

NO. 24113

IN THE SUPREME COURT OF THE STATE OF HAWAII

REINWALD, O'CONNOR & PLAYDON,
Plaintiff/Counterclaim-Defendant-Appellee,

vs.

BURT L. SNYDER,
Defendant/Counterclaimant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-4517)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Defendant/counterclaimant-appellant Burt L. Snyder appeals from the first circuit court's:¹ (1) July 26, 2000 judgment; and (2) July 26, 2000 findings of fact, conclusions of law, and order granting plaintiff/counterclaim-defendant-appellee Reinwald O'Connor & Playdon's [hereinafter, Reinwald] motion for summary judgment. On appeal, Snyder contends that the circuit court erred in: (1) entering various findings of fact and conclusions of law; (2) "failing to make an additional finding in the [f]indings of [f]act"; and (3) granting the motion for summary judgment because (a) "there were genuine issues of material fact"; and (b) "[Reinwald] was not entitled to judgment as a matter of law[.]"

¹ The Honorable Victoria Marks presided over the matters that are the subject of this appeal.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Snyder's contentions as follows:

With respect to Snyder's contention that his counterclaims of negligence and breach of contract² were not barred by the statute of limitations, we note that his claims allege legal malpractice by Reinwald in connection with its handling of the 1982 action. It is well-settled that the statute of limitation for legal malpractice claims, whether rooted in contract or tort, is governed by HRS § 657-1(1) (1993). Blair v. Ing, 95 Hawai'i 247, 267, 21 P.3d 452, 472, reconsideration denied, 96 Hawai'i 327, 31 P.3d 184 (2001); Higa v. Mirikitani, 55 Haw. 167, 173, 517 P.2d 1, 6 (1973). HRS § 657-1(1) provides that "actions shall be commenced within six years next after the cause of action accrued[.]" In determining the date on which the cause of action in a legal malpractice claim "accrued," we utilize the discovery rule, under which "a cause of action does

² We note that Snyder asserts that his counterclaim was recoupment -- not negligence or breach of contract. However, "[r]ecoupment is an affirmative defense." Mayer v. Alexander & Baldwin, Inc., 56 Haw. 195, 200 n.5, 532 P.2d 1007, 1010 n.5 (1975). Thus, Snyder was obligated to "set forth affirmatively" the defense of recoupment in his answer to Reinwald's complaint. Hawai'i Rules of Civil Procedure (HRCP) Rule 8(c) (2000); see also HRCP Rule 12(b) (2000). In this case, Snyder neither plead the defense of recoupment in his answer, nor filed an amended answer. Therefore, Snyder's recoupment defense is deemed waived for failure to plead. See State v. Hawaiian Dredging Co., 48 Haw. 152, 161, 397 P.2d 593, 600 (1964). Moreover, Snyder has not established that "evidence of the defense [was] introduced and not objected to for failure to plead it, and no su[r]prise [was] claimed." See Wilson v. Kealakekua Ranch, Ltd., 57 Haw. 124, 126, 551 P.2d 525, 527 (1976). Accordingly, we do not address Snyder's arguments regarding recoupment.

not 'accrue,' and the limitations period therefore does not begin to run, until the plaintiff knew or should have known of the defendant's negligence." Blair, 95 Hawai'i at 264, 21 P.3d at 470 (citation omitted). Stated differently, "under the discovery rule, the statute of limitations begins to run the moment the plaintiff discovers or should have discovered the negligent act, the damage, and the causal connection between the former and the latter." Buck v. Miles, 89 Hawai'i 244, 251, 971 P.2d 707, 724 (1999) (citation, internal quotation marks, and brackets omitted).

In the instant case, Snyder was informed of the loss of boxes in August 1983. Prior to trial, which commenced on July 27, 1987, Snyder complained about the loss of evidence to Reinwald. Reinwald continued to represent Snyder throughout the trial, after which judgment was entered against Snyder. Snyder thereafter informed Reinwald that he did not want Reinwald to represent him further. Reinwald's last written communication to Snyder was on January 8, 1988.

Based on the foregoing, Snyder knew of Reinwald's alleged negligent act in August 1983, discovered its damaging consequences when judgment was entered against him, and should have known of "the causal connection between the former and the latter[]" once judgment was entered against him. See Buck, 89 Hawai'i at 251, 971 P.2d at 724 (citation omitted). Although the record on appeal does not indicate the exact date on which

judgment was entered, it would not be unreasonable to conclude that it was entered some time before January 8, 1988 -- the date of Reinwald's last communication with Snyder. Therefore, Snyder's claims of negligence and breach of contract "accrued" at the latest on January 8, 1988. Consequently, pursuant to HRS § 657-1(1), Snyder's claims must have been brought within six years of that date, i.e., by January 8, 1994. They were not. Accordingly, we hold that the circuit court did not err in concluding that Snyder's counterclaims were barred by the statute of limitations.³ Therefore,

IT IS HEREBY ORDERED that the circuit court's July 26, 2000 judgment is affirmed.

DATED: Honolulu, Hawai'i, September 27, 2004.

On the briefs:

Burt L. Snyder,
defendant/counterclaimant-
appellant, appearing pro se

Gilbert D. Butson (of
Reinwald, O'Connor &
Playdon) for plaintiff/
counterclaim-defendant-
appellee

³ In light of our holding that the circuit court did not err in ruling that Snyder's counterclaims were barred by the statute of limitations, we do not address the findings of fact and conclusions of law relating to the alternative grounds for granting Reinwald's motion for summary judgment -- i.e., waiver and estoppel in pais. Likewise, we do not address Snyder's argument that the circuit court erred in "failing to make an additional finding," inasmuch as Snyder's proposed finding is irrelevant to whether his counterclaims were time-barred.