

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

CHAMBERS OF  
ANDRE M. DAVIS  
UNITED STATES DISTRICT JUDGE

U.S. COURTHOUSE  
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June 1, 2009

MEMORANDUM TO COUNSEL RE:

WW, LLC v. Pear, Sperling, Eggan & Daniels, P.C.  
Civil No. AMD 09-524

Before the court in this diversity action arising under Maryland law is the defendants' motion to dismiss. I have elected to rule in this informal manner. (Plaintiffs do not object and are not prejudiced insofar as the court treats the motion as one for summary judgment. *See* Fed.R.Civ.P. 12(b)(6).)

The simple, straightforward issue presented is whether the gloss placed on the three year statute of limitations by the "discovery rule" tolls the accrual of a cause of action until a plaintiff discovers the *identity* of an additional alleged tortfeasor (here, the lawyers who represented the principal alleged tortfeasor). While there may be some circumstances in which the facts comprising a cause of action are inextricably intertwined with the facts identifying the tortfeasor, *see Pennwalt Corp. v. Nasios*, 314 Md. 433, 438, 550 A.2d 1155 (1988), as a matter of law, this is not such a case. Accordingly, as reflected in well-settled Maryland law, discovery of the identity of the tortfeasor does not affect the accrual of the cause of action or the running of limitations. *Jacobs v. Flynn*, 749 A.2d 174, 131 Md.App. 342 (2000); *Conaway v. State*, 90 Md.App. 234, 600 A.2d 1133 (1992); *Doe v. American Nat. Red Cross*, 923 F.Supp. 753 (D.Md. 1996); *cf. Combs v. Albert Kahn Associates, Inc.*, 183 S.W.3d 190, 199 (Ky.App. 2006) ("[T]he discovery rule does not operate to toll the statute of limitations to allow an injured plaintiff to discover the identity of the wrongdoer unless there is fraudulent concealment or a misrepresentation by the defendant of his role in causing the plaintiff's injuries. A person who knows he has been injured has a duty to investigate and discover the identity of the tortfeasor within the statutory time constraints." (Citation omitted; alteration in original)).

For the reason set forth, the motion to dismiss is GRANTED. An Order follows.

Very truly yours,

/s/

Andre M. Davis  
United States District Judge

AMD:tt