michael Rhoades and Kovitz Shifrin & Nesbit, P.C. [ ].
>
> Copies of those Orders are attached hereto. Plaintiffs-Appellants request that the above-referenced Orders be reversed and vacated and for all other relief that is deemed just and equitable."

¶ 32 In their notice of appeal, plaintiffs sought review of orders dismissing the CAC not the CTAC. The notice of appeal, however, also referenced the July 6, 2017, order granting the Rule

304(a) finding as to the December 21, 2015, judgment dismissing the claims against them with prejudice as set forth in the CTAC. While plaintiffs did not specifically request review of the December 21, 2015, order dismissing the CTAC in their notice of appeal, the July 6, 2017, order does reference the December 21, 2015, order and thus sufficiently apprised the Rhoades defendants that they would be seeking review of this order. See *JPMorgan Chase Bank, National Association v. Ivanov*, 2014 IL App (1st) 133553, ¶ 41.

¶ 33 Moreover, on appeal plaintiffs do not challenge the trial court's rulings regarding the dismissal of any of their claims pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)). Instead, plaintiffs' sole contention on appeal is that the trial court erred when it dismissed their claims pursuant to section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2014)) as untimely. In its December 21, 2015, order, the trial court observed that additional claims were made in the CTAC, but that its ruling regarding the untimeliness of plaintiffs' claims against the Rhoades defendants remained unchanged. Furthermore, the Rhoades defendants do not argue that they would be prejudiced if we reviewed the December 21, 2015, order and their response brief contains substantive argument as to the validity of the trial court's basis as set forth in the December 21, 2015 order. See *Pennymac Corp. v. Jenkins*, 2018 IL App (1st) 171191, ¶ 20. Accordingly, we conclude that we have jurisdiction to review the trial court's determination that plaintiffs' claims were untimely and warranted dismissal of those claims against the Rhoades defendants pursuant to section 2-619(a)(5) of the Code. See *JPMorgan Chase Bank, National Association*, 2014 IL App (1st) 133553, ¶ 41

¶ 34 Standard of Review

¶ 35 A motion to dismiss pursuant to section 2-619 (735 ILCS 5/2-619 (West 2014)) admits the legal sufficiency of the complaint, but asserts certain defects, defenses or other affirmative

matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002). Specifically, subsection (a)(5) of section 2-619 allows dismissal when "the action was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2014). In ruling on a section 2-619 motion, all pleadings and supporting documents must be construed in a light most favorable to the nonmoving party, and the motion should be granted only where no material facts are in dispute and the defendant is entitled to dismissal as a matter of law. *Kheirkhahvash v. Baniassadi*, 407 Ill. App. 3d 171, 176 (2011); *Mayfield v. ACME Barrel Company*, 258 Ill. App. 3d 32, 34 (1994).

¶ 36 We review a trial court's ruling on a section 2-619 motion *de novo*. *Freeman v. Williamson*, 383 Ill. App. 3d 933, 936 (2008). *De novo* consideration means we perform the same analysis that a trial court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). We may affirm for any basis that appears in the record. *Joyce v. DLA Piper Rudnick Gray Cary LLP*, 382 Ill. App. 3d 632, 638 (2008).

¶ 37 Accounting Malpractice

¶ 38 On appeal, plaintiffs first argue the trial court erred when it applied subsection 13-214.2(a) of the Code (735 ILCS 5/13-214.2(a) (West 2012)) and dismissed the claims against the Murphy defendants pursuant to section 2-619(a)(5) of the Code. Plaintiffs maintain that if subsection 13-214.2(a) applies here, the statute of limitations did not commence running until they became aware of the injuries caused by the Murphy defendants during Murphy's August 2011 deposition and thus their June 2012 complaint was timely filed. Plaintiffs further argue that the five-year statute of limitations set forth in section 13-215 of the Code (735 ILCS 5/13-215 (West 2012)) involving fraudulent concealment applies to their claims against the Murphy defendants.

¶ 39 In response, the Murphy defendants contend plaintiffs had knowledge of their injuries as alleged when they filed their will contest in July 2009, which subsequently incorporated William's August 2009 affidavit. The Murphy defendants further argue that section 13-215 of the Code does not apply here because plaintiffs failed to plead any facts demonstrating that fraud prevented the discovery of their causes of action. For the reasons that follow, we affirm the trial court's order granting the Murphy defendants' section 2-619(a)(5) motion to dismiss plaintiffs' claims as untimely.

¶ 40 We first address plaintiffs' arguments pursuant to subsection 13-214.2(a) of the Code. 735 ILCS 5/13-214.2(a) (West 2012). Plaintiffs contend that if the two-year statute of limitations set forth in subsection 13-214.2(a) of the Code applies, their complaint against the Murphy defendants was timely filed because they "were not aware of their injuries and that they were wrongfully caused" until Murphy's deposition in August 2011. According to plaintiffs, it was not until the deposition that plaintiffs learned the Murphy defendants (1) had followed instructions from William to eliminate $9 million owed to Mrs. O'Malley without consulting her, (2) took a deduction for a conservation easement in 2005 when it was of no value to Mrs. O'Malley (again at the direction of William and without consulting Mrs. O'Malley), and (3) only communicated with Mrs. O'Malley twice over the course of their 10-year representation. Plaintiffs further maintain the question of when they knew of their injuries is a question of fact to be determined by the fact-finder.

¶ 41 Subsection 13-214.2(a) provides:

> "Actions based upon tort, contract or otherwise against any person, partnership or corporation registered pursuant to the Illinois Public Accounting Act, as amended, or any of its employees, partners, members, officers or shareholders, for an act or omission in

> the performance of professional services shall be commenced within 2 years from the time the person bringing an action knew or should reasonably have known of such act or omission." 735 ILCS 5/13-214.2(a) (West 2012).

This statutory provision includes a discovery rule that delays commencement of the statute of limitations until the plaintiff knows or reasonably should have known of the injury and that the injury may have been wrongfully caused. *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 130 (2011); *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 672 (1997). The term "wrongfully caused" as used in the discovery rule does not mean knowledge of negligent conduct or knowledge of the existence of a cause of action. *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 22. The discovery rule "has been interpreted to delay commencement until the person has a reasonable belief that the injury was caused by wrongful conduct thereby creating an obligation to inquire further on that issue." *Dancor*, 288 Ill. App. 3d at 673. In other words, the mere fact that the extent of injury is not immediately known or ascertainable does not postpone the triggering of the statute of limitations. *Khan*, 2012 IL 112219, ¶ 22; *Dancor*, 288 Ill. App. 3d at 677. Moreover, knowledge that an injury was wrongfully caused does not mean knowledge of a specific defendant's negligent conduct. *Janousek v. Katten Muchin Rosenman LLP*, 2015 IL App (1st) 142989, ¶¶ 13, 21. Although the issue of when a party knew or should have known both of the injury and that it was wrongfully caused is generally one of fact, where the facts are not in dispute, and only one conclusion can be drawn from those facts, the question may be determined by the court as a matter of law. See *Young v. McKiegue*, 303 Ill. App. 3d 380, 387 (1999); *Wells v. Travis*, 284 Ill. App. 3d 282, 286 (1996).

¶ 42 In this case, the discovery rule became operative and the statute of limitations

commenced at the time plaintiffs had enough information to put them on notice that they were injured and that the injury may have been wrongfully caused. See *Dancor*, 288 Ill. App. 3d at 674. In determining when plaintiffs were on notice, we find *Dancor* to be instructive. *Dancor*, 288 Ill. App. 3d 666. In *Dancor*, the plaintiff filed a negligence claim against an accounting firm for its failure to detect warehouse fraud and embezzlement committed by one of plaintiff's officers. *Id.* at 668. The defendant moved to dismiss the claims based on section 13-214.2 of the Code, arguing the plaintiff knew or should have known of the defendant's negligence and failure to discover the fraud when the plaintiff filed a federal lawsuit against the officer, which detailed specific acts of fraud. *Id.* at 669. The plaintiff responded that it was not until it retrieved all of its accounting records ten months after it filed the federal lawsuit that it was able to determine that it had been injured by the defendant. *Id.* at 670-72. The trial court granted the defendant's motion, finding the information the plaintiff possessed that enabled it to file a federal lawsuit against its officer was enough to put it on notice of a potential claim against the defendant. *Id.* at 671. On appeal, the plaintiff argued it could not have known about the defendant's negligent conduct and malpractice until it received a professional opinion to that effect, ten months after the filing of the federal lawsuit against its officer. *Id.* at 673.

¶ 43 The reviewing court affirmed, noting that the discovery rule does not delay the commencement of the statute of limitations until the plaintiff knows or should know of negligent conduct or of a cause of action, as the plaintiff suggested. *Id.* at 673-74. The court observed that such a standard would allow a party to wait to bring an action far beyond a reasonable time when sufficient notice has been received of a possible invasion of a plaintiff's legally protected interests. *Id.* at 673. The court further observed that the information in the federal complaint was used to support the plaintiff's charge of malpractice against the defendant. *Id.* at 674. When

the federal complaint was filed, the plaintiff thus had enough information to put it on notice that it was injured and that the injury might have been wrongfully caused. *Id.* The court found that the discovery rule therefore became operative and the statute of limitations began to run when the plaintiff filed its federal complaint against its officer. *Id.*

¶ 44 Here, plaintiffs alleged in the CTAC that the Murphy defendants provided accounting services to Mrs. O'Malley by assisting in the transfer of assets and preparing and filing her tax returns and the tax returns for the club. Plaintiffs specifically attacked a 2007 gift tax return prepared by the Murphy defendants along with a myriad of other improper transactions. Plaintiffs further alleged that on August 21, 2009, William provided plaintiffs with an affidavit wherein he averred that he and several of his siblings used their influence to convince Mrs. O'Malley to sign certain documents which she would not have signed had she been fully aware of their contents. A portion of those documents included "[a]ll documents related to the 2007 gift of Palos Country Club, including but not limited to [the] operating agreement of Southmoor, LLC, the operating agreement of Palos CC, LLC, *the US 709 gift tax return for 2007* and the ABI of the land trust holding title to the land of Palos Country Club." (Emphasis added.) William further averred that "[t]he gift of Palos Country Club was a complete fraud." Significantly, the 2007 gift tax return is the document which transformed Mrs. O'Malley's loan to the club into an "additional capital contribution." It is therefore undisputed that plaintiffs were aware of a fraudulent gift tax return when they received William's affidavit on August 21, 2009.

¶ 45 Similar to *Dancor*, plaintiffs here unquestionably had sufficient knowledge to cause them to inquire further into wrongful conduct by the Murphy defendants in filing possibly fraudulent tax returns for Mrs. O'Malley and the club based upon the statements in William's affidavit. See *Id*. at 673-74. Although plaintiffs may not have had full knowledge on August 21, 2009, of the

extent of the Murphy defendants' involvement in the O'Malley defendants' scheme or of specific actionable conduct, the knowledge they did possess at that time was sufficient to put them on notice of the Murphy defendants' possible invasion of their legally protected rights. See *Khan*, 2012 IL 112219, ¶ 22; *Dancor*, 288 Ill. App. 3d at 672-75; *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 84-87 (1995). At that point, plaintiffs were required to investigate and inquire further. *Khan*, 2012 IL 112219, ¶¶ 21-22; *Dancor*, 288 Ill. App. 3d at 673-75; *Hermitage Corp.*, 166 Ill. 2d at 86. Under the discovery rule provided in subsection 13-214.2(a), plaintiffs had two years from August 21, 2009, to make that inquiry and to file their cause of action against the Murphy defendants before that action became time-barred on August 21, 2011. Instead, plaintiffs delayed in filing their cause of action against the Murphy defendants until June 27, 2012. Accordingly, plaintiffs' June 2012, complaint was untimely. 735 ILCS 5/13-214.2(a) (West 2012); see *Dancor*, 288 Ill. App. 3d at 672-75.

¶ 46 Even if plaintiffs overlooked Murphy's role in the 2007 gift of the club, we reiterate that plaintiffs' knowledge that an injury has been wrongfully caused does not mean knowledge of a specific defendant's conduct. *Janousek*, 2015 IL App (1st) 142989, ¶¶ 13, 21. Plaintiffs knew they were injured by the gift and that such injury was wrongfully caused, at the very latest, when they received William's 2009 affidavit because the affidavit stated the gift "was a complete fraud." Plaintiffs' June 2012 complaint was therefore untimely. 735 ILCS 5/13-214.2(a) (West 2012); see *Dancor*, 288 Ill. App. 3d at 672-75. Accordingly, we affirm the circuit court's judgment dismissing plaintiffs' complaint against defendants as the accounting malpractice claims were not filed within the two-year statute of limitations. See 735 ILCS 5/13-214.2(a) (West 2012).

¶ 47 Plaintiffs maintain, however, that the five-year statute of limitations set forth in section

13-215 of the Code applies. This section provides:

> "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." 735 ILCS 5/13-215 (West 2012).

¶ 48 Generally, the concealment of a cause of action sufficient to toll the statute of limitations requires affirmative acts or representations designed to prevent discovery of the action or to induce a claimant into delaying the filing of his or her claim. See *Dancor*, 288 Ill. App. 3d at 675. The allegedly fraudulent act that forms the basis of the cause of action may not constitute fraudulent concealment in the absence of a showing that the defendant concealed the cause of action. *Barratt v. Goldberg*, 296 Ill. App. 3d 252, 257 (1998). Moreover, silence alone on the part of the defendant, accompanied by the plaintiff's failure to discover the cause of action, ordinarily does not constitute fraudulent concealment. *Wisniewski v. Diocese of Belleville*, 406 Ill. App. 3d 1119, 1154 (2011). Mere silence, however, is sufficient to establish fraudulent concealment where a fiduciary relationship exists between the parties. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 76 (2006). A fiduciary relationship may arise as a matter of law from the existence of a particular relationship, such as an attorney-client relationship, or come about when " 'one party reposes trust and confidence in another, who thereby gains a resulting influence and a superiority over the subservient party.' " *Miller v. Harris*, 2013 IL App (2d) 120512, ¶ 21 (quoting *Khan*, 2012 IL 112219, ¶ 58). Where a fiduciary relationship does not exist as a matter of law, a plaintiff must plead facts from which a fiduciary relationship arises. *Santa Claus Industries, Inc. v. First National Bank*, 216 Ill. App. 3d 231, 238 (1991).

¶ 49 Here, plaintiffs initially argue in a conclusory fashion that "[d]efendants stood in a

fiduciary relationship with Mrs. O'Malley. Thus, their mere silence in the face of their duty of full disclosure is sufficient to constitute fraudulent concealment." Plaintiffs fail to argue that, as a matter of law, an accountant has a fiduciary relationship with his or her client, and our independent research confirms that a fiduciary relationship between an accountant and a client does not arise as a matter of law. See *In re Estate of Stahling*, 2013 IL App (4th) 120271, ¶ 18 (stating that a fiduciary relationship may exist as a matter of law between partners, joint adventurers, trustee and beneficiary, guardian and ward, attorney and client, and principal and agent; where the fiduciary relationship does not exist as a matter of law, it may be shown to exist as a matter of fact and must be proved by clear and convincing evidence).

¶ 50 Plaintiffs were therefore required to demonstrate the existence of a fiduciary relationship. See *Santa Claus Industries*, 216 Ill. App. 3d at 238. A plaintiff can demonstrate a fiduciary relationship by pleading that trust is reposed on one party which results in superiority and influence over the other party. *In re Estate of Long*, 311 Ill. App. 3d 959, 963 (2000). Our review of the operative complaint reveals that plaintiffs failed to allege any facts indicating the Murphy defendants retained such trust or influence over Mrs. O'Malley sufficient to create a fiduciary relationship. See *id*. In fact, contrary to a finding of sufficient influence over Mrs. O'Malley, plaintiffs allege on appeal that the Murphy defendants communicated with Mrs. O'Malley only twice during the ten years that they represented her. Accordingly, the Murphy defendants' mere silence is insufficient to constitute fraudulent concealment, and plaintiffs were required to allege affirmative acts or representations by the Murphy defendants designed to prevent plaintiffs' discovery of the cause of action. See *Dancor*, 288 Ill. App. 3d at 675.

¶ 51 Furthermore, in order for the five-year statute of limitations set forth in section 13-215 to apply, plaintiffs must plead and prove that fraud prevented discovery of a cause of action.

Henderson Square Condominium Ass'n v. LAB Townhomes, LLC, 2015 IL 118139, ¶ 36; *McIntosh v. Cueto*, 323 Ill. App. 3d 384, 390 (2001). See *Barratt*, 296 Ill. App. 3d at 258. Plaintiffs maintain the Murphy defendants affirmatively engaged in fraudulent concealment by (1) converting the $9 million loan due to Mrs. O'Malley into "paid in capital" without ever informing Mrs. O'Malley, and (2) speaking to Mrs. O'Malley only twice during their ten years of representing her and failing to inform her of several accounting transactions that were to her detriment.

¶ 52 It is unclear how these actions prevented plaintiffs from discovering their action against the Murphy defendants or induced them into delaying the filing of their claims, as required to toll the statute of limitations based on fraudulent concealment. See *Dancor*, 288 Ill. App. 3d at 675. Moreover, the Murphy defendants' mere silence by failing to inform Mrs. O'Malley of the various transactions is insufficient to constitute fraudulent concealment. See *Wisniewski*, 406 Ill. App. 3d at 1154. Our review of the CTAC further reveals plaintiffs failed to allege any affirmative acts by the Murphy defendants designed to prevent plaintiffs' discovery of the cause of action. See *Dancor*, 288 Ill. App. 3d at 675. Plaintiffs have therefore failed to establish the Murphy defendants fraudulently concealed the cause of action. *Id*. Accordingly, the five-year statute of limitations provided in section 13-215 of the Code does not apply.

¶ 53 Legal Malpractice

¶ 54 Plaintiffs next contend the trial court erred in applying subsection 13-214.3(d) of the Code (735 ILCS 5/13-214.3(d) (West 2012)) because the injuries alleged all occurred prior to Mrs. O'Malley's death in 2009; specifically, the transactions at issue involved in the transfer of the club.

¶ 55 In response, the Rhoades defendants maintain that the trial court correctly applied the

statute of limitations as set forth in subsection 13-214.3(d) because plaintiffs' alleged damages did not occur until after Mrs. O'Malley's death. Specifically, the Rhoades defendants point to various allegations wherein plaintiffs allege that the defendants as a whole effectuated a scheme consisting of "improper transactions and deprived Mrs. O'Malley's *estate* [o]f assets that otherwise would have entered the *estate* and, as a result, deprived the individual Plaintiffs of their rightful expectancies from the *estate*." (Emphasis added.)

¶ 56 At issue in this case are the limitations periods contained in section 13-214.3 of the Code. That section states, in relevant part:

> "(b) An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services *** must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.
>
> (c) Except as provided in subsection (d), an action described in subsection (b) may not be commenced in any event more than 6 years after the date on which the act or omission occurred.
>
> (d) When the injury caused by the act or omission does not occur until the death of the person for whom the professional services were rendered, the action may be commenced within 2 years after the date of the person's death unless letters of office are issued or the person's will is admitted to probate within that 2 year period, in which case the action must be commenced within the time for filing claims against the estate or a petition contesting the validity of the will of the deceased person, whichever is later, as provided in the Probate Act of 1975." 735 ILCS 5/13-214.3 (West 2012).

¶ 57 Similar to section 13-214.2 discussed above, subsection 13-214.3(b) is also a statute of

limitations incorporating the "discovery rule," which tolls the limitations period to the time the plaintiff knew or reasonably should have known of the injury. *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 10. Subsection 13-214.3(b) provides a two year limitations period. 735 ILCS 5/13-214.3(b) (West 2012). At the same time, subsection 13-214.3(c) is a statute of repose that serves to curtail the "long tail" of liability that could otherwise result from the discovery rule. *Snyder*, 2011 IL 111052, ¶ 10. A statute of repose begins to run when an event occurs. *Id.* It is not tied to the existence of an injury but rather extinguishes liability after a fixed period of time. *Id.* Subsection 13-214.3(c) provides a six-year statute of repose. 735 ILCS 5/13-214.3(c) (West 2012).

¶ 58 Subsection 13-214.3(d) contains an exception to subsections (b) and (c). *DeLuna*, 223 Ill. 2d at 74. Subsection 13-214.3(d) provides distinct repose periods that apply when the injury caused by the malpractice does not occur until the client's death. 735 ILCS 5/13-214.3(d) (West 2012); *Wackrow v. Niemi*, 231 Ill. 2d 418, 423-24 (2008). Under subsection 13-214.3(d), if letters of office are issued or the decedent's will is admitted to probate within two years of the decedent's death, the action must be brought within the time for filing claims against the estate or a petition contesting the validity of the will of the deceased person, whichever is later, as provided in the Probate Act (755 ILCS 5/8-3(a) (West 2012)). 735 ILCS 5/13-214.3(d) (West 2012). In contrast, if no letters of office are issued and no will is admitted to probate during the relevant period, the action must be filed within two years of the death of the person to whom the professional services were rendered. *Id.*

¶ 59 As stated, subsection 13-214.3(d) is an exception to the general statute of limitations set forth in subsection 13-214.3(b). *DeLuna*, 223 Ill. 2d at 74. Accordingly, even if we were to disagree with the trial court's determination that the allegations against the Rhoades defendants

were untimely under subsection 13-214.3(d), we would still conclude that the allegations were time-barred by statute of limitations in subsection 13-214.3(b). See *Joyce*, 382 Ill. App. 3d at 638 (we may affirm for any basis that appears in the record).

¶ 60 The statute of limitations contained in subsection 13-214.3(b), as previously stated, incorporates the discovery rule, which serves to "postpone the start of the period of limitations until the injured party knows or reasonably should know of the injury and knows or reasonably should know that the injury was wrongfully caused." *Khan*, 2012 IL 112219, ¶ 20. Historically, courts in Illinois have recognized that " '[t]he phrase "wrongfully caused" does not mean knowledge of a *specific* defendant's negligent conduct or knowledge of the existence of a cause of action." (Emphasis in original.) *Castello v. Kalis*, 352 Ill. App. 3d 736, 744 (2004) (quoting *Young*, 303 Ill. App. 3d at 388, and collecting cases). "Rather, the term refers to when an injured party 'becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved.' " *Castello*, 352 Ill. App. 3d at 744-45 (quoting *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 416 (1981)).

¶ 61 In other words, "when a party knows or reasonably should know both that an injury has occurred and that it was wrongfully caused, the statute begins to run and the party is under an obligation to inquire further to determine whether an actionable wrong was committed. In that way, an injured person is not held to a standard of knowing the inherently unknowable [citation], yet once it reasonably appears that an injury was wrongfully caused, the party may not slumber on his rights.' " *Steinmetz v. Wolgamot*, 2013 IL App (1st) 121375, ¶ 30 (quoting *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981)). " 'The question of when a party knew or should have known both of an injury and its [probable] wrongful cause is one of fact, unless the facts are undisputed and only one conclusion may be drawn from them.' " *Steinmetz*, 2013 IL

App (1st) 121375, ¶ 30.

¶ 62 Here, the allegations relating to the Rhoades defendants were first stated in the CAC filed on June 27, 2012. Thus, in order for plaintiffs to take advantage of the discovery rule, they would have to demonstrate that they knew or reasonably should have known that an injury had occurred and that it was wrongfully caused sometime within the two-year period prior to that date, *i.e.* on or after June 27, 2010. See *Hermitage Corp.*, 166 Ill. 2d at 85 ("When a plaintiff uses the discovery rule to delay commencement of the statute of limitations, the plaintiff has the burden of proving the date of discovery.").

¶ 63 Plaintiffs assert that they were not aware of their injuries and that they were wrongfully caused until after Rhoades was deposed on September 27, 2011. According to plaintiffs, after Rhoades' deposition, they diligently investigated his claims and determined the veracity of his testimony, ultimately concluding that he was not truthful.

¶ 64 The Rhoades defendants disagree and maintain that by February 2010 at the latest, plaintiffs were aware of the Rhoades defendants' involvement in drafting the documents that gifted the club to William and Thomas.

¶ 65 We agree with the Rhoades defendants; "it is not the acquisition of knowledge that one has a cause of action against another for an injury he has suffered" rather "the statute starts to run when a person knows or reasonably should know of his injury and *** that it was wrongfully caused." *Knox College*, 88 Ill. 2d at 415. Here, plaintiffs were expressly aware of the gift of the club in August 2009 when William averred that had his mother been aware, she would not have signed:

> "All documents related to the 2007 gift of Palos Country Club, including but not limited to operating agreement of Southmoor, LLC, the operating agreement of Palos CC, LLC,

> the US 709 gift tax return for 2007 and the ABI of the land trust holding title to the land of Palos Country Club. The gift of Palos Country Club was a complete fraud."

While William's affidavit did not name the Rhoades defendants, as of August 21, 2009, plaintiffs had sufficient information concerning an injury involving the club transfer and the burden was on them to inquire whether actionable conduct was involved. See *Carlton v. Fish*, 2014 IL App (1st) 140526, ¶ 33. Based on plaintiff's allegations and the depositions in this case, even a cursory inquiry into the transfer of the club would have revealed the involvement of the Rhoades defendants.

¶ 66 This was certainly true in October 2009 when plaintiffs filed the *Palos CC, LLC v. Palos Country Club, Inc.* litigation in which they claimed that William and Thomas wrongfully obtained ownership and control of the club. Furthermore, as a result of this litigation, the transactional and estate planning documents that were prepared by the Rhoades defendants were produced and Rhoades was identified in these documents. Then, in February 2010, William gave a deposition in which he testified that Rhoades was one of the attorneys who advised Mrs. O'Malley concerning the gift of the club. The undisputed facts thus allow for only one conclusion; plaintiffs reasonably should have known as early as August/October 2009 and as late as February 2010 of the Rhoades defendants' involvement in the transfer of the club. See *Butler v. Mayer, Brown & Platt*, 301 Ill. App. 3d 919, 922 (1998) (citing *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill. 2d 240, 250 (1994)) (when a plaintiff should have discovered his injury can be decided as a matter of law where the undisputed facts allow for only one conclusion). Therefore, their addition of the Rhoades defendants in the CAC filed on June 27, 2012, was untimely under subsection 13-214.3(b) of the Code (735 ILCS 5/13-214.3(b) (West 2012)).

¶ 67 Plaintiffs argue nonetheless that the appropriate statute of limitations is the five-year period found in section 13-215 of the Code (735 ILCS 5/13-215 (West 2012)) given the Rhoades defendants' fraudulent concealment because Rhoades falsely testified in his September 27, 2011, deposition that he met or spoke with Mrs. O'Malley numerous times to confirm her intentions with regard to the transfer of the club to William and Thomas. According to plaintiffs, they did not discover until March 2012 that Rhoades' only engagement letter was with William and his only correspondence was to William. Plaintiffs contend that Rhoades' deposition testimony was an attempt to conceal his wrongdoing and their claims against him. Plaintiffs generally maintain that the club transaction that the Rhoades defendants were hired to facilitate was an example of the Rhoades defendants' fraudulent concealment.

¶ 68 In response, the Rhoades defendants maintain plaintiffs were required to sufficiently plead that the Rhoades defendants engaged in the affirmative conduct calculated to conceal plaintiffs' claims but failed to do so. Accordingly, the Rhoades defendants cannot rely on the five-year statute of limitations set forth in section 13-215 of the Code.

¶ 69 We again reiterate that section 13-215 provides: "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." 735 ILCS 5/13-215 (West 2012)). To succeed under this provision, a plaintiff must demonstrate that the defendant engaged in affirmative acts or representations so as to prevent the discovery of the cause of action or lead the plaintiff to delay filing a claim. *J.S. Reimer, Inc. v. Village of Orland Hills*, 2013 IL App (1st) 120106, ¶ 51. The plaintiff, however, must plead and prove that fraud prevented discovery of a cause of action. *Henderson Square Condominium Ass'n*, 2015 IL

118139, ¶ 36; *McIntosh*, 323 Ill. App. 3d at 390. Moreover, the allegedly fraudulent act that forms the basis of the cause of action may not constitute fraudulent concealment in the absence of a showing that the defendant concealed the cause of action. *Barratt*, 296 Ill. App. 3d at 257.

¶ 70 Furthermore, fraudulent concealment as by codified section 13-215 is not a cause of action in and of itself but rather serves as an exception to the limitations periods for the underlying cause of action. *Wisniewski*, 406 Ill. App. 3d at 1154. In addition, courts do not apply section 13-215 to toll the limitations period where the plaintiff either discovered the fraudulent concealment, or should have discovered the fraudulent concealment through ordinary diligence, and a reasonable time remains within the remaining limitations period. *J.S. Reimer, Inc.*, 2013 IL App (1st) 120106, ¶ 51. That is the situation here.

¶ 71 As previously discussed, plaintiffs should have discovered the alleged fraudulent concealment through ordinary diligence during the will contest upon receipt of William's August 21, 2009, affidavit and when they were investigating and pursuing the chancery litigation involving the club in October 2009. Plaintiffs were expressly aware of the Rhoades defendants' involvement, however, when William testified at his February 2010 deposition that Rhoades was one of the attorneys who advised Mrs. O'Malley concerning the gift of the club. Thus, plaintiffs had until at least February 2012 to file their claim before the deadline under subsection 13-214.3(b). We conclude that, as a matter of law, after William was deposed in February 2010, a reasonable time remained to file the action so plaintiffs may not assert the fraudulent concealment exception of section 13-215 of the Code. See *cf. Real v. Kim*, 112 Ill. App. 3d 427, 436 (1983) (10 months left in limitations period after the decedent knew or should have known of his possible cause of action was sufficient time in which to bring an action); *Sabath v. Mansfield*, 60 Ill. App. 3d 1008, 1015 (1978) (eight months remaining after inducement for delay

had passed was, as a matter of law, ample time to file suit); see also *Butler*, 301 Ill. App. 3d at 926 ("We have held that as little as six months remaining in a statute of limitations period is 'ample time' for a plaintiff to bring suit."). Accordingly, we affirm the judgment of the trial court dismissing the Rhoades defendants pursuant to section 2-619(a)(5) of the Code.

¶ 72 CONCLUSION

¶ 73 For the reasons stated above, we affirm the judgment of the circuit court.

¶ 74 Affirmed.