MERLIN'S KIDS AND JANICE WOLFE, Plaintiffs – Appellants, v. KEVORK ADANAS, Defendant – Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003482-23 ON APPEAL FROM ORDER OF LAW DIVISION GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SAT BELOW: HON. ANNETTE SCOCA, J.S.C SUPERIOR COURT OF NEW JERSEY ESSEX COUNTY: LAW DIVISION DOCKET NO.: ESX-L-5586-23

APPELLANTS' REPLY BRIEF IN FURTHER SUPPORT OF APPEAL OF TRIAL COURT'S ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DISMISSAL WITH PREJUDICE

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PRELIMINARY STATEMENT

Appellants-Plaintiffs Merlin's Kids, Inc. and Janice Wolfe ("Appellants") brought this appeal based on Respondent-Defendant Kevork Adanas P.C.'s ("Respondent") failure to register Merlin's Kids, Inc. as a charity with the State of New Jersey.

Respondent assisted in forming the corporate entity on October 3, 2008 but did not file and register Merlin's Kids as a charitable entity with the Consumer Affairs Division of the Attorney General's Office. That failure did not have any consequences until December 18, 2020, when the Attorney General filed a complaint against Appellants based, in part, on their failure to register Merlin's Kids as a charitable entity.

Despite these facts, the Law Division dismissed Appellants' complaint as barred by the statute of limitations for a legal malpractice claim, which runs for six years. This is manifestly unjust and inequitable. Respondent's inaction—by failing to register Merlin's Kids as a charity—set a metaphorical landmine for Appellants that they only stepped on when the Attorney General's office filed the action against them in December 2020 (in which Appellants continue to defend themselves four years later).

Because Respondent's negligence did not cause any damages to Appellants from 2008 to 2020, Appellants must have the right to pursue their claim for legal

malpractice as against Respondent. To bar them from doing so—effectively because the Attorney General did not file the action against Appellants within the first six years of Merlin's Kids' operations—is an inflexible, inequitable result and runs counter to established case law in the State of New Jersey.

LEGAL ARGUMENT

I. THE LEGAL MALPRACTICE CLAIM ONLY ACCRUED WHEN APPELLANTS SUFFERED ACTUAL DAMAGES

Appellants suffered actual damages once the failure to register as a charity caused the Attorney General's office to file an action against them.

"Mere knowledge of an attorney's negligence does not cause a legal malpractice claim to accrue." Olds v. Donnelly, 150 N.J. 424, 437 (1997). A legal malpractice claim "accrues when an attorney's breach of professional duty proximately causes a plaintiff's damages." Grunwald v. Bronkesh, 131 N.J. 483, 492 (1993). A plaintiff's damages must be "real" as opposed to "speculative." Olds, 150 N.J. at 437. An adverse judgment "may constitute damage" and thus the accrual of the legal malpractice claim. See id.

As the Supreme Court of New Jersey held in Grunwald, the accrual date begins when "the client suffers actual damages and discovers . . . [or should discover] the facts essential to the malpractice claim." Grunwald, 131 N.J. at 494. The Supreme Court has also "recognized, however, the unfairness of an inflexible

application of the statute of limitations when a client would not reasonably be aware of 'the underlying factual basis for a cause of action,' to file a timely complaint." Vastano v. Algeier, 178 N.J. 230, 236 (2003) (quoting Grunwald, 131 N.J. at 492-93). "To guard against that inequity, we have applied the discovery rule in those cases in which the injury or wrong is not readily ascertainable through means of reasonable diligence." Vastano, 178 N.J. at 236. "We understand that in some circumstances a client may not be able to detect the essential facts of a malpractice claim with ease or speed of the complexity of the issues or proceedings, or because of the special nature of the attorney-client relationship." Id.

Appellants initiated this action once they realized that the charity was not properly registered—because the Attorney General's office filed a complaint against Appellants, on December 18, 2020. Appellants filed this action on August 29, 2023, well within six years of the Attorney General's office filing the complaint.

"The majority of courts hold that when attorney malpractice occurs during the course of litigation, the cause of action accrues on entry of an adverse judgment in the trial court." Olds, 150 N.J. at 438.

In an analogous way, the legal malpractice claim in this matter accrued once there was an injury to Appellants: the Attorney General filing an action against them asserting a claim for violating the statute that requires proper registration of the charity.

CONCLUSION

Therefore, for the foregoing reasons, it is respectfully submitted that the order of the trial court should be vacated and the matter remanded back to the trial court.

Respectfully submitted,

Scott B. Piekarsky, Esq.

Superior Court of New Jersey

Appellate Division

Docket No. A-003482-23

MERLIN'S KIDS, INC., and JANICE WOLFE,	:	CIVIL ACTION
	:	ON APPEAL FROM AN ORDER OF THE
Plaintiffs-Appellants,	:	SUPERIOR COURT OF NEW JERSEY, LAW DIVISION,
vs.	:	ESSEX COUNTY
	:	DOCKET NO.: ESX-L-5586-23
KEVORK ADANAS, P.C.,	:	Sat Below:
Defendant-Respondent.	:	HON. ANNETTE SCOCA, J.S.C

BRIEF ON BEHALF OF DEFENDANT-RESPONDENT

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PRELIMINARY STATEMENT

Dismissal of the Appellants'/Plaintiffs' Merlin's Kids, Inc. and Janice Wolfe ("Appellants", "Plaintiffs") Amended Complaint was properly granted in favor of Respondent/Defendant Kevork Adanas P.C. ("Respondent", "Defendant" and "Kevork"), as the Appellants' legal malpractice claim is time barred pursuant to the six-year statute of limitations under New Jersey law.

Statutes of limitation serve important dual purposes in this jurisdiction. Statutes of limitation not only promote the diligent and prompt vindication of legal claims but also avoid the unfairness and injustice resulting from a defendant having to defend against claims where memories have faded, and evidence has been lost. The instant case is a clear example of a litigant who sat on its legal rights and allowed memories to fade to the extreme detriment of the defendant.

By way of background, in October of 2008, Plaintiff Janice Wolfe retained Kevork to assist in the formation of the non-profit entity, Merlin's Kids, Inc. ("Merlin's Kids"). It is undisputed that on or about October 3, 2008, Kevork assisted Janice Wolfe by filing Merlin Kid's Certificate of Incorporation with the New Jersey Division of Revenue. According to the Complaint, in 2020, Plaintiffs were sued by the New Jersey Attorney General (bearing Docket No. BER-C-247-20) (hereinafter referred to as "AG Action") "for failing to file and

register as a charitable entity with the Consumer Affairs Division of the Attorney General's Office (hereinafter referred to as "AG office") and for failing to follow specific statutes and regulations governing charitable entities in the State of New Jersey."

However, as will be set forth below, on or about March 25, 2014, Plaintiffs received Notice, via certified mail, from the New Jersey Office of the Attorney General ("AG Notice") wherein it set forth that Merlin's Kids was not properly registered with the Charities Registration & Investigation Unit (CRI).

Thereafter, on or about August 29, 2023, nearly fifteen (15) years after Kevork assisted Plaintiffs in the formation of Merlin's Kids, Plaintiffs initiated the within action as against Kevork, alleging, in part, that Kevork "failed to advise Plaintiffs of the need to register the charity". In response, Defendant filed a Motion to Dismiss in Lieu of an Answer on the basis that Plaintiffs' legal malpractice claim was barred by the six-year statute of limitations. Thereafter, on May 31, 2024, the Honorable Annette Scoca, J.S.C., granted Defendant's Motion ("Trial Court Order"), holding that the statute of limitations began to accrue when Janice Wolfe received the AG Notice in 2014. The Trial Court reasoned that the AG Notice clearly apprised Janice Wolfe of Merlin's Kids' registration status and further, advised Janice Wolfe that Merlin's Kids'

failure to satisfy such registration requirements may result in further actions by the AG Office.

Appellants now appeal the Trial Court's Order arguing that their first notice of harm or damage was on April 27, 2022, when the court granted partial summary judgment in the AG Action.

For the reasons set forth more fully below, the entry of the Trial Court's Order was proper and should be affirmed. The uncontroverted evidence establishes that Plaintiffs' legal malpractice claim accrued on March 25, 2014. Therefore, Plaintiffs were required to file their legal malpractice complaint by March 25, 2020. Plaintiffs did not initiate the within action until August of 2023, nearly three and a half (3 ½) years after the expiration of the applicable statute of limitations. Accordingly, Respondent respectfully submits that the Trial Court's May 31, 2024 Order should be affirmed.

COMBINED PROCEDURAL HISTORY & STATEMENT OF FACTS[1]

The following Counterstatement of Facts is submitted for the purpose of this Opposition to Appellants' Appeal and should not be deemed an admission nor an adopted admission by Kevork.

[1] The factual background and procedural history of this matter are intertwined and therefore, presented together.

Plaintiffs initiated the within action on August 28, 2023, wherein they allege that Janice Wolfe retained Kevork Adanas, P.C. in the Fall of 2008 to assist her in creating a charitable not for profit entity, Merlin's Kids. (Pa 1). Notably, the Complaint in the instant matter was not properly served and thereafter an Amended Complaint was filed (alleging the same claims) on January 23, 2024. (Pa 7).

Nevertheless, on October 3, 2008, Kevork filed a Certificate of Incorporation with the New Jersey Division of Revenue in Trenton, New Jersey incorporating Merlin's Kids Inc. (Pa 7; Pa 29). The Certificate of Incorporation listed Janice Wolfe as both a Trustee and as the Registered Agent of Merlin's Kids, Inc. (Pa30).

On March 25, 2014, the New Jersey Office of the Attorney General issued a Notice of Unregistered Charitable Organization to Merlin's Kids, via certified mail, stating that Merlin's Kids was not properly registered as a charitable organization with the State of New Jersey and that Plaintiffs' "failure to satisfy the registration may result in further action by the [AG]". (Pa 35; Pa 39). On March 30, 2014, Janice Wolfe signed for the Notice of Unregistered Charitable Organization on behalf of Merlin's Kids. (Pa 37)

According to the Amended Complaint, in 2020, the AG Office initiated the AG Action as against Janice Wolfe and Merlin's Kids "for failing to file and

register as a charitable entity with the Consumer Affairs Division of the Attorney General's Office and for failing to follow specific statutes and regulations governing charitable entities in the State of New Jersey." (Pa 7).

In response to Plaintiffs' Complaint, Defendant filed a Motion to Dismiss in Lieu of an Answer on the basis that Plaintiffs' legal malpractice claim was barred by the six-year statute of limitations. (Pa 10). On May 31, 2024, the Honorable Annette Scoca, J.S.C., granted Defendant's Motion to Dismiss. (Pa 83). The Trial Court granted Defendant's motion to dismiss on the basis that Plaintiffs' claims were barred by the six-year statute of limitations under New Jersey law. (T1, 15:7-17:10). Specifically, Judge Scoca found:

> The record shows that the notice (indiscernible) stated March 25th, 2014 (indiscernible) certified mail return receipt requested (indiscernible). In this notice plaintiff was advised, failure to satisfy the registration may result in further action by the division. Until registration requirements are met your organization is not properly registered with the State of New Jersey. At this point plaintiff became aware that her organization was not registered or may not have been registered as a charitable organization. At this (indiscernible) plaintiff was aware or should have become aware that plaintiff was aware of defendants legal malpractice.
>
> [T1, 13:1-14].

The Appellants now appeal the Trial Court's decision to dismiss its Amended Complaint.

LEGAL ARGUMENT
POINT ONE

DISMISSAL FOR FAILURE TO STATE A CLAIM WAS PROPERLY GRANTED BECAUSE THE STATUTE OF LIMITATIONS HAD EXPIRED.

This Court reviews the granting of Defendant Kevork's Motion to Dismiss under R. 4:6-2(e), applying the same standard as is applied in the Law Division. Major v. Maguire, 224 N.J. 1, 26 (2016).

Under R. 4:6-2, a party asserting a defense of the failure to state a claim upon which relief can be granted may raise the claim prior to filing an answer. R. 4:6-2(e). A motion to dismiss under R. 4:6-2(e) must be evaluated in light of the legal sufficiency of the facts alleged on the face of the complaint. Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). While the non-moving party is entitled to every reasonable inference of fact, the denial of a motion to dismiss cannot be supported by a plaintiff's reliance on vague and conclusory allegations, bald assertions, or legal conclusions. See e.g., Rieder v. State Dept. of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (stating that a Court cannot consider anything other than the legal sufficiency of the facts alleged and apparent on the face of the complaint).

Moreover, the plaintiff has the obligation of "mak[ing] allegations, which, if proven, would constitute a valid cause of action." Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005) (quoting Leon v. Rite Aid Corp., 340 N.J.

Super. 462, 472 (App. Div. 2001)). If the factual allegations are "palpably insufficient" to support a claim upon which relief can be granted, then dismissal is appropriate. Frederick v. Smith, 416 N.J. Super. 594, 597 (App. Div. 2010). "In evaluating motions to dismiss, courts consider allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) (internal quotes omitted.) See also Myska v. New Jersery Mfrs. Ins. Co; 440 NJ Super 458, 482 (App. Div. 2015).

A Court reviewing a Complaint pursuant to a motion to dismiss may consider documents specifically referenced in the complaint "without converting the motion into one for summary judgment." Myska v. New Jersey Mfrs. Ins. Co., 440 N.J. Super. 458, 482 (App. Div. 2015), citing E. Dickerson & Son, Inc. v. Ernst & Young, LLP, 361 N.J. Super. 362, 365 n. 1 (App. Div. 2003). Furthermore, "when allegations contained in a complaint are contradicted by the document it cites, the document controls." Myska, 440 N.J. Super. at 482 (citing Rapaport v. Robin S. Weingast & Assocs., 859 F. Supp. 2d 706, 714 (D.N.J. 2012))

As discussed in greater detail below, even affording Appellants the benefit of all inferences, there can be no question that the Trial Court properly dismissed Appellants' legal malpractice claims with prejudice.

A. The Trial Court correctly ruled that Plaintiffs had knowledge of the facts essential to Defendant's alleged malpractice when Plaintiffs received the March 25, 2014 Attorney General's Notice.

Statutes of Limitations are statutes of repose whose underlying rationale is fairness to the defendant. See, e.g., Tevis v.Tevis, 79 N.J. 422, 430-31 (1979); Fox v. Passaic Gen. Hosp., 71 N.J. 122 (1976). They reflect a public policy that claims redress from the injurious acts of others shall be brought within a reasonable time so that a defendant has a fair opportunity to defend. Tevis, 79 N.J. at 430. On the one hand, those statutes promote diligent and prompt vindication of legal claims, while on the other hand, avoid unfairness and injustice resulting from having to defend suits where memories have faded and evidence has been lost. Lopez v. Swyer, 62 N.J. 267, 274 (1973).

Pursuant to N.J.S.A. 2A:14-1, "a legal malpractice action must commence within six years from the accrual of the cause of action." Vastano v. Algeier, 178 N.J. 230, 236 (2003); citing Grunwald v. Bronkesh, 131 N.J. 483, 499 (1993); McGrogan v. Till, 167 N.J. 414, 419, 424–26 (2001); Olds v. Donnelly, 150 N.J. 424, 440 (1997). "Ordinarily, a cause of action 'accrues when an attorney's breach of professional duty proximately causes a plaintiff's damages.'" Vastano, 178 N.J. at 236; citing Grunwald, 131 N.J. at 492. However, due to the "unfairness of an inflexible application of the statute of limitations" the Supreme Court has "applied the discovery rule in [] cases in

which the injury or wrong is not readily ascertainable through means of reasonable diligence." Vastano, 178 N.J. at 236; see also Grunwald, 131 N.J. at 492-93; Olds, 150 N.J. 436-37.

Accordingly, in applying the discovery rule in a legal malpractice action, a cause of action accrues when the underlying facts, and not when the legal effect of those facts, are known or knowable by a plaintiff. Grunwald, 131 N.J. at 493-94. Further, the "Statute of Limitations begins to run when the plaintiff is aware, or *reasonably should be aware*, of facts indicating that she has been injured through the fault of another, *not when a lawyer advises her that the facts give rise to a legal cause of action."* Burd v. New Jersey Tel. Co., 76 N.J. 284, 291 (1978) (emphasis added); see also Lopez v. Swyer, 62 N.J. at 273 (1973). Similarly, a plaintiff need not have "knowledge of a specific basis for legal liability or a provable cause of action before the statute of limitations begins to run." Savage v. Old Bridge-Sayreville Med. Group, 134 N.J. 241, 248 (1993); see Vastano, 178 N.J. at 236 (citing Grunwald, 131 N.J. at 494).

It is important to note that the discovery rule does not toll the statutory period when a legal malpractice plaintiff "clearly knew or should have known that he was harmed by his attorney's negligent advice", but rather, "when the essential facts of the malpractice claim are reasonably discoverable". Vastano, 178 N.J. at 236 - 242. For reference, in Vastano, the Supreme Court found that

plaintiffs' claim did not accrue when plaintiffs "actually" learned of a settlement offer, but rather, when the plaintiff's obtained possession of their case file. Id. at 241. The Vastano Court explained that the accrual date is not governed by the date when the plaintiffs actually learned of the uncommunicated settlement offer if that information was reasonably discoverable at an earlier time. Id. at 241-242.

Similar to the facts set forth in Vastano, here, Plaintiffs received the AG Notice in March of 2014, which notified Plaintiffs that Merlin's Kids was not properly registered with the Charities Registration and Investigations Unit of the New Jersy Office of the Attorney General. However, Plaintiffs did not initiate the within action until August of 2023, nine (9) years after receiving the AG Notice and three and a half (3 ½) years after the AG filed the AG Action. Specifically, between 2014 and 2020, despite having been placed on notice, Plaintiffs did nothing. As provided by the Trial Court in its reasoning, "it seems like they got the letter and did nothing about it." (T1 15:18).

Further, like in Vastano, Appellants "possessed all the information necessary to reveal [the] malpractice" when they received the AG Notice in March of 2014.[2] Vastano, 178 N.J. at 242. Here, the AG Notice was thorough,

[2] We make no finding that Defendant Kevork was, in fact, negligent and in fact deny same. However, we assume negligence solely for the purpose of our analysis in this brief.

as it specifically set forth the following information as to Merlin's Kids' registration/charitable status: (1) Merlin's Kids was not registered with the CRI; (2) pursuant to various New Jersey laws, regulations and statutes, a charitable organization, unless exempt, must file a registration annually; (3) the failure to satisfy Merlin's Kids' registration with the CRI may result in further action by the Division of Consumer Affairs; (4) that until registration requirements were met, Merlin's Kids, was not properly registered as a charity with the State of New Jersey. (Pa 38).

The Appellants initiated the within action on August 28, 2023, wherein they allege that Janice Wolfe retained Kevork in the Fall of 2008 to assist her in creating a charitable not for profit entity, "Merlin's Kids, Inc.". (Pa 1). However, as the Trial Court correctly determined, the Appellants were aware of a potential cause of action no later than March 25, 2014. (T1). Specifically, the Trial Court determined that when Janice Wolfe received the AG Notice, certified mail return receipt requested, she "became aware that her organization was not registered or may not have been registered as a charitable organization" and further, "was aware or should have become aware.…of defendant's legal malpractice". (T1: 13:1-14). Further, the Trial Court unequivocally found that the AG Notice "specifically indicates that failure to satisfy the registration may result in further actions by the division[]" and "[a]t this moment, the use of reasonable diligence

[Appellant] should have or could have discovered facts essential to the malpractice claim. (T1 14:16-16:14). Therefore, the Trial Court correctly determined that the Appellants' Amended Complaint against Kevork is time barred by the applicable six-year Statute of Limitations.

POINT TWO

THERE IS NO MERIT TO PLAINTIFFS' CLAIM THAT THE DISCOVERY RULE TOLLED THE STATUTE OF LIMITATIONS UNTIL "ACTUAL DAMAGES" WERE ESTABLISHED

As set forth above, the discovery rule applies to toll the running of the statute of limitations until such time that the plaintiff discovers or reasonably should have discovered the basis for an actionable claim. Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 134 (2017). Specifically, as set forth by the Supreme Court in Ben Elazar:

> Whether the discovery rule applies depends on whether the facts presented would alert a reasonable person, exercising ordinary diligence, that he or she was injured due to the fault of another. The standard is basically an objective one-whether plaintiff knew or should have known of sufficient facts to start the statute of limitations running. When a plaintiff knows he has suffered an injury but does not know that it is attributable to the fault of another, the discovery rule tolls the date of accrual as to that unknown responsible party. And, when a plaintiff knows her injury is the fault of another, but is reasonably unaware that a third party may also be responsible, the accrual clock does not begin ticking against the third party until the plaintiff has evidence that reveals his or her possible complicity.

> [Id., 230 N.J. at 134-35 (internal cites, quotes, and bracketing omitted.)]

Thus, under the discovery rule, a cause of action does not accrue until a plaintiff knows or has reason to know of both factors, that the injury exists and that it was the fault of another. Martinez v. Cooper Hospital-University Medical Center, 163 N.J. 45, 52 (2000). The discovery rule only applies to two classes: "those who do not know that they have been injured and those who know they have suffered an injury but do not know that it is attributable to the fault of another." Martinez, 163 N.J. at 53.

"[P]ursuant to the discovery rule, a professional malpractice claim accrues when: (1) the claimant suffers an injury or damages; and (2) the claimant knows or should know that its injury is attributable to the professional negligent advice." Vision Mortgage Corp. v. Patricia Y. Chiapperini Inc., 156 N.J. 580, 586 (1999). "The limitations period begins to run when a plaintiff knows or should know the facts underlying those elements, not necessarily when a plaintiff learns the legal effect of those facts." Grunwald v. Bronkesh, 131 N.J. at 493. Courts will "impute discovery if the plaintiff is aware of facts that would alert a reasonable person to the possibility of an actionable claim ... legal certainty is not required." Lapka v. Porter Hayden Co., 162 N.J. 545, 555-556 (2000).

Here, the Appellants maintain that the Trial Court committed error by failing to properly consider the Appellants' position regarding when the cause of action accrued. Specifically, the Appellants argue that "[Janice Wolfe] first learned of the legal problem of not registering as a charity with New Jersey on December 18, 2020, when the complaint was served." (Pa 7). The Appellants further contend that Janice Wolfe's first notice of actual harm or damage from the same occurred on April 27, 2022, when the underlying court granted summary judgment." Ibid.

The Appellants' arguments are flawed as it has misapplied the facts and holding from the precedential case, Grunwald. Specifically, the Appellants have misunderstood/misconstrued the terms "actual damage" to mean "real" or ascertainable damages and moreover, have failed to realize that the decision in Grunwald concerned a finding of damages and not liability. Grunwald, 131 N.J. at 495 (noting the term "damage" is used "interchangeably with 'injury"'). Assuming the discovery rule would apply here, the statute of limitations began to run when Plaintiff had reason to know of its injury though the fault of another. As provided by the Trial Court in rendering its decision, "[t]he discovery rule focuses on an injured part[y's] knowledge concerning the origin and existence of its injuries as it relates to the conduct of another person". (T1 15:16-19). When Janice Wolfe received the AG Notice on March 25, 2014, via certified

mail, the Appellants were put on notice of their injuries/damages from the conduct of Kevork's alleged malpractice. Specifically, in its decision, the Trial Court reasoned in part:

> In [the AG Notice] plaintiff was advised, failure to satisfy the registration may result in further action by the division.. Until registration requirements are met [plaintiff's] organization is not properly registered with the State of New Jersey. At this point plaintiff became aware that her organization was not registered or may not have been registered as a charitable organization. . . . plaintiff was aware or should have become aware that plaintiff was aware of defendants legal malpractice.
>
> [T1 13:1-14]

As provided by the Trial Court, the AG Notice specifically advised the Appellants that Janice Wolfe's failure to properly register her organization, Merlin's Kids, may result in action by the Attorney General. Accordingly, the receipt of the AG Notice constituted a "basis of a cause of action" and triggered the applicable six-year statute of limitations as to filing an action as against Kevork. (T1: 16:3-14).

As set forth above, Grunwald does not require a plaintiff to suffer actual damage before its legal malpractice claim begins to run. Grunwald v. Bronkesh, 131 N.J. 483 (1993). Instead, Grunwald holds that "the statute of limitations begins to run only when the client suffers actual damage and discovers, *or*

through the use of reasonable diligence should discover, the facts essential to the malpractice claim." Ibid. emphasis added; see also Vision Mortgage, 156 N.J. at 586 (finding when plaintiff knew or had reason to know that its property interests were impaired, a legal injury occurred and the claim accrued); Olds, 150 N.J. at 439 ("[t]o trigger the statute of limitations, only the fact, not the amount of damages needs to be certain."). These legal principles are crucial when considering the Appellant's arguments.

Here, the fact that Plaintiffs chose not to take appropriate action after receiving the AG Notice has no bearing on the applicability of the statute of limitation. To the contrary, Plaintiffs' receipt of the notice demonstrates that they were fully capable of asserting the instant malpractice allegation within the statutorily permitted time period but simply chose not to do so**.** Plaintiffs admit that Ms. Wolfe, on behalf of Merlin's Kids, received the letter but chose not to take action because the notice stated that Janice Wolfe "may have to register" and that the Division "may take action". Plaintiffs contend that the AG Notice does not constitute actual damage as required by Grunwald. However, pursuant to the discovery rule, Plaintiffs knew or should have known that a potential cause of action existed against Kevork no later than March 25, 2014. Upon receipt of the AG Notice in 2014, Plaintiffs were obligated to investigate the potential claims which it has now alleged in this litigation.

This conclusion is consistent with New Jersey case law. In Vision, the Supreme Court rejected the argument that the cause of action in a mortgage foreclosure case accrued at the time of default or the sale of the mortgaged premises, rather than when the negligent appraisal became known to the plaintiff. Vision, 156 N.J. at 585. "The better analysis leads us to conclude that the accrual of a cause of action should not await the sale of the mortgaged properties, but rather that the cause of action should accrue when the mortgagee knows or has reason to know that its collateral has been impaired or endangered by the negligent appraisal. At that time, the mortgagee knows that it has suffered legal injury." Id. at 585-86. See also, Vastano, 178 N.J. at 239 (holding that the statute of limitation on legal malpractice for failure to obtain an expert began to run upon jury verdict and was not stayed pending appeal).

Thus, Plaintiff's argument is misplaced in that the cause of action in this case did not accrue on April 27, 2022, when the summary judgment was entered in the AG Action. Instead, the cause of action accrued in 2014 when, as a result of the AG Notice, Plaintiffs knew, or should have known, that Merlin's Kids was not properly registered. Accordingly, the Trial Court was correct in dismissing the Complaint and Respondent Kevork respectfully requests that this Court affirm the Trial Court's Order.

CONCLUSION

For the reasons set forth above, the Trial Court properly analyzed this case and dismissed Plaintiffs' Complaint. Accordingly, Respondent Kevork respectfully requests that this Court affirm the Trial Court's decision.

Respectfully Submitted,
MILBER MAKRIS PLOUSADIS & SEIDEN, LLP

By *_/s/ Lisa Olshen Adelsohn_____*

Lisa Olshen Adelsohn, Esq.

Dated: November 26, 2024

MERLIN'S KIDS, INC., AND JANICE WOLFE, Plaintiffs – Appellants, v. KEVORK ADANAS, P.C., Defendant – Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003482-23 ON APPEAL FROM ORDER OF LAW DIVISION GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SAT BELOW: HON. ANNETTE SCOCA, J.S.C SUPERIOR COURT OF NEW JERSEY ESSEX COUNTY: LAW DIVISION DOCKET NO.: ESX-L-5586-23

APPELLANT'S BRIEF IN SUPPORT OF APPEAL OF TRIAL COURT'S ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DISMISSAL WITH PREJUDICE

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Submitted on: October 28, 2024

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PRELIMINARY STATEMENT

The Trial Court erroneously dismissed Plaintiff's case by misapplying the discovery rule and misconstruing the facts of the case.

Plaintiffs became aware of a problem with their non-registration as a New Jersey charity when they learned of the Attorney General's complaint on December 18, 2020. The Plaintiffs' first notice of harm or damage attributable to the registration problem was on April 27, 2022, when the court granted partial summary judgment in an underlying case. Suit here was filed on August 29, 2023, or within six years of the said notice. Therefore, the court should have never dismissed the complaint with prejudice.

PROCEDURAL HISTORY

Plaintiff filed the complaint on August 29, 2023. (PA000001) An amended complaint was filed on January 23, 2024. (PA000007) A motion to dismiss the complaint was filed on April 2, 2024. (PA000010) Opposition to the motion was filed on April 10, 2024. (PA00064) A reply brief was filed on April 17, 2024. (PA000071) Oral argument was heard, and the case was dismissed on May 31, 2024. (PA000083/T1)

STATEMENT OF FACTS

When Plaintiffs learned of fault and damages attributable to Defendant's failure to advise or register Plaintiff Merlin's Kids as a charity on December 18, 2020, the discovery rule was triggered and Plaintiffs had six years to file their legal malpractice case. They filed within six years on August 29, 2023. (PA000001) The trial court erroneously dismissed the case with prejudice.

LEGAL ARGUMENT

I. Standard of Review

An appellate court reviews a grant of summary judgment de novo, "applying the same standard as the trial court." L.A. v. New Jersey Div. of Youth and Family Services, 217 N.J. 311, 323 (2014). Summary judgment is warranted where "there is no genuine issue as to any material fact challenged and … the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2 (c). An issue of material fact arises where "the competent evidential material presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life. Ins. Co., 142 N.J. 520, 540 (1995). Here there is clearly an issue as to the notice and date and nature of the same.

II. The Trial Court Erroneously Applied the Discovery Rule and the Dismissal Should be Vacated & the Matter Remanded to the Law Division (PA000083)

The Plaintiff Janice Wolfe certified that she first learned of the legal problem of not registering as a charity with New Jersey on December 18, 2020, when the complaint was served. However, her first notice of actual harm or damage from the same occurred on April 27, 2022, when the underlying court granted summary judgment.

The seminal case of Grunwald v. Bronkesh, 131 N.J. 483, 494 (1993) is directly on point and dispositive of this case.

In Grunwald, the Supreme Court had to decide when the statute of limitations begins to run on a legal malpractice action. The trial court said it ran when the trial court decided against Plaintiff. The Appellate Division reversed finding it started to run when the appellate process had been concluded. Id. at 487

Factually, Plaintiff engaged Bronkesh to negotiate an option agreement for sale of real estate property in Atlantic City. Bronkesh prepared the option agreement and attached a contract of sale for buyer's approval. The buyer signed the option agreement and erroneously signed the contract too. Id., at 488

Bronkesh erroneously advised that the buyer now entered into an enforceable contract. In reliance, Grunwald passed up another opportunity to develop the property. The buyer never exercised the option. Id.

On Bronkesh's advice, Grunwald retained another firm and in April of 1984, sued buyer for specific performance or damages. On July 31, 1984, the court held the agreement unenforceable because buyer did not intend to buy the property. Plaintiff hired a third attorney to appeal and on November 30, 1985, the court affirmed the trial court. With a fourth attorney, Plaintiff filed a legal malpractice case on September 28, 1990, more than six years after the dismissal. Plaintiff said no one told him he had a possible legal malpractice case. Id.

The trial court granted summary judgment holding that the statute of limitations barred the action. Applying the discovery rule, the court concluded that Plaintiff should have known he suffered damages attributable to Defendant's negligence on July 31, 1984. Id., at 489.

The Appellate Division reversed and found that Plaintiff could not have established a prima facie legal malpractice case until he exhausted the appeal. Until the appellate process ran its course, Plaintiff's damages were merely speculative. Id. The Supreme Court then went on and reversed the Appellate Division as we will discuss.

The Court held that the limitations period begins to run when Plaintiff knows or should have known the facts underlying injury and fault, not when a Plaintiff learns of the legal effect of the facts. Id., at 493. The court went on to state that the discovery rule in a legal malpractice case begins to run when the Plaintiff suffers

actual damage and discovers through reasonable diligence the facts essential to the claim. Id., at 494.

The Court held that you need injury and fault. "Actual damages are those that are real and substantial as opposed to speculative. Also, in a legal malpractice case actual damages may exist in the form of an adverse judgment." Id.

In the instant matter, the first and only time that the Plaintiff sustained actual injury or damages from the negligent advice was when the court entered the summary judgment order on April 27, 2022.

Here, the trial court completely erred by finding that the Plaintiff sustained the necessary damage when she received a March 25, 1994, letter from the State saying she may have to register and the Division may take action. That is not the actual suffered damage as required by Grunwald. Hence, the statute of limitations began to run on April 27, 2022, when Plaintiff received the adverse judgment that Grunwald specifically speaks to.

It could not be any clearer that the Plaintiff satisfied the discovery rule and the court below erred.

CONCLUSION

Therefore, for the foregoing reasons, it is respectfully submitted that the order of the trial court should be vacated and the matter remanded back to the trial court.

Respectfully submitted,

Scott B. Piekarsky, Esq.