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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

EASTWOOD RANCH, LP, et al.,

Plaintiffs and Appellants,

v.

ROBERT W. DYESS, JR., et al.,

Defendants and Respondents.

G046526

(Super. Ct. No. 30-2010-00418687)

ORDER MODIFYING OPINION;
NO CHANGE IN JUDGMENT

It is ordered that the opinion filed herein on January 16, 2013, be modified as follows: On the first page, delete attorney:

“Sedgwick LLP and Federick B. Hayes for Defendants and Respondents.”

And in its place insert the following correctly spelled attorney name:

“Sedgwick LLP and Frederick B. Hayes for Defendants and Respondents.”

There is no change in the judgment.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.

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(Super. Ct. No. 30-2010-00418687)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jamoa A. Moberly, Judge. Affirmed.

Sayre & Levitt, Federico Castelan Sayre and Mahadhi Corzano for Plaintiffs and Appellants.

Sedgwick LLP and Federick B. Hayes for Defendants and Respondents.

Samuel Ayoub (Ayoub) a licensed realtor and real estate investor hired Robert W. Dyess, Jr., (Dyess) and his law firm, Good Wildman Hegness & Walley (the Law Firm), to prepare documentation to form a limited partnership, and a limited liability company, and an agreement for the purchase of an apartment building with several other investors as tenants in common. Dyess prepared documents to create The Eastwood Ranch, LP, (hereafter the Eastwood Partnership), a Delaware limited partnership to act as owner of the property, and The Eastwood Ranch GP, LLC, (hereafter Eastwood GP) to act as the general partner of the Eastwood Partnership. Ayoub was named the managing member of Eastwood GP. Dyess drafted the tenancy in common agreement (TIC Agreement), executed by the Eastwood Partnership and several other investors purchasing the apartment building together.

After the building was purchased, Ayoub discovered problems with Dyess's drafting of the TIC agreement. Ayoub, Eastwood Partnership, and Eastwood GP (hereafter referred to collectively as Plaintiffs, unless otherwise required to avoid confusion), filed a legal malpractice lawsuit against Dyess and the Law Firm. The sole issue raised on appeal is whether the trial court erred in awarding summary judgment and denying a motion for new trial on the grounds Plaintiffs' malpractice action was barred by the one-year statute of limitations. (Code Civ. Proc., § 340.6.)¹ We affirm the judgment.

I

Ayoub and several other investors wished to purchase an apartment building in Texas. Because some of the parties were investing in the property as Internal

¹ All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

Revenue Code section 1031 (hereafter section 1031) exchanges,² Ayoub consulted with Dyess, a tax attorney and partner at the Law Firm.

In 2005, Dyess prepared the documentation to form Eastwood Partnership to act as owner of the property. He designated Ayoub as the managing member of Eastwood GP, formed to act as the general partner of Eastwood Partnership. To take advantage of section 1031, Dyess recommended the building be purchased and held as a tenancy in common. The advantages of section 1031 would be lost if the investors were treated as a partnership.

In 2005, the investors purchased the property for \$11,845,000 and then assigned their interests in the property to the tenancy in common. Dyess drafted the TIC Agreement for the investors to sign. It provided the Eastwood Partnership owned 55 percent of the property as a tenant in common with three sets of individual investors, who owned the other 45 percent. As required by section 1031, the TIC Agreement required all the tenants in common to have unanimous consent for all significant decisions affecting the property, including renting, refinancing, or selling the property. Thereafter, Dyess did not perform any further legal services for Ayoub.

In the TIC Agreement, Dyess did not include a “call provision,” which would have specified a procedure under which the majority owners would have the right to purchase the ownership interest of the minority owners at fair market value at the time the option was exercised. This omission is the basis for the Plaintiffs’ legal malpractice action because this provision was needed several years later (in 2007), when the investors disagreed about leasing the property.

Specifically, in September 2007 Ayoub was approached by a gas company wanting to lease the property’s mineral and subsurface rights. During the lease

² Under this provision of the United States Internal Revenue Code, a party can exchange certain types of property to defer the recognition of capital gains or losses that may be due upon sale.

negotiations, Ayoub learned for the first time the TIC Agreement required unanimous consent for all significant property decisions, including a lease of the mineral rights. As it turned out, four of the investors (the Shalabys and the Mansours) refused to give their consent to the lease.³

Unable to lease the property, Ayoub began consulting with a Texas law firm, Cantey & Hanger, in November 2007, about selling the property. At the time, the property was worth 12.4 million dollars. In January 2008, the Texas law firm informed Ayoub it could not represent him and the other investors with respect to a potential sale because their fees would be a flat rate based on the proceeds of the escrow or a signing bonus. The firm declined representation on the grounds the unanimous consent clause in the TIC Agreement would complicate the sale transaction. It was deemed too risky for the law firm to prepare the deal and have it fall through in the event a single investor objected to the terms of the sale.

In February 2008, Ayoub sent an e-mail to some of the other investors explaining the difficulty in finding a law firm to represent the group in selling the property. He wrote Cantey & Hanger's "main concern was, as in the case of other law firms, is that [*sic*] 'All [that] it takes is that **one** of the [t]enants-[i]n-[c]ommon refusing to sign any of the documents needed to close the transaction; [*sic*] to bring the whole deal to a complete stop.' The concern of the lawyers is that they will not be able to close escrow and get paid." Ayoub also disclosed to the others, "I am wondering now: why the attorney who put together this [t]enancy-[i]n-[c]ommon back in 2005, moved quickly without these concerns?"

Ayoub was referring to Dyess, the drafting attorney. Shortly thereafter, Ayoub contacted Dyess to ask about the unanimous consent provision. Dyess informed Ayoub that inclusion of a provision permitting a majority rather than unanimous decision

³ The record does not include any more information about these investors other than their last names.

would have violated the IRS's rules governing section 1031 exchanges, and the investors would have been required to pay capital gain taxes. Ayoub recalled Dyess represented he had given the investors the best possible TIC Agreement under the IRS rules.

Although Dyess did not perform further legal services for Plaintiffs, in May 2009 he sent Ayoub an e-mail regarding a possible buyer to purchase the property. In November 2009, Ayoub visited a friend in California who also used a TIC Agreement to purchase property. The friend had not encountered the same problems as Ayoub because his agreement contained a "call provision." Ayoub learned this provision would have permitted him to have purchased the ownership interests of the dissenting investors for fair market value and, thereafter, he would have been free to lease or sell the property.

In February or March of 2010, Ayoub consulted with another attorney, Eugene Trowbridge in California. Trowbridge explained "call provisions" in TIC Agreements were standard as of 2002 and qualified for section 1031 tax deferred status. A few months later, on October 21, 2010, Plaintiffs filed their legal malpractice action against Dyess and the Law Firm. Plaintiffs claimed they could have sold the property for \$12.4 million dollars in 2007 if the TIC Agreement contained the "call provision." In addition, Plaintiffs alleged they had to invest additional capital to prevent the property from going into default because rents from the property had declined along with the overall real estate market. Ayoub alleged he personally loaned the investment \$230,000, and he had not received his agreed upon management fees or out of pocket expenses, totaling \$300,000.

Dyess and the Law Firm moved for summary judgment, alleging the statute of limitations started to run no later than February 7, 2008, when Plaintiffs first suffered actual injury and had discovered facts relating to Dyess's alleged negligence in drafting the TIC Agreement. (§ 340.6) They referred to Ayoub's February 7, 2008, e-mail as evidence Ayoub had a strong suspicion Dyess's drafting skills were lacking. Plaintiffs filed an opposition, presenting evidence the statute of limitations did not commence until

November 2009, when Ayoub learned from a friend about the missing “call provision.” Plaintiffs also argued Dyess and the Law Firm were equitably stopped from asserting the statute of limitations defense because Dyess told Ayoub the agreement was not negligently drafted.

On November 22, 2011, the court granted the motion. In its minute order, the court stated, “Ayoub was aware in 2007 and 2008 of facts giving rise to his claim for malpractice, i.e., that the [TIC Agreement] required unanimous consent of [the] member[s] for major sales, and that minority members refused to give consent to the sale of the Property and mineral rights. . . . At that time, he was on notice to inquire. The only thing Ayoub learned in 2009 was the legal theory behind his malpractice action.” (Citing *Village Nurseries v. Greenbaum* (2002) 101 Cal.App.4th 26, 42-43.) In addition, the court ruled Plaintiffs had failed to “plead or present admissible evidence supporting equitable estoppel. . . . There is no evidence that . . . Dyess knew at any relevant time that a call provision could have been included in the TIC Agreement.”

Plaintiffs filed a motion for a new trial asserting fraudulent intent was not required to prove equitable estoppel, and based on this error of law, the court should grant a new trial. On January 20, 2012, the court denied the motion. In the minute order the court stated, “Equitable estoppel cannot apply until the statute of limitations begins to run. . . . Plaintiffs admitted that [Dyess and the Law Firm] provided no legal advice and representation in 2009 and 2010. . . . The one-year statute of limitations ran prior to filing of the complaint on October 21, 2010.”

II

Plaintiffs contend the trial court erred in concluding their malpractice action was barred by the one-year statute of limitations, and thus the trial court should not have granted summary judgment. They assert the court misinterpreted the alleged wrongful acts, because Dyess’s mistake did not relate to the unanimous consent provision, but rather to his failure to include the “call provision.” Plaintiffs allege there is a triable issue

of material fact as to whether they had constructive knowledge of this related, but separate wrongful act. We disagree.

A. Summary Judgment Standard of Review

“Summary judgment is appropriate only if there is no triable issue of material fact and the moving party is entitled to judgment in its favor as a matter of law. [Citation.] . . . A defendant moving for summary judgment . . . must show that one or more elements of the plaintiff’s cause of action cannot be established or that there is a complete defense. [Citation.] The defendant can satisfy its burden by presenting evidence that negates an element of the cause of action or evidence that the plaintiff does not possess and cannot reasonably expect to obtain evidence needed to support an element of the cause of action. [Citation.] If the defendant meets this burden, the burden shifts to the plaintiff to set forth ‘specific facts’ showing that a triable issue of material fact exists. [Citation.] ¶] We review the trial court’s ruling de novo, liberally construe the evidence in favor of the party opposing the motion, and resolve all doubts concerning the evidence in favor of the opposing party. [Citation.] We will affirm an order granting summary judgment . . . if it is correct on any ground that the parties had an adequate opportunity to address in the trial court, regardless of the trial court’s stated reasons. [Citations.]” (*Securitas Security Services USA, Inc. v. Superior Court* (2011) 197 Cal.App.4th 115, 119 120.)

B. Statute of Limitations for Legal Malpractice

To prove professional negligence against an attorney, the former client must satisfy these elements: (1) the professional had a duty to use such skill, prudence, and diligence as other members of the profession commonly exercise; (2) the defendant breached the duty, failing to meet this standard of conduct; (3) there was causation between negligence and claimed loss or injury; and (4) actual loss or damage resulted from professional negligence. (*Budd v. Nixen* (1971) 6 Cal.3d 195, 200, superseded in irrelevant part by § 340.6, as stated in *Laird v. Blacker* (1992) 2 Cal.4th 606.)

A plaintiff's discovery (actual or constructive) of a defendant's alleged wrongful conduct is not an element of a cause of action for legal malpractice, but an untimely discovery of injury can be pleaded as an affirmative defense to a claim of malpractice. (*Samuels v. Mix* (1999) 22 Cal.4th 1, 7-8.) Although section 340.6 specifies the limitations period begins to run upon the plaintiff's discovery of such facts as will show the defending attorney acted wrongfully (or ability to discover), the section further provides for tolling of that time period until actual injury is sustained. (§ 340.6, subd. (a)(1).)

Specifically, section 340.6 provides, in relevant part, "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. . . . [I]n no event shall the time for commencement of legal action exceed four years except that the period shall be tolled during the time that any of the following exist: [¶] (1) The plaintiff has not sustained actual injury. [¶] (2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred. [¶] (3) The attorney willfully conceals the facts constituting the wrongful act or omission when such facts are known to the attorney, except that this subdivision shall toll only the four-year limitation. . . ." (§ 340.6, subd. (a).)

"Thus, the limitations period is one year from actual or imputed discovery, or four years (whichever is sooner), unless tolling applies.' [Citation.] Although the language of the statute is ambiguous on the point, '[t]he tolling provisions of section 340.6 apply to both the one-year and the four-year provisions.' [Citations.]" (*Croucier v. Chavos* (2012) 207 Cal.App.4th 1138, 1145-1146.)

“The question of when a malpractice plaintiff actually discovered or through the use of reasonable diligence should have discovered a wrongful act or omission and suffered injury is generally one of fact. [Citation.]” (*McCann v. Welden* (1984) 153 Cal.App.3d 814, 824, fn. omitted (*McCann*)). “The question becomes a matter of law only where reasonable minds can draw but one conclusion from the evidence. [Citation.]” (*Ibid*, fn. 13; *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112 (*Jolly*)) [“While resolution of the statute of limitations issue is normally a question of fact, where the uncontradicted facts established through discovery are susceptible of only one legitimate inference, summary judgment is proper”].)

In this case, the record clearly reveals *when* Plaintiffs sustained actual injury from the manner in which Dyess prepared the transactional documents. The complaint acknowledges that by 2008 Plaintiffs learned they could not lease or sell the property without unanimous consent of all the tenants in common, law firms refused to represent them in selling the property, and there was no remedy written in the agreement to address this contingency. The issue we must decide is whether there was also evidence Plaintiffs had sufficient suspicion of wrongdoing to trigger the statute of limitations. (§ 340.6, subd. (a).)

C. Knowledge and Constructive Knowledge Criteria

“It is well settled that the one-year limitations period of section 340.6 “‘is triggered by the client’s discovery of ‘the facts constituting the wrongful act or omission,’ not by his discovery that such facts constitute professional negligence, i.e., by discovery that a particular legal theory is applicable based on the known facts. ‘It is irrelevant that the plaintiff is ignorant of his legal remedy or the legal theories underlying his cause of action.’” [Citation.]’ [Citations.]” (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 685 (*Peregrine*)).

“The statute of limitations is not tolled by belated discovery of *legal theories*, as distinguished from belated discovery of *facts*. In legal and medical

malpractice cases, the courts are often confronted with such claims that the statute of limitations has been tolled. However, the Supreme Court repeatedly has explained that it is the knowledge of facts rather than discovery of legal theory, that is the test. The test is whether the plaintiff has information of circumstances sufficient to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his or her investigation. [Citation.] If the plaintiff believes that someone has done something wrong because of the damages suffered by [him or] her, such a fact is sufficient to alert a plaintiff ‘to the necessity for investigation and pursuit of her remedies.’ [Citation.]” (*McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 803; see *Jolly, supra*, 44 Cal.3d at p. 1110; *Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 101.)

Plaintiffs claim Dyess negligently drafted the TIC Agreement by failing to include a remedy in the event the tenants in common could not unanimously agree about matters involving the property. Specifically, Dyess could have included a “call provision,” which would have permitted Plaintiffs to purchase the interests of the dissenting investors. Plaintiffs correctly assert having knowledge of the unanimity provision cannot be deemed the same thing as having knowledge Dyess omitted the call provision. And Plaintiffs established they first learned about the possibility of including a call provision in 2010, when Ayoub read his friend’s TIC Agreement.

Nevertheless, we agree with the trial court’s determination the statute of limitations began to run in 2007 when Plaintiffs should have discovered the facts supporting liability. It is undisputed Plaintiffs suffered actual injury in September 2007 when they were unable to lease the mineral rights, and in November 2007 when the Texas law firm and other law firms refused to represent Plaintiffs in the sale of the property. Ayoub’s e-mail to his fellow investors reflected Plaintiffs suspected the harm was caused by poor drafting of the TIC Agreement. Although they may not have known Dyess omitted a specific kind of provision that could have easily remedied the impasse between investors, the facts underlying the harm plus Ayoub’s stated suspicious would

have alerted a reasonable person “to the necessity for investigation and pursuit of [his or] her remedies.’ [Citation.]” (*McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 803.) In other words, Plaintiffs were not ignorant of the need for a remedy to address the damage, they were only unaware of the name or type of provision that should be added to their TIC Agreement.

The above conclusion is what sets this case apart from *McCann, supra*, 153 Cal.App.3d 814, relied upon by Plaintiffs. In that case, the court concluded separate acts of malpractice led to separate actionable injuries. The plaintiff in *McCann* learned shortly after dissolution of his marriage that his attorney drafted a stipulation that inadequately provided for distribution of the marital assets. (*McCann, supra*, 153 Cal.App.3d at pp. 817-818.) He decided not to sue. However, the following year, he learned the stipulation contained a second deficiency in that it failed to provide for a termination of his spousal support obligations when he purchased a house. (*Id.* at p. 818.) The appellate court concluded the claim for negligence regarding the spousal support stipulation was timely even though the plaintiff had earlier discovered he had a possible malpractice action against the defendant based on a different drafting mistake. (*Id.* at pp. 820-821.)

In contrast, here there was only one injury as a result of Dyess’s failure to include the “call provision,” i.e., Plaintiffs could not sell or lease the property without unanimous consent of all the tenants in common. The two provisions are separate but certainly related. Plaintiffs’ knowledge of the harm caused by one would put a reasonable person on constructive notice there may be something that could be added or changed to help remedy the investors’ deadlock over what to do with their property. We are not suggesting Plaintiffs were required to have expert knowledge of the types of remedies available under the IRS rules for section 1031 tax deferred exchanges. The test for triggering the statute of limitations is not the point at which a Plaintiff has technical knowledge of the standard or care in drafting a TIC Agreement. But as seen in Ayoub’s

e-mail to the other investors, he clearly suspected the TIC Agreement was not properly drafted. Given these facts, a reasonable person would investigate the matter further by seeking different legal advice, i.e., get a second opinion.

We agree with the trial court's conclusion the disputed facts established, as a matter of law, Plaintiffs were on notice of a potential legal malpractice claim in 2007. The statute of limitations are “practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and the evidence has been lost.’ [Citation.]” (*Adams v. Paul* (1995) 11 Cal.4th 583, 603.) As aptly noted by Dyess and the Law Firm, if we were to accept Plaintiffs’ theory they needed actual knowledge of the name of the missing remedy provision, they would have unilateral control over the limitations period. It should not take years of missed leasing opportunities, multiple rejections of legal representation, or lack of purchase offers to put a reasonable person on inquiry notice and the need to seek an expert’s opinion. We conclude that in this case the nature of the Plaintiffs’ damages in 2007 were sufficient to cause a reasonable person to suspect the TIC Agreement was negligently drafted. In short, when Plaintiffs found it impossible to lease or sell the property, or find a law firm to represent them, the statute of limitations to file a legal malpractice action was triggered.

E. Equitable Estoppel

Plaintiffs argue the trial court erred in finding (1) they were required to plead fraudulent intent to claim equitable estoppel, and (2) equitable estoppel does not apply until the statute of limitations begins to run. Applying our de novo standard of review, we need not decide if the trial court was mistaken. Based on our review of the record, we conclude equitable estoppel does not apply in this case.

Plaintiffs seek to “invoke the venerable principle that “[o]ne cannot justly or equitably lull his adversary into a false sense of security, and thereby cause his adversary to subject his claim to the bar of the statute of limitations, and then be

permitted to plead the very delay caused by his course of conduct as a defense to the action when brought.” [Citations.] [¶] Equitable tolling and equitable estoppel are distinct doctrines. “Tolling, strictly speaking, is concerned with the point at which the limitations period begins to run and with the circumstances in which the running of the limitations period may be suspended. . . . Equitable estoppel, however, . . . comes into play only after the limitations period has run and addresses . . . the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period. [Equitable estoppel] is wholly independent of the limitations period itself and takes its life . . . from the equitable principle that no man [may] profit from his own wrongdoing in a court of justice.” [Citation.]” (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 383 (*Lantzy*).

“One aspect of equitable estoppel is codified in Evidence Code section 623, which provides that ‘[w]henver a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.’ [Citation.] But “[a]n estoppel may arise although there was no designed fraud on the part of the person sought to be estopped. [Citation.] To create an equitable estoppel, ‘it is enough if the party has been induced to refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss.’ . . . “ . . . Where the delay in commencing action is induced by the conduct of the defendant it cannot be availed of by him as a defense.”” [Citations.]” (*Lantzy, supra*, 31 Cal.4th at p. 384.)

To invoke the doctrine of equitable estoppel, Plaintiffs rely on evidence Dyess knew Plaintiffs were having difficulty selling the property and that he advised Ayoub there was no way around the unanimous consent provision. If true, this would be considered faulty legal advice. Relying on *Leasequip, Inc. v. Dapeer* (2002)

103 Cal.App.4th 394 (*Leasequip*), Plaintiffs argue that in legal malpractice cases any erroneously rendered legal opinion can serve as a basis for applying equitable estoppel. Not so. In the *Leasequip* case, plaintiff corporation was prevented from filing a timely legal malpractice action against its attorney because, during the statutory period, its corporate powers were suspended. (*Id.* at p. 404.) Plaintiff's status as a suspended corporation resulted directly from the attorney's erroneous advice that compliance with corporate formalities was not necessary and would not affect the company's legal claims. (*Ibid.*) The appellate court, applying the doctrine of equitable estoppel, ruled the attorney could not raise a statute of limitations defense when plaintiff's reliance upon his erroneous legal advice was the very thing that led to the statute expiring. (*Id.* at p. 405.)

Other courts have factually distinguished this case and interpreted the *Leasequip* opinion as holding an attorney's misconduct will not invoke equitable estoppels unless there is specific conduct that induced the plaintiff from filing suit. (See *Peregrine, supra*, 133 Cal.App.4th at p. 686.) Indeed, it has long been the rule that equitable estoppel must be based on conduct inducing the plaintiff to refrain from filing suit. (See *Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 848 [promise made during settlement negotiations induced plaintiff not to file suit or objection to probate petition]; *Union Oil Co. of California v. Greka Energy Corp.* (2008) 165 Cal.App.4th 129, 138 [defendant "urged the bonding company and Unocal to suspend legal actions" with a "promise to amend the contracts"]; *Shaffer v. Debbas* (1993) 17 Cal.App.4th 33, 43-44 [suit delayed by representations of repair]; cf. *Peregrine, supra*, 133 Cal.App.4th at p. 686 [no facts alleged showing defendants "'actually and reasonably induced' the investors to forbear filing suit . . ."].)

There is no evidence in the record showing Dyess or his Law Firm induced Plaintiffs from filing a lawsuit against him or the Law Firm. Plaintiffs do not allege Dyess discouraged them from filing a legal malpractice action. Dyess simply represented to the Plaintiffs he thought the TIC Agreement was properly drafted. However, when

Plaintiffs asked Dyess about the TIC Agreement, they already suspected this was not the case. At the time, Plaintiffs were on notice of the need to inquire about Dyess's drafting skills. A reasonable person would seek the legal opinion of someone other than Dyess, to review the agreement he prepared for error. It would not be reasonable to ask the doctor who operated on the wrong leg if he thinks he did a good job. Dyess's favorable opinion about his own drafting skills was no justification for Plaintiffs to forbear filing a malpractice suit within the limitations period. Despite having suspicion of wrongdoing, Plaintiffs sat on their rights to file suit.

III

The judgment is affirmed. Respondents shall recover their costs on appeal.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.