SUPREME COURT OF KENTUCKY

Queensway Financial Holdings Ltd. v. Cotton & Allen, P.S.C.

237 S.W.3d 141 (Ky. 2007) · No. 2004-SC-000254-DG · Decided November 1, 2007

SUMMARY

The Supreme Court of Kentucky held that Queensway Financial Holdings Ltd.’s professional malpractice claims against its auditor were barred by the one-year limitations period in KRS 413.245. The court concluded that any damages accrued when Queensway purchased Paradigm Insurance Company, because the alleged under-reserving made the purchase price excessive, and that Queensway should have discovered the claim no later than December 1997. The court affirmed summary judgment for Cotton & Allen, P.S.C.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Noble; Chief Justice Lambert; Justice Cunningham; Justice Minton; Justice Schroder; Justice Scott; Justice Abramson
JURISDICTION	Kentucky
DECIDED	November 1, 2007
DOCKET	2004-SC-000254-DG
DISPOSITION	affirmed
PROCEDURAL POSTURE	Queensway and its subsidiaries filed a professional malpractice action alleging breach of contract and negligence arising from Cotton & Allen's audits of Paradigm's financial statements. The trial court granted Cotton & Allen summary judgment on statute-of-limitations grounds. The Kentucky Court of Appeals affirmed, and the Supreme Court of Kentucky granted discretionary review and affirmed.
STANDARD OF REVIEW	Summary judgment is proper when, as a matter of law, it would be impossible for the nonmoving party to produce evidence warranting a judgment in its favor. The record must be construed in the light most favorable to the nonmoving party, but unsupported claims and arguments do not create a genuine issue of material fact.
PRECEDENTIAL VALUE	Published, precedential Kentucky Supreme Court opinion
PARTIES	Queensway Financial Holdings Ltd., Paradigm Acquisitions Corporation, Paradigm Insurance Company v. Cotton & Allen, P.S.C.

TOPICS

professional negligence | statute of limitations | summary judgment | contracts | civil procedure

PRACTICE AREAS

professional negligence | professional malpractice | commercial litigation | civil procedure | contracts

QUESTIONS PRESENTED

1. When did Queensway's professional malpractice cause of action accrue under KRS 413.245?
2. When did Queensway know or reasonably should have known of the cause of action under the discovery rule in KRS 413.245?
3. Whether summary judgment was proper because Queensway filed suit more than one year after accrual and discovery of its professional malpractice claim.

HOLDINGS

1. Under KRS 413.245, a professional malpractice cause of action accrues when negligence and damages have both occurred, and damages are fixed and non-speculative. Queensway's damages became fixed when it purchased Paradigm because the company was either overpriced at that time or it was not; the later Indiana reserve adjustment did not create the injury or delay accrual.
2. Queensway knew or, through reasonable diligence, should have known of its cause of action no later than October 1998, and the evidence established notice as early as December 1997. The discovery rule does not toll the statute while an injured plaintiff investigates the identity of the wrongdoer, absent fraudulent concealment or misrepresentation by the defendant.
3. Summary judgment for Cotton & Allen was proper because the record contained no genuine issue of material fact concerning the relevant documents, Queensway's receipt of them, or the date by which Queensway should have discovered its injury and possible malpractice.

KEY QUOTATIONS

> *"Instead, the plaintiff's statute of limitations claim must be evaluated separately under both the accrual and discovery rules."* (148)

> *"Any damages that Queensway suffered became fixed and non-speculative when it purchased Paradigm."* (150)

> *"Because Queensway's suit was filed in February 2000, more than a year after either of those dates, it was filed outside any applicable statute of limitations period contained in KRS 413.245."* (152)

FACTUAL BACKGROUND

Queensway purchased Paradigm Insurance Company at the end of 1997, relying in part on audited financial statements prepared by Cotton & Allen. Shortly before and after the purchase, Paradigm disclosed problems with its loss-reserve methodology and increased its reserves by approximately $3.3 million; additional documents in

1998 described continuing reserve deficiencies. In February 1999, the Indiana Department of Insurance ordered Paradigm to increase its reserves by approximately $6 million. Queensway filed suit against Cotton & Allen in February 2000, alleging that the audits had failed to identify inadequate reserves.

PROCEDURAL HISTORY

Queensway filed suit on February 11, 2000. Cotton & Allen moved for summary judgment under KRS 413.245, arguing that the claims were filed more than one year after Queensway knew or should have known of the alleged malpractice. The trial court granted summary judgment, the Court of Appeals adopted the trial court's opinion and affirmed, and the Supreme Court of Kentucky affirmed on discretionary review.

DISPOSITION

affirmed

CASES CITED

- Michels v. Sklavos, 869 S.W.2d 728 (Ky. 1994)
- Northwestern Nat. Ins. Co. v. Osborne, 610 F. Supp. 126 (E.D. Ky. 1985)
- Perkins v. Northeastern Log Homes, 808 S.W.2d 809 (Ky. 1991)
- Alagia, Day, Trautwein & Smith v. Broadbent, 882 S.W.2d 121 (Ky. 1994)
- Meade County Bank v. Wheatley, 910 S.W.2d 233 (Ky. 1995)
- Faris v. Stone, 103 S.W.3d 1 (Ky. 2003)
- Paintsville Hosp. Co. v. Rose, 683 S.W.2d 255 (Ky. 1985)
- Roberson v. Lampton, 516 S.W.2d 838 (Ky. 1974)
- Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476 (Ky. 1991)
- City of Florence v. Chipman, 38 S.W.3d 387 (Ky. 2001)
- Wymer v. JH Properties, Inc., 50 S.W.3d 195 (Ky. 2001)
- Hoke v. Cullinan, 914 S.W.2d 335 (Ky. 1995)
- McLain v. Dana Corp., 16 S.W.3d 320 (Ky. App. 1999)
- Combs v. Albert Kahn Associates, Inc., 183 S.W.3d 190 (Ky. App. 2006)