

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
MCHENRY COUNTY, ILLINOIS**

PAUL DULBERG, )  
)  
Plaintiff, )  
)  
vs. ) No. 17 LA 377  
)  
THE LAW OFFICES OF THOMAS J. )  
POPOVICH, P.C., and HANS MAST, )  
)  
Defendants. )

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS  
MAST’S REPLY IN SUPPORT OF THEIR MOTION/MEMORANDUM IN SUPPORT  
OF THEIR MOTION FOR SUMMARY JUDGMENT**

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST, by and through their attorneys, Karbal Cohen Economou Silk & Dunne, LLC, for their REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT, state as follows:

**I. INTRODUCTION**

Plaintiff’s Response confuses allegations made at the pleading stage of litigation, and facts established in the record (here mainly by virtue of sworn deposition testimony). On its face, Dulberg’s legal malpractice complaint is untimely filed. The record demonstrates that Dulberg can never meet his burden of proving an exception to the applicable two-year statute of limitations. Defendants’ motion for summary judgment under 735 ILCS 5/2-1005 establishes that Dulberg can never prove a late “discovery” of his allegedly wrongfully caused injury.<sup>1</sup> As will be discussed below, the only legal analysis contained in Dulberg’s response, relies on an inapplicable “transactional” malpractice case, *Suburban Real Estate Servs. Inc. v. Carlson*, 2022 IL

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<sup>1</sup> Defendants’ Motion is brought under 735 ILCS 5/2-1005, and not under 735 ILCS 5/2-619.1 as suggested by Plaintiff.

126935. Dulberg’s case arises out of litigation – not transactional work. Plaintiff’s alleged injury was incurred at the time of settlement and dismissal of the McGuire litigation.

## II. UNDISPUTED MATERIAL FACTS

The undisputed material facts of the case are properly cited in Defendants’ Motion at pages 5-9, with specific citations to exhibits and page numbers. Additional citations to pleadings are recited in the “Statement of Claim” section at pages 2-4 of Defendants’ motion. Plaintiff disputes the citations by making a general denial at Response page 5, ¶A. Defendants submit that their factual citations are evident and stand for themselves.

In section B of Dulberg’s Response, he attempts to argue that some disputed material fact prevents the entry of summary judgment. In support, he recites certain allegations contained in the pleadings, as opposed to the facts adduced in depositions or affidavits. He fails to provide any analysis or explanation as to how any of these alleged facts constitute a genuine issue of material fact that has any relevance to the alleged late discovery of his claims, and which would prevent the court from entering summary judgment for the defendants.

## III. ARGUMENT

Dulberg does virtually nothing to discuss any of the testimony cited by Defendants, apply the facts, or analyze the law cited by Defendants. Instead, Dulberg references the case of *Suburban Real Estate Services, Inc. v. Carlson*, 2022 IL 126935 and references a “a pecuniary loss” as an issue in that case. However, there is no analysis or application to the facts here. In any event, *Suburban Real Estate* involves alleged transactional legal malpractice, and is not on point with this case. However, the Illinois Supreme Court in *Suburban Real Estate Services, Inc.* analyzed the “injury” component in a legal malpractice claim, in view of the two year statute of limitations. The court distinguished between transactional malpractice, and malpractice arising out of

litigation. The court engaged in an extensive analysis of the “injury” component of the two year statute of limitations. “Thus, to discern when a claim accrues, we identify the injury and then determine when the injury was discovered or should have been discovered.” *Suburban Real Estate Services* at [\*P16] The court discussed legal malpractice actions arising out of litigation, or the “case within a case.” “As this court has explained, no injury exists, and therefore no actionable claim arises, unless and until the attorney’s negligence results in the loss of the underlying cause of action.” *Suburban Real Estate Services* at \*P19, citing *Tri-G, Inc. v. Burke Bosselman and Weaver*, 222 Ill. 2d 218 (2006). Importantly, the Illinois Supreme Court then wrote, “Thus, the injury does not accrue, and the statute of limitations does not begin to run until a judgment or settlement or dismissal of the underlying action.” (emphasis added) *Suburban Real Estate Services* at \*P19.

Here, a portion of the underlying case was settled and dismissed – the very portion of the case complained of here by Dulberg. The dismissal order attached as Exhibit H to Defendant’s Motion for Summary Judgment is dispositive of Dulberg’s claims. The order included a good faith finding of settlement, and was final and appealable. The injury sustained is the loss of the ability to further recover anything from the McGuire’s over the \$5,000 settlement Dulberg approved. The injury was incurred when the settlement was finalized and the McGuire’s were dismissed.

Dulberg fails to analyze any of the cases cited in Defendants’ motion that stand for the proposition that he was on reasonable notice to inquire further as to the existence of a cause of action. Nor does he squarely address the facts cited, or really any arguments made in defendants’ motion. The evidence cited by Defendants in their motion demonstrates that Dulberg deliberated over a settlement offer from the McGuires from at least November 2013, until he executed the settlement release on January 29, 2014. He admitted that Mast did not force him to accept the

settlement. Exhibit E, p. 73. After the McGuires were dismissed, Dulberg and Mast continued to prosecute the case against Gagnon. However, Dulberg became disillusioned with Mast and Popovich, and even threatened legal malpractice as early as February 22, 2015. Dulberg then sought substitute counsel when Mast and Popovich withdrew. He always had the ability and opportunity to seek a second opinion about the McGuire settlement (before and after he agreed to it). All of these facts establish that Dulberg knew or should have known, or should have inquired as to whether Mast and Popovich breached the standard of care, and whether said breach caused him any injury.

Dulberg bears the burden of proving some alternative date of discovery of his injury and claims. His futile attempts at amending his complaint, and the well-documented evasive discovery responses clearly establish that Dulberg has not met and cannot meet his burden demonstrating a “late” discovery of his claims. Summary judgment must be entered in favor of Mast and Popovich.

### **III. CONCLUSION**

**WHEREFORE**, for the reasons stated herein and in THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST’S MOTION FOR SUMMARY JUDGMENT, pray that this Honorable Court grant their Motion for Summary Judgment, with prejudice, and for any further relief this court deems fair and proper.

Dated: January 19, 2023

Respectfully submitted,

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: /s/ George K. Flynn

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