

# Franklin County Legal Journal

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*Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.*

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**Gary Ahalt, William Murdaugh, and Jeffrey South, Plaintiffs v. Michael Morley, II, The Morley Group, Inc., Morley Consulting, LLC, John/Jane Does 1-3, And X,Y,Z Corporations 1-3, Defendants**  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch, Civil Action No. 2010-1915

HEADNOTES

*Joinder; Prejudice*

1. A party that is opposed to being joined to a pending action must establish prejudice. See Pa. R. Civ. P. 2229 and 2232
2. The “Discovery Rule” holds that the statute of limitations will not bar a claim in which the complaining party was reasonably unaware of the other party’s conduct and concealed facts. Crouse v. Cyclops Industries, 745 A.2d 606, 611 (2000).
3. Where facts are in dispute as to whether a party was reasonably unaware, for purposes of the Discovery Rule, the matter becomes an issue to be decided by the jury.

Appearances:

Paula J. McDermott, Esq., *Attorney for Plaintiffs*

Joseph W. Bullen, III, Esq., *Attorney for Defendants*

OPINION

Before Herman, P.J.

**Procedural History**

This matter commenced on May 10, 2010, when a group of seven plaintiffs filed a praecipe for writs of summons against twelve defendants. On May 10, 2012, the same plaintiffs sought writs of summons to be issued against six of the original twelve defendants. On April 12, 2013, the three Plaintiffs who are currently the only named Plaintiffs in this action filed a Complaint and sought to add Morley Consulting, LLC which had previously never been named as a defendant. On May 3, 2013, Plaintiffs filed the instant Motion to Join Additional Defendants which sought to join Morley Consulting, LLC. Defendant, Morley Consulting, LLC, filed a response on May 29, 2013. The matter was heard at oral argument court on October 10, 2013, and briefs were filed in accordance to the local rules. The matter is ready for decision.

**Factual History**

While many facts are in dispute, the following appears to be a brief

background on the matter. Plaintiffs were business partners operating three businesses, AMS Industries, Inc., Just Wood Industries, Inc., and Greencastle Kitchen and Flooring. The plaintiffs were introduced to Robert and Deanna Howard and Michael Morley in 2007. According to Plaintiffs, the Howards represented that they were wealthy and successful businesspeople, and that partnering with them could help all parties involved. Michael Morley would provide financial advisement, would structure the transferring of stock, and would provide access to shared bank accounts. Michael Morley, according to Plaintiffs, is the sole principal of the Morley Group and Morley Consulting, LLC. The business transactions, for whatever reason, did not go as planned and were unsuccessful. Plaintiffs allege that the failure was due to misrepresentations and scheming perpetrated by the Howards and furthered by Morley. Plaintiffs are alleging that it was the misrepresentations and conspiracy between the perpetrators that led to loss of money, incurring of personal debt, and destruction of these businesses.

### **Discussion**

Plaintiffs seek to join Morley Consulting, LLC as defendants to the instant action. Morley consulting objects on two grounds. First, Pa. R. Civ. P. 2232 does not permit joinder here. Second, joinder is not permitted where the statute of limitations on the cause of action has run. As to the general issue of joinder, “[a] plaintiff may join as defendants persons against whom the plaintiff asserts any right to relief jointly, severally, separately or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact affecting the liabilities of all such persons will arise in the action.” Pa. R. Civ. P. 2229. The court may order the joinder, at any time, of any party who could have previously been joined. Pa. R. Civ. P. 2232(c). Finally, where the party to be joined would be prejudiced by a late joinder, the court may decline to grant the motion seeking joinder of that party. Stefanik v. Matkowski, 446 A.2d 655 (Pa. Super. 1982).

Plaintiffs have clearly alleged sufficient facts to establish that Morley Consulting, LLC engaged in the same conduct as the existing Morley defendants. That is, engaging in a course of conduct to make a series of misrepresentations and breaches of a fiduciary duties. These allegations arise out of the same transactions and occurrences and will involve the same common questions of law and fact affecting the other defendants. Further, Morley Consulting, LLC has not established any prejudice that it would incur if it is made party to this action. Similarly, we are unable to find any prejudice. It appears that Defendant, Michael J. Morley is the sole principal of Morley Consulting. Morley Consulting appears to be intertwined

with the Morley Group and Michael Morley. It cannot be said that Morley Consulting was not aware of the pending litigation. Morley Consulting has not expressed the destruction of evidence it once held but no longer holds due to the passage of time. Further, this action is still in the pleading stages and Morley Consulting has not been prejudiced by not being a party of key stages of litigation. Therefore, we find that pursuant to Pa. R. Civ. P. 2229 and 2232, Morley Consulting, LLC can be joined as a party to this action.

This brings the discussion to the second issue: Whether the statute of limitations bars joinder of Morley Consulting, LLC. It appears, as Morley Consulting, LLC suggests, that the statute of limitations is two years pursuant to 42 Pa. Con. Stat. § 5524. The statute of limitations begins to run as soon as the right to institute an action arises. Wilson v. El-Daief, 964 A.2d 354 (Pa. 2009); International Raceway, Inc. v. Pocono Produce, Inc., 468 A.2d 468 (Pa. 1983). A complaining party must assert reasonable diligence to inform himself of the fact surrounding his cause of action, and once the statute of limitations have run, that party will be barred from asserting a claim. Hayward v. Medical Center of Beaver County, 608 A.2d 1040 (Pa. 1992). An exception to the tolling of the statute of limitations is known as the “Discovery Rule.” This exception provides that the statute of limitations will not bar a claim in which the complaining party was *reasonably unaware* of the other party’s conduct concealed facts. Crouse v. Cyclops Industries, 745 A.2d 606, 611 (2000).

Here, Plaintiffs argue that they could not have reasonably known about Morley Consulting, LLC’s involvement until they received answers to their discovery requests in January of 2012. Defendant argues that Plaintiffs were aware of Morley Consulting’s involvement since sometime in 2008, when Just Wood filed for bankruptcy in March 2010, or at least by the time the first set of Writ of Summons were sent out in May 2010.

Upon reviewing the briefs of both parties on this issue, it is clear that there is a large body of facts surrounding whether or not the Plaintiffs should have known of Morley Consulting’s involvement. For that reason, we are unable to decide this issue at this time. “Where the [Discovery] rule’s application involves a factual determination regarding whether the plaintiff exercised due diligence in discovering his injury, the jury must decide whether the rule applies.” Coleman v. Wyeth Pharmaceuticals, Inc., 6 A.3d 502 (Pa. Super. 2010). “Pursuant to application of the discovery rule, the point at which the complaining party should reasonably be aware that he has suffered an injury is a factual issue “best determined by the collective judgment, wisdom and experience of jurors.” Crouse v. Cyclops Industries, 745 A.2d 606 (Pa. 2000.) (quoting White v. Owens-Corning Fiberglas Corp., 668 A.2d 136, 144 (1995)). It is further worth noting that the Crouse court

remanded the case back to the trial court so that a jury trial could be held on the issue of whether the statute of limitations had run on a particular claim.

Too many facts are disputed for us to make a determination on the issue of whether the Plaintiffs should have known that Morley Consulting, LLC was involved in inflicting the alleged injury, and when they should have known that fact. Pursuant to the case law, it would be error on our part to make this factual determination. Therefore, we will not rule on this issue and it will remain undetermined until it can be decided by a jury at trial.

### **Conclusion**

In light of the foregoing discussion, Plaintiffs' motion seeking to join Morley Consulting, LLC will be granted. Morley Consulting will be joined as a defendant in this matter. Further, the issue of whether the statute of limitations bars any recovery against Morley Consulting, is an issue of fact that must be determined by a jury at the time of trial.

### **ORDER**

**NOW THIS** 30th day of January 2014, upon review and consideration of the Plaintiffs' Motion to Join Additional Defendants, Defendants' response thereto, the briefs in support, and oral argument:

**THE COURT HEREBY ORDERS** that Plaintiffs' Motion to Join Additional Defendants is GRANTED and Morley Consulting, LLC will be joined as a defendant in this matter for reasons set forth in the attached Opinion.

**IT IS FURTHER ORDERED** that the issue of whether the statute of limitations bars any recovery against Morley Consulting, LLC is an issue of fact that must be determined by a jury at the time of trial for reasons set forth in the attached Opinion.

*Pursuant to the requirements of Pa. R. Civ. P. 236 (a)(2), (b) and (d), the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Opinion and Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.*