

1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 10th day of May,
16 2018, at the McHenry County Government Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 THE GOOCH FIRM, by
20 MS. SABINA WALCZYK,
On behalf of the Plaintiff;

21 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
22 MR. GEORGE K. FLYNN,
On behalf of the Defendants.

23

24

1 THE COURT: Let's go to work on Dulberg.

2 MS. WALCZYK: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. WALCZYK: Sabina Walczyk on behalf of
5 Dulberg.

6 MR. FLYNN: Good morning. George Flynn on
7 behalf of the Popovich firm and Hans Mast.

8 THE COURT: It is -- it is rare when I know both
9 the plaintiff and the defendant ahead of time. Only
10 through the courtroom, but still unusual.

11 I looked at -- I'm going to tell you what
12 I'm thinking. And then if you choose to argue, you
13 can to -- if you wish to convince me that I'm wrong;
14 or we can go forward. Either is fine.

15 I felt that the 2-615 motion was
16 appropriate because I felt that -- and I -- for a
17 specific reason, not -- not perhaps all the reasons
18 that were cited by the defendant. I felt that the
19 complaint, when it talked about how -- I'm looking
20 for the words, misled -- when it said that the
21 attorneys misled -- lied and misled Mr. Dulberg, I
22 felt that there was some specificity that was going
23 to be required. Because they -- ultimately, these
24 things are going to factor into the statute of

1 limitations issue. And if you're going to say that
2 it was a breach of his duty in lying or misleading,
3 I think we need more particularity in the
4 allegations. You can't just make a conclusory
5 statement to that effect.

6 That's my perspective. What would you
7 like -- I'll give you an opportunity -- opportunity
8 to replead; but if you want to argue against my
9 thinking, I'll listen.

10 MS. WALCZYK: Well, Your Honor, I -- I won't
11 argue with the Court. If Your Honor would like some
12 more specificity as to those certain terms, we can
13 certainly replead and plead those a little bit more
14 specifically to --

15 THE COURT: And with respect to the discovery
16 rule issue --

17 MS. WALCZYK: Uh-huh.

18 THE COURT: -- since it's going to come up one
19 way or another, although I think it's a question of
20 fact, I would like to see it touched upon, because
21 I'm not following the -- the fact that he got more
22 from the arbitrator than had been initially
23 suggested by his attorneys, isn't really telling me
24 anything. So I need maybe a little bit more

1 information to understand the relationship of the
2 two things.

3 With respect to the issue of -- on the
4 2-619, I felt that in light of how I was going with
5 the 2-615, I really couldn't rule on the -- the
6 application of the discovery rule. And, ultimately,
7 I saw that in the long run, it was going to be a
8 question of fact, and I would probably need -- and I
9 could only address that with some more facts than
10 what's just contained in the complaint.

11 With respect to estoppel, I didn't agree --
12 and you can tell me why you think I'm wrong, but I
13 didn't agree with the argument that you were making
14 because it -- it, carried to its logical conclusion,
15 I could mislead and lie to my client about the --
16 about the implications and why he should settle, and
17 then once he agrees to it, then I'm -- I'm released
18 from my breach of my duty.

19 So I don't think that it -- that that was
20 the type of scenario involved when the courts were
21 discussing the estoppel issue.

22 Do you have anything -- do you want to
23 contest that?

24 MR. FLYNN: Not at this time, Your Honor. I --

1 I've always learned that it's better to quit while
2 you're ahead. And with -- without giving a roadmap
3 to the plaintiff, I do think that having their best
4 complaint on file benefits us all.

5 THE COURT: Yes.

6 MR. FLYNN: So going back to the 2-615 issues,
7 again, a legal malpractice case, they've got to
8 plead and prove, not only the legal malpractice, but
9 the elements of the underlying case. And it seemed
10 to me, and as we pointed out, that -- that all of
11 the allegations were very conclusory. That they
12 would have gotten more, they wouldn't have done
13 this, that the -- that Hans Mast and the Popovich
14 firm should have undertaken additional actions in
15 the underlying case, but they don't say what those
16 are. And I think that they -- they're required to
17 if they believe that there was a breach of a duty
18 that led to damages.

19 The high-low agreement, which is very
20 confusing to me and to my client, frankly, because
21 he's never seen it, and as I understand it, that's
22 outside of the four corners --

23 THE COURT: It is outside, but it did lead to an
24 area where I was also a little bit confused. And

1 I -- and I think you touched on -- I'll ask you: Is
2 the complaint having to do with the settlement with
3 the McGuires, or does it somehow relate to the suit
4 that continued with respect to Gagnon and the
5 high-low agreement?

6 MS. WALCZYK: Well, I think it's a little bit of
7 both, because it started with the suit against
8 McGuires, which settled. And then it looks like
9 there was a high-low agreement signed.

10 THE COURT: Okay.

11 MS. WALCZYK: And --

12 THE COURT: Was it signed by Mr. Mast?

13 MS. WALCZYK: Oh, I believe it was signed by
14 Mr. Dulberg. I haven't seen it.

15 THE COURT: Okay.

16 MS. WALCZYK: However, we can attach it if -- if
17 you want --

18 THE COURT: If -- if you are going to allege
19 malpractice as a result of entering into the
20 high-low agreement, yes, I would require you, then,
21 to attach it and to make that a little more
22 explicit.

23 MS. WALCZYK: Yes.

24 THE COURT: Because I -- I came away thinking

1 that was not part of your complaint, but I wasn't a
2 100 percent sure.

3 Also, let's see -- yeah, I need to know
4 with some specificity what facts were concealed and
5 how he was misled. I had problems with,
6 particularly, I had -- paragraphs 20 and 21 and felt
7 that you should have included more in that. And I
8 won't probably say more than that.

9 MS. WALCZYK: Uh-huh.

10 THE COURT: And I -- on the estoppel argument,
11 as I've said, I don't think that it is clear that
12 the signing of the release was something that could
13 be assumed to be knowing and voluntary when the
14 plaintiff is alleging that he was misled as to the
15 ramifications of that. Excuse me. Let's see.
16 Okay.

17 Any -- so I'm granting on the 2-615. I
18 will grant you leave to refile or replead.

19 MS. WALCZYK: Okay.

20 THE COURT: And what else? Is there anything
21 else that we need?

22 MR. FLYNN: Just as a housekeeping, again,
23 depending on what theory you're going under, if it's
24 related to the Gagnon settlement, and we may have

1 more people coming to the party; but if not, then
2 that's it.

3 THE COURT: Yeah. I mean, if you're going to
4 draw that in, then I need it a little more explicit.

5 MS. WALCZYK: Okay.

6 THE COURT: And I got -- in fact -- I'm reading
7 from my notes. I need facts on what was false,
8 misleading and what -- what you mean by coercion.

9 MR. FLYNN: So the 615 is granted with leave to
10 replead.

11 THE COURT: Yes.

12 MR. FLYNN: I wasn't clear, I guess, on whether
13 there's an actual ruling on the 619 or --

14 THE COURT: 619, I'm denying because --

15 MR. FLYNN: Okay.

16 THE COURT: -- there's a question of fact --

17 MR. FLYNN: Okay.

18 THE COURT: -- at this stage.

19 And I think that even if they include
20 additional facts in their complaint, I would still
21 come back to it being a question of fact, because
22 I -- there's going to be a lot more about their
23 relationship than I think can be reflected in merely
24 the complaint. I would -- so I mean, if you were to

1 bring another 2-619, feel free.

2 MR. FLYNN: Sure.

3 THE COURT: But I would still think it's going
4 to be a question of fact as to what is clear --
5 Dulberg's claims are with respect to how he was
6 misled or facts were concealed.

7 MR. FLYNN: Okay.

8 THE COURT: Because it's going to depend on
9 their interaction.

10 MR. FLYNN: And it is the -- the language of
11 statute is "knew or reasonably should have been
12 known." And, again, this -- he does have counsel
13 that came in right after my clients got out. So,
14 again, the Blue Water Partners case says you --
15 potentially, you can't bury your head in the sand.

16 THE COURT: No, you can't. But because I -- of
17 the absence of information --

18 MR. FLYNN: Fair enough.

19 THE COURT: -- I was reluctant to go further.
20 The statute of limitations, you might get a little
21 bit farther, but I still might run into a fact
22 question.

23 MR. FLYNN: Understood.

24 THE COURT: So how long do you need?

1 MS. WALCZYK: If I could have 28 days, Your
2 Honor.

3 THE COURT: Sure.

4 MS. WALCZYK: We have a trial coming up.

5 THE COURT: And to answer or otherwise plead?

6 MR. FLYNN: 28, please.

7 THE COURT: All right. That would -- excuse me.
8 Why don't we come back in -- 60 days is July 9th.
9 How about July 11th, a Wednesday? Or do you have --
10 it's all the same to me, so long as I am here.

11 MR. FLYNN: Let's see. I believe I'm going to
12 be out of state that week.

13 THE COURT: Okay. When is it convenient for you
14 to come here? She's here all the time, so I
15 don't --

16 MR. FLYNN: The following week would be --

17 THE COURT: What day works for either of you the
18 following week?

19 MS. WALCZYK: We may actually have a trial that
20 week. That may or may not go; I'm not sure at this
21 point. At least the first two days, if we could do
22 towards the end of week, that would be great for us.

23 THE COURT: 20th?

24 MR. FLYNN: 20th works.

1 MS. WALCZYK: That's perfect.

2 THE COURT: All right. We'll see you on
3 July 20th.

4 MR. FLYNN: Thank you, Your Honor.

5 MS. WALCZYK: Thank you very much.

6 THE COURT: Thank you.

7 (Which were all the proceedings
8 had in the above-entitled cause
9 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
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5 I, MAUREEN URBANSKI, an official Court
6 Reporter for the Circuit Court of McHenry County,
7 Twenty-Second Judicial Circuit of Illinois,
8 transcribed the electronic recording of the
9 proceeding in the above-entitled cause to the best
10 of my ability and based on the quality of the
11 recording, and I hereby certify the foregoing to be
12 a true and accurate transcript of said electronic
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15 Maureen S. Urbanski

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