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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

DEANNA MARENSTEIN,

Plaintiff and Appellant,

v.

WARREN S. SEIDER AND  
WARREN S. SEIDER, A LAW  
CORPORATION,

Defendants and Respondents.

B289426

(Los Angeles County  
Super. Ct. No. LC104326)

APPEAL from a judgment of the Superior Court of Los Angeles County, John J. Kralik, Judge. Affirmed.

Renshaw & Associates, Steven J. Renshaw for Plaintiff and Appellant.

Kaufman Dolowich & Voluck, Barry Z. Brodsky and Jodi L. Girtten for Defendants and Respondents.

## INTRODUCTION

Plaintiff and appellant Deanna Pimes Marenstein sued defendants and respondents Warren S. Sieder and Warren S. Sieder, A Law Corporation (collectively, Sieder)<sup>1</sup> for legal malpractice, alleging Sieder failed to timely file a claim and/or advise her about her right to recover increased workers' compensation benefits from the Subsequent Injuries Benefit Trust Fund (SIBTF).<sup>2</sup> Sieder moved for summary judgment on two independent grounds: (1) Marenstein could not establish the elements of her malpractice claim because Sieder did not have a duty to advise Marenstein on her SIBTF claim; and (2) Marenstein's malpractice claim was barred by the statute of

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<sup>1</sup> Warren S. Sieder and Warren S. Sieder, A Law Corporation were erroneously sued as Warren S. Seider and Warren S. Seider and Associates.

<sup>2</sup> According to the Department of Industrial Relations website, the SIBTF "is a source of additional compensation to injured workers who already had a disability or impairment at the time of injury. For benefits to be paid from the SIBTF, the combined effect of the injury and the previous disability or impairment must result in a permanent disability of at least 70 percent. The fund enables employers to hire disabled workers without fear of being held liable for the effects of previous disabilities or impairments. SIBTF benefit checks are issued to injured workers by the SIBTF Claims Unit after benefits are awarded by the Workers' Compensation Appeals Board." (*California Department of Industrial Relations* <<https://perma.cc/N7ZL-SZLP>> [as of Sep. 23, 2019].)

limitations under Code of Civil Procedure section 340.6.<sup>3</sup> The trial court granted summary judgment. Marenstein appeals.

We conclude Marenstein's complaint was barred by the one-year statute of limitations set forth in section 340.6, subdivision (a), because she filed her complaint over a year after she discovered the facts of the alleged malpractice and sustained actual injury. Because this conclusion is completely dispositive of the matter, we need not address whether Sieder owed Marenstein a duty to advise her on her SIBTF claim. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Marenstein worked as a bookkeeper and legal assistant at her husband's law firm – Lewis, Marenstein Wicke and Sherwin (Lewis Marenstein). While represented by Lewis Marenstein, Marenstein filed an initial workers' compensation claim for injuries she sustained while an employee of the firm in 1999 and 2000. In 2001, Lewis Marenstein settled the initial claim on her behalf. It also filed a separate claim for recovery of SIBTF benefits based on preexisting injuries. The worker's compensation administrative law judge found she was entitled to SIBTF benefits.

In 2004, Marenstein retained Sieder to file a second workers' compensation claim for injuries sustained in 2003. On January 21, 2010, Marenstein terminated Sieder's legal services and substituted in the law firm of Kozden, Fields, Sherry and Katz (Kozden). On March 27, 2014, Kozden settled Marenstein's second workers' compensation claim.

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<sup>3</sup> All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

After Marenstein settled her second workers' compensation claim in 2014, Lewis Marenstein filed a second claim for SIBTF benefits on Marenstein's behalf. On March 26, 2015, the Assistant Chief Counsel of the Department of Industrial Relations sent a letter to Lewis Marenstein offering to settle the SIBTF claim and explaining the statute of limitations for her claim "ha[d] long since passed." The offer was not accepted. On October 8, 2015, the workers' compensation administrative law judge concluded Marenstein's claim for SIBTF benefits was barred by the applicable five-year statute of limitations, which ran in 2008. On December 15, 2015, the Workers' Compensation Appeals Board affirmed the administrative law judge's finding.

On June 22, 2016, Marenstein filed a complaint against Sieder for legal malpractice, alleging Sieder "breached their duty to [Marenstein] by . . . failing to timely file and pursue a claim for increased benefits from the SIBTF, or advise [Marenstein] that she had a right to pursue such a claim and that there was a time limitation on pursuing such a claim." Sieder moved for summary judgment, asserting Marenstein could not establish the duty element of a legal malpractice claim, and the complaint was barred by the statute of limitations under section 340.6. At the hearing on the motion, which Marenstein's counsel failed to attend, the court granted Sieder's motion. The court entered judgment in favor of Sieder. Marenstein appeals from the judgment.

## **DISCUSSION**

### **I. Standard of Review**

"A party is entitled to summary judgment only if there is no triable issue of material fact and the party is entitled to judgment

as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) 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. (*Id.*, subd. (p)(2).) If the defendant meets this burden, the burden shifts to the plaintiff to present evidence creating a triable issue of material fact. (*Ibid.*) A triable issue of fact exists if the evidence would allow a reasonable trier of fact to find the fact in favor of the party opposing summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 [citation.] )

“We review the trial court’s ruling on a summary judgment motion 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 opponent. (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460 [citation.]) We must affirm a summary judgment if it is correct on any of the grounds asserted in the trial court, regardless of the trial court’s stated reasons. [Citation.]” (*Grebing v. 24 Hour Fitness USA, Inc.* (2015) 234 Cal.App.4th 631, 636-637.)

## **II. Marenstein’s Legal Malpractice Suit is Barred by The Statute of Limitations in Section 340.6**

Section 340.6, subdivision (a) provides, in relevant part, “[a]n action against an attorney for a wrongful act or omission . . . 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.” The time for commencement of

a legal malpractice action shall not exceed four years “except that the period may be tolled during the time . . . [¶] [t]he plaintiff has not sustained actual injury. . . .” (§ 340.6, subd. (a)(1).) Thus, under section 340.6, the one-year limitations period commences when the plaintiff actually or constructively discovers the facts of the wrongful act or omission, but the period is tolled until the plaintiff sustains actual injury. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 751.)

Marenstein filed her complaint for legal malpractice against Sieder on June 22, 2016. Marenstein contends she did not suffer actual injury triggering the statute of limitations until October 8, 2015, when the administrative law judge determined Marenstein’s claim for SIBTF benefits was barred by the applicable statute of limitations. We disagree with Marenstein.

“If the allegedly negligent conduct does not cause damage, it generates no cause of action in tort. [Citation.] The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence. [Citations.] Hence, until the client suffers appreciable harm as a consequence of [the] attorney’s negligence, the client cannot establish a cause of action.” (*Jordache, supra*, 18 Cal.4th at pp. 749-750, quoting *Budd v. Nixen* (1971) 6 Cal.3d 195, 200.) When malpractice results in the loss of a right or a remedy, however, there has been actual injury regardless of whether future events may affect the permanency of the injury. (*Jordache, supra*, 18 Cal.4th at p. 750.)

Here, the limitations period on Marenstein’s SIBTF claim ran in 2008—five years after her injury in 2003. Because Marenstein lost her right to claim SIBTF benefits in 2008, that is

when she sustained “actual injury” under section 340.6, subd. (a)(1). At that point, assuming Marenstein had knowledge of her counsel’s alleged neglect, Marenstein could have pled damages that could establish a cause of action for legal malpractice, i.e., loss of entitlement to SIBTF benefits. (*Jordache, supra*, 18 Cal.4th at p. 744 [“section 340.6, subdivision (a)(1), will not toll the limitations period once the client can plead damages that could establish a cause of action for legal malpractice.”].) That the administrative law judge did not conclusively hold Marenstein’s claim for SIBTF benefits was barred by the statute of limitations until October 8, 2015 does not alter our conclusion; the fact remains that Marenstein could have pled a cause of action for legal malpractice in 2008 had she known about her counsel’s failure to timely file a SIBTF claim.

Moreover, the undisputed facts demonstrate Marenstein discovered “facts constituting the wrongful act or omission” no later than March 26, 2015, when the Assistant Chief Counsel of the Department of Industrial Relations sent a letter to Marenstein’s counsel offering to settle the SIBTF claim. The letter stated: “As I explained, your client, who was previously awarded [SIBTF] benefits, waited over 11 years to file her second application for [SIBTF] benefits. Thus, the statute of limitations has long since passed. [Citation.]” Marenstein’s counsel confirmed he received the letter, his practice was to communicate the offer to his client, and Marenstein rejected the offer. Marenstein initially testified in her deposition that she was very concerned when she learned of the State’s position that her SIBTF claim was barred by the statute of limitations. Sieder acknowledges Marenstein later revised her deposition testimony, however, stating she did not recall seeing the March 26, 2015 letter. But

whether Marenstein read the letter is irrelevant because an attorney's knowledge is imputed to his or her client for purposes of determining when Marenstein "discovered" her attorney's alleged negligence. (*See e.g., Stalberg v. Western Title Ins. Co.* (1991) 230 Cal.App.3d 1223, 1231.)

Because Marenstein did not file her malpractice complaint until June 22, 2016, over a year after she clearly had knowledge of the alleged wrongful act or omission, and years after she sustained actual injury, her claim is barred by the statute of limitations in section 340.6, subdivision (a). Summary judgment was therefore properly granted.



## **DISPOSITION**

The judgment is affirmed. Sieder is awarded his costs on appeal.

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CURREY, J.

WE CONCUR:

WILLHITE, Acting P. J.

COLLINS, J.