

Superior Court Opinion in favor of Time Limits Clause in Accountant's Engagement Letter
Sandra McCaffrey, Appellant v. Carbis Walker & Associates, LLP No. 130 WDA 2008

On May 26, 2009, in a case handled through the trial court and the Superior Court by partner Dianne S. Wainwright, the Superior Court affirmed the trial Court's order granting summary judgment in favor of Carbis Walker & Associates LLP ("Carbis Walker") a regional accounting firm headquartered in New Castle Pa. The case was originally filed by Mr. & Mrs. Charles G. McCaffrey III against Carbis Walker, asserting claims for professional negligence, negligent misrepresentation and breach of contract. Mr. & Mrs. McCaffrey were shareholders/directors of a corporation known as Dellwood Mortgage Co. Carbis Walker performed the annual financial statement audits for Dellwood and also prepared Mr. & Mrs. McCaffrey's annual income tax returns.

Plaintiffs initiated the case by Writ and the Complaint was filed in June of 2002. Mr. McCaffrey discontinued his claims on May 12, 2005 in an apparent attempt to improve his wife's claims against the accountants. Based on the evidence, Mr. McCaffrey knew it would be difficult for him to argue that "he was unaware" that there were financial difficulties at Dellwood. Following extensive discovery which included the depositions of the McCaffreys, a Dellwood Board member, former Dellwood employees, and Carbis Walker representatives, Carbis Walker filed its Motion for Summary Judgment on all counts of Mrs. McCaffrey's Complaint.

Although there were numerous arguments included in the Motion for Summary Judgment, (e.g. claims barred by: the time limit set forth in the parties' contract, lack of standing, failure to show causation and the plaintiffs' contributory negligence) the trial Court primarily focused on the statute of limitations and scope of work/duty arguments. Carbis Walker's 1998 engagement letter included a "time limits" clause limiting the time period for bringing claims arising out of the engagement to two years. The 1999 engagement letter changed the time limit from two years to one year. The 1998 audit report was dated April 29, 1999 and the 1999 audit report was dated March 8, 2000. Accordingly, pursuant to the engagement letters, claims arising out of the 1998 engagement had to have been filed on or before April 29, 2001 and claims arising out of the 1999 engagement had to have been filed on or before March 8, 2001. The plaintiffs filed their claims on March 8, 2002. The trial court held that Mrs. McCaffrey's claims based on her status as a director/ shareholder, and owner of Dellwood were barred because her rights as a director/shareholder "cannot exceed those of the corporation in whose shoes she seeks to stand." Accordingly, the trial Court held that such claims were time barred. On appeal the appellant did not challenge the portion of the trial court's opinion relating to the time-bar. However, in footnote two, the Superior Court made clear that such time limits clauses are enforceable pursuant to the law of Pennsylvania. Although dicta, the Superior Court included the following recitation of the law on the time limits clause issue:

2. We note that enforcement of such contractual provisions comports with the law in Pennsylvania. See *Mutual of Omaha Ins. Co. v. Bosses*, 237 A.2d 218, 221 (Oa. 1968) (quoting *North Western Ins. Co. v. Phoenix Oil and Candle Co.* 1858 WL 7927, 2(Pa. 1858) ("it was always law, that parties might contract to

renounce privileges allowed them by law; and such renunciation is binding on them.”); **see also** 42 Pa. C.S. § 5501 (a) (emphasis added) (stating that an action “must be commenced within the time specified in or pursuant to this chapter unless, in the case of a civil action or proceeding, a different time is provided by this title or another statute **or a shorter time which is not manifestly unreasonable is prescribed by written agreement**”).

Ultimately, this was a win for the accountants, and significantly for the proposition that time limits clauses in the accountant/auditor’s engagement letters are enforceable under Pennsylvania law.