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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 8, 2023 Session

PAUL W. CHRISMAN, JR., TRUSTEE v. SP TITLE, LLC, ET AL.

Appeal from the Chancery Court for Williamson County
No. 16CV-45779 Joseph A. Woodruff, Judge

No. M2022-00944-COA-R3-CV

This appeal arises out of a third-party complaint asserting claims arising from the sale of real property. The trial court entered an order granting in part and denying in part the third-party defendants' motion for summary judgment. Afterward, the third-party plaintiff filed a notice of voluntary dismissal as to his remaining claim, which was then dismissed without prejudice by the trial court. The third-party plaintiff appeals. We reverse in part, vacate in part, and remand for further proceedings consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed in Part, Vacated in Part, and Remanded

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which ANDY D. BENNETT and JEFFREY USMAN, JJ., joined.

August C. Winter, Brentwood, Tennessee, for the appellant, Paul W. Chrisman, Jr., Trustee.

William N. Bates and A. Ryan Simmons, Brentwood, Tennessee, for the appellees, SP Title, LLC and Keith Solomon.

OPINION

I. FACTS & PROCEDURAL HISTORY

Background

Mr. Paul W. Chrisman, Jr. is the trustee of The Chrisman Family Trust and The Testamentary Trusts Established in the Last Will and Testament of Paul Woodrow

Chrisman ("the Trusts"). In January 2015, he retained Mr. Keith Solomon to represent him individually and as the Trustee in the sale of a parcel of farm property ("the Property") owned by the Trusts.[1] Mr. Solomon was an attorney who had represented Mr. Chrisman in prior matters. In addition to being an attorney, he was the sole manager of SP Title, LLC, f/k/a Solomon Parks Title & Escrow, LLC ("SP Title").[2] SP Title was a business that provided title search, title insurance, and closing services for residential and commercial real estate closings.

In February 2015, Mr. Chrisman received an offer to purchase the Property from Parks Holdings, LLC ("Parks Holdings"), of which Mr. Bob Parks was the chief manager and sole member. Mr. Parks was Mr. Solomon's business partner because Parks Holdings owned 50% of SP Title. The other 50% of SP Title was owned by The Solomon Tree, LLC, of which Mr. Solomon was the chief manager and sole member. Mr. Chrisman knew Mr. Solomon and Mr. Parks had a business relationship when he hired Mr. Solomon to represent him.

Mr. Chrisman had also received an offer to purchase the Property from NVR, Inc. ("NVR") and discussed the offer with Mr. Solomon. Ultimately, Mr. Chrisman accepted the offer from Parks Holdings and entered into an Assignable Real Estate Sales Contract ("the Agreement") with Parks Holdings on February 26, 2015. According to the Agreement, Parks Holdings intended to develop the Property into a subdivision with approximately 175 lots and would purchase the Property for $5,130,000. However, the purchase price depended on the number of lots approved by Williamson County authorities:

> **4(b)** If the construction plans and Subdivision Plans permit a combined development on the Property at a density which is more than or less than one hundred seventy[-]five (175) single family detached residential dwelling units, each dwelling unit being an "**Approved Residential Lot**", then the Purchase Price shall be calculated by multiplying the total number of Approved Residential Lots times Twenty[-]Nine Thousand Three Hundred Fourteen and 28/100 Dollars ($29,314.28). In the event the total number of Approved Residential Lots is less than one hundred fifty (150), then Purchaser may terminate this Contract by written notice to Seller at any time prior to the Closing Date, and the parties shall have no further rights or obligations hereunder. If the number of lots is more than one hundred seventy[-]five (175), then the purchase price shall be adjusted for the

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[1] Mr. Chrisman signed an engagement letter which was provided to him by Mr. Solomon. According to the engagement letter, Mr. Solomon would receive 3% of the gross proceeds from the sale of the Property rather than a retainer fee or an hourly rate.

[2] The name of this business was changed to SP Title, LLC on January 19, 2018. Although some of the facts related to the business occurred before the name was changed, we only refer to the business as SP Title in this opinion for the sake of clarity.

additional number of lots at the per lot price stated herein.

The Agreement provided for a 90-day Study Period for the purpose of conducting various tests, studies, and investigations related to the Property. The Agreement also provided for a 275-day Entitlement Period for the purpose of obtaining the necessary entitlements to construct the approved lots as contemplated by Parks Holding. Once the subdivision plans were ready and Parks Holdings received the necessary entitlements to construct the approved lots, closing was supposed to take place within 30 days.

In January 2016, Mr. Jamie Reed, an engineer who had been engaged by Parks Holdings, emailed Mr. Parks informing him of a traffic shed analysis which adversely affected the potential number of lots that would be approved. In a follow-up email, Mr. Reed stated that "[t]his will knock more than a third of the lots out." Based on this traffic shed analysis, Mr. Chrisman stood to lose more than $1,700,000 off the purchase price. Mr. Solomon was eventually "cc'd" in this email chain so that he could attend a meeting where they would discuss this issue. According to Mr. Chrisman, however, *he* was never apprised of this information by Mr. Solomon and would not have agreed to an extension to the Agreement if he had been. He allegedly did not learn of this traffic shed analysis until sometime after December 2016.

In March 2016, Mr. Chrisman and Parks Holdings entered into an amendment to the Agreement, which extended the Entitlement Period to August 31, 2016, and extended the time for closing to September 30, 2016. On June 15, 2016, Mr. Parks received the results of a second traffic shed analysis, which were based on traffic counts from December 2015 and the revised Williamson County Zoning Ordinance. Mr. Parks provided the results to Mr. Chrisman and Mr. Solomon and stated as follows:

> [Mr. Chrisman], attached is the calculations for the number of lots that the county will allow on your property. After we remove the acreage for the step system it appears we will end up with approximately 130 lots. Although I'm disappointed with the final results it could have been a lot worse. Thanks[.][3]

In September 2016, Mr. Chrisman and Parks Holdings entered into a second amendment to the Agreement, which extended the Entitlement Period to September 30, 2016, and extended the time for closing to October 14, 2016. The extension specifically provided that Mr. Chrisman would "not grant any additional extensions."

According to Mr. Chrisman, "things started heating up" at this point. On October 5, 2016, he began expressing suspicions about Mr. Solomon when he emailed his accountant:

[3] Although the number of lots was less than 150, Parks Holdings did not elect to terminate the contract.

> I haven't talked to [Mr. Solomon] yet, and don't recall clearly now I guess whether you were going to ask for the breakdown [of attorney's fees] before or after I would talk to him about it. I still have no strategy here, and I certainly don't know whether or not it would be better or worse for me to ask him for the breakdown directly. It could muddy the waters, it might get him thinking tho[ugh], and planning more for all eventualities. But after sufficient recent confidential discussions[,] it becomes more clear [sic] that [Mr. Solomon] is probably acting in conflict of interest. And I probably should be prepared for him to file a lien against the trust and or me should I refuse to pay him. And I'm pretty sure he'll want to take a check at closing, and I have assumed all along he would close the property.
>
> All this is coming up pretty darn soon, I have a couple of attorney's names, but thought you may have another or two suggestions. Were [Mr. Solomon] to file a lien, I guess it would then open the door to the conflict lawsuit. I might could also just go ahead now and try to get the contract null and void and try to start over. [Mr. Solomon] could easily lose his license, [Mr.] Parks could lose all [of] his earnest money and the paperwork of the county approvals, . . .
>
> I have a couple of names, but thought you might add a couple more attorneys to discuss this conflict and related matters.

According to Mr. Chrisman, the sentiments expressed in this email were associated with his growing realization that Mr. Solomon was not informing him about what was going on. Mr. Chrisman then emailed his accountant again stating that he was considering filing a lawsuit. Mr. Chrisman believed that closing on the Property would take place on or just a few days after October 14, 2016, but that did not happen. He claims that he was unaware of what was going on and that he was unable to get any information during this time. However, he was aware that Mr. Solomon had prepared a closing statement in order to close on the Property. The closing statement indicated that Propst Development Fiddler's Glen Nashville, LLC ("Propst") would purchase the Property upon closing. In his deposition, Mr. Chrisman stated that he could not recall seeing Propst on the closing statement, but he knew that Mr. Parks was speaking with someone about involving them in the Property. He did not learn about Propst's involvement until later. On October 21, 2016, Parks Holdings assigned its interest in the Agreement to Propst pursuant to an Assignment of Assignable Real Estate Sales Contract ("the Assignment"). According to Mr. Parks, Parks Holdings was to be paid a commission for the sale of the Property contingent upon Propst closing, which explained why he was still involved in negotiations after this Assignment was executed. Mr. Chrisman stated that he had no objection to Propst being the purchaser of the Property, but he did not understand the Assignment between Propst and Mr. Parks.

On October 27, 2016, Mr. Chrisman sent a text message to Mr. Solomon stating that

"facets of concern are beginning to glare more uncomfortably, and I am feeling compelled to talk with you about them." According to Mr. Chrisman, he was "flustered and frustrated," did not know what was going on, and had lost trust in Mr. Solomon at this point. The following day, Mr. Chrisman and his friend, Mr. Tommy Campbell, met Mr. Solomon at his office. According to Mr. Chrisman, Mr. Solomon informed him at this meeting that the Agreement with Parks Holdings had expired. He also provided Mr. Chrisman a $20,000 check from Mr. Parks. According to Mr. Chrisman, he found this "bizarre" and did not understand what the check could be for because Mr. Solomon had informed him that the Agreement had expired. He said that Mr. Solomon never told him that the check was an additional deposit which would go toward the other earnest money. However, Mr. Solomon stated that he did inform Mr. Chrisman that the check was to be added to the other earnest money. Following this meeting, Mr. Solomon sent an email to Mr. Chrisman, which stated in pertinent part that:

> Just to recap the meeting we had today:
>
> [Mr. Parks] is talking with Signature Homes today to see exactly when funding can occur.
>
> Environmental and Survey are hopefully to be completed by Monday so the funds can be received into my escrow account and then wired to you immediately.
>
> [Mr. Parks] advanced you another [$]20,000 today, which will be added to the other earnest money deposits you have received pursuant to the contract and this additional money will cause the settlement statement to be revised to reflect the same.

On November 6, 2016, Mr. Solomon had a discussion with Mr. Chrisman and advised him against depositing the check from Mr. Parks unless Mr. Chrisman intended to close on the Property. After choosing to deposit the check on November 7, 2016, Mr. Chrisman received a phone call from Mr. Parks. According to Mr. Chrisman, this phone call confirmed his suspicions that Mr. Solomon and Mr. Parks were in league together because Mr. Parks called basically to say, "We gotcha. You cashed the check." Mr. Chrisman believed that Mr. Parks and Mr. Solomon were working together to try and trick him or keep in the Agreement. He said, "[b]asically it was a trick to try to -- if I cashed [the check] that meant that I was going to be still under a contract . . . ."

On November 10, 2016, Mr. Solomon informed Mr. Chrisman that closing documents were ready for him to sign. The following day, Mr. Chrisman sent a text message to Mr. Solomon stating that other buyers were bidding on the Property and that he was choosing his friend Mr. Campbell to negotiate on his behalf. However, he further stated that "you are still my attorney, and I know and respect your short[-] and long[-]term

interest in this deal, and I appreciate any and all your input as always, so call me and please continue to help and advise me." Mr. Solomon responded, "I will continue to advise as allowed and can and will work with [Mr. Campbell]." On November 13, 2016, Mr. Chrisman sent another email to his accountant stating, "I been dealin [sic] with crooks. But still have [the Property] and complete approval for a 130[-]home development." According to Mr. Chrisman, this was an expression of his feeling that something was going on that he did not know about. He said that it was "fair to say" he had realized Mr. Solomon was more interested in his relationship with Mr. Parks than achieving a good deal for him.

On November 15, 2016, Mr. Chrisman sent a text message to Mr. Solomon stating in pertinent part as follows:

> [Mr.] Campbell will be representing me in any further negotiations, I just don't have the time nor capability and no experience at all in such matters, and at this point I also don't see how you could be looking out for my best financial interests either. I have little doubt you know what you're doing, but it seems you keep now selling me on a deal that is just over, thru, the contract for that deal expired.

The following day, he accused Mr. Solomon and Mr. Parks of giving him misleading information and lying to him:

> You and [Mr. Parks] have given me quite misleading information(s) -I'm trying to not let that affect any fair decisions regarding your contributions but I was bustin [sic] my stupid butt tryin [sic] to get out the house, you and [Mr. Parks] were tellin [sic] me you had money and were ready to close, and needed to break ground before winter etc[.] and it just wasn't true! And you knew it!! Y'all didn't need to lie to me!!

On November 29, 2016, he sent a text message to Mr. Parks notifying him of his intention to enter into a contract with other potential buyers—thereby indicating that he intended not to perform under the Agreement. Mr. Parks then sent a text message to Mr. Chrisman telling him not to enter into another contract and explained that:

> By cashing my check of $20,000 at the end of Oct[ober] you implied that you were still going thru with our deal. It is definitely my opinion that our contract is still valid and we have been ready to close for several weeks. If you sign another contract there could be legal ramifications. I've been asking to meet with you but you have refused to do so.

Meanwhile, Propst had signed closing documents prepared by Mr. Solomon, but Mr. Chrisman had not yet signed them. On November 30, 2016, Propst informed Mr. Solomon that it was still ready to close on the Property and that it had the necessary funds available

to do so. Furthermore, it informed Mr. Solomon that it would file a lawsuit to protect its rights if Mr. Chrisman did not agree to close on the Property. Mr. Solomon then informed Mr. Chrisman of his correspondence with Propst. He asked Mr. Chrisman to reach out to Mr. Parks and meet with him before "this gets out of hand." Additionally, he told Mr. Chrisman that he could not represent him in connection with any litigation and that Mr. Chrisman would need to hire another attorney for such matters.

Trial Court Proceedings

In December 2016, Propst and Parks Holdings filed a complaint against Mr. Chrisman, in his capacity as Trustee, and Mr. Campbell.[4] Along with their complaint, they filed an abstract of lien lis pendens on the Property. In November 2017, Mr. Chrisman sent a letter to Mr. Solomon discussing potential claims of legal malpractice and breach of fiduciary duty related to the sale of the Property. He requested that Mr. Solomon sign a tolling agreement, which would toll the assertion of these claims and any time-related defenses applicable to these claims for at least 180 days. The tolling agreement emphasized that it did not affect any time-related defenses existing prior to the effective date of the tolling agreement. Mr. Chrisman and Mr. Solomon executed the tolling agreement at the end of November 2017. Thereafter, they executed an amendment to the tolling agreement in May 2018, which extended the tolling agreement through November 27, 2018. The amendment identified November 27, 2017, as the effective date of the tolling agreement.

In November 2018, the trial court entered an order granting Mr. Chrisman's motion to amend his answer to the complaint and file a counterclaim against Propst, Parks Holding, and certain additional parties, Mr. Solomon and Mr. Parks, for fraudulent concealment, civil conspiracy, and breach of fiduciary duty. The court also granted Mr. Chrisman's motion to file a third-party complaint against Mr. Solomon and SP Title. However, the court noted that it would sever the issues for trial pursuant to Tennessee Rule of Civil Procedure 42. The court would first conduct a bench trial on the issues raised in the complaint and on the issues of fraudulent concealment and civil conspiracy raised in Mr. Chrisman's counterclaim. The court would then conduct a separate, subsequent trial on the issues raised in Mr. Chrisman's third-party complaint and the remaining issues in his counterclaim.

Mr. Chrisman then filed his third-party complaint against Mr. Solomon and SP Title on November 7, 2018. In regard to Mr. Solomon, Mr. Chrisman alleged that he was negligent in his role as an attorney for the following reasons:

> a. Failing to act to [Mr. Chrisman]'s advantage in the negotiation of the Agreement and influencing him to execute the Agreement with Parks

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[4] In September 2018, the trial court entered an order of partial nonsuit dismissing all of the claims against Mr. Campbell pursuant to Tennessee Rule of Civil Procedure 41.01.

Holdings when there was a more advantageous offer pending from NVR;

b. Failing to provide [Mr. Chrisman] with an informed understanding of his legal rights and obligations and explaining the practical implications of the same, in the negotiation and execution of the Agreement, the decisions to grant extensions, the right to terminate, and the decision to close or not to close;
c. Failing to keep [Mr. Chrisman] informed about the status of the matter, in particular failing to inform his client about the negative report from the transportation engineer in January 2016 affecting the density of the project and the sales price under the Agreement;
d. Revealing confidential information relating to his representation of the client to [Mr.] Parks, Parks Holdings, and indirectly Propst, concerning [Mr.] Chrisman's mental state and financial condition;
e. Sharing with [Mr.] Parks and Parks Holdings information about competing offers that [Mr.] Chrisman had received on the Property without [Mr.] Chrisman's permission and without providing the latter with advice or information concerning the competing offer;
f. Representing both [Mr.] Chrisman and Parks Holdings in the same transaction without obtaining the written consent of [Mr.] Chrisman; and,
g. Failing to disclose material facts to the other parties to the transaction and knowingly allowing those parties to make critical decisions in reliance upon such erroneous and incomplete information.

Additionally, Mr. Chrisman alleged that both Mr. Solomon and SP Title were negligent as his closing agent for the following reasons:

a. [F]ailing to observe the terms of the Agreement including delivering the entire document (including extensions) to Propst;
b. [F]ailing to require proof of consent of [Mr. Chrisman] to any assignment; and,
c. [F]ailing to inform the assignee, Propst, that the title issues that were ostensibly the reason for the delay in closing had been waived by [Mr.] Parks, due to [Mr.] Parks failure to object to title matters during the study period.

Afterward, Mr. Chrisman, Propst, Mr. Parks, and Parks Holdings participated in mediation which led to all of them entering into a Settlement Agreement and Mutual Release ("the Settlement") in January 2019. Pursuant to the Settlement, Propst and Mr. Chrisman agreed to enter into a new Purchase and Sale Agreement as to the Property. Additionally, all of the parties to the Settlement agreed to dismiss the claims between and among one another and agreed that the abstract of lien lis pendens on the Property should be terminated. Following this Settlement, the trial court entered an agreed order of dismissal of the claims between and among Mr. Chrisman, Propst, Mr. Parks, and Parks Holdings. The court

specifically noted that Mr. Chrisman's claim of fraudulent concealment against Mr. Solomon as set forth in his counterclaim was not dismissed and that all of Mr. Chrisman's claims against Mr. Solomon and SP Title remained to be adjudicated. Propst and Parks Holdings also filed a notice of termination of the lien lis pendens on the Property.

In December 2021, Mr. Chrisman filed an amended third-party complaint, and Mr. Solomon and SP Title filed an answer.[5] In his amended third-party complaint, Mr. Chrisman alleged the following causes of action:

> 31. [Mr.] Solomon failed to comply with the standard of care required of attorneys practicing law in this State in January-March, 2016, by concealing from his client [Mr.] Chrisman the adverse news regarding the traffic study and its potential impact on the ultimate purchase price of a sale of the [Property] under the Parks Holdings contract. Instead of sharing this information with his client, [Mr.] Solomon chose instead to take advantage of [Mr. Chrisman]'s ignorance. [Mr.] Solomon on his own initiative drafted a six[-]month extension of the contract and persuaded his client to agree to it. [Mr.] Solomon here was engaging in self-dealing to the detriment of [Mr. Chrisman], as he stood to share half of the profits flowing into [SP Title], as well as a 3% of the sales price attorney's fee, if a sale under the Parks Holdings contract was accomplished.
> 32. [Mr.] Chrisman was damaged by the aforementioned malpractice of his attorney, as he would not have agreed to an extension of the contract but would have exercised his right to terminate the contract if he [had] been made aware of the traffic study and its potential impact on the ultimate sales price of the [Property] under the Parks Holdings contract. [Mr.] Chrisman would have sold his $5,000,000 [Property] to another interested party within a reasonable time after exercising his right to terminate the contract. Alternatively, [Mr.] Chrisman suffered delay damages in not being able to put the [Property] back on the market before the lien lis pendens was terminated in 2019.
> 33. [Mr.] Solomon also breached the standard of care required of attorneys practicing law in this State at the end of 2017 when he continued to act as [Mr.] Chrisman's attorney in his dealings with Parks Holdings and with Propst in regard to the sale of the [Property] after [Mr.] Chrisman had given him clear and express written instructions that he no longer had authority to act for [Mr.] Chrisman in regard to that matter. [Mr.] Solomon's misrepresentations to Propst and his failure to provide the appropriate information to Propst before and after [Mr.] Solomon was

[5] Mr. Chrisman had previously filed a motion to amend his third-party complaint, and Mr. Solomon and SP Title filed a response stating that they did not oppose the amended third-party complaint.

> discharged caused [Mr.] Chrisman to be sued by Propst/Parks [Holdings] and to have a lien lis pendens placed on [the Property]. These acts and omissions caused [Mr.] Chrisman to incur substantial attorneys' fees in the resulting litigation and delay damages resulting from the lien lis pendens.

For these reasons, Mr. Chrisman demanded judgment against Mr. Solomon and SP Title, jointly and severally, for compensatory and punitive damages.

In April 2022, Mr. Solomon and SP Title filed a motion for summary judgment seeking to dismiss Mr. Chrisman's remaining claims. In support of their motion, they argued the following: (1) Mr. Chrisman's claim that Mr. Solomon concealed news of a traffic shed analysis was barred by the statute of limitations because he had notice of the injuries alleged to have been caused by Mr. Solomon more than one year before the effective date of the tolling agreement on November 27, 2017; (2) Mr. Chrisman waived any claims of legal malpractice by retaining Mr. Solomon after learning he was injured by Mr. Solomon's malpractice; (3) summary judgment was warranted on Mr. Chrisman's claims that Mr. Solomon's concealment of the traffic shed analysis caused Mr. Chrisman to be damaged in the amount of $5,000,000 or delay damages; (4) summary judgment was warranted on Mr. Chrisman's claims that Mr. Solomon continued to act as his attorney in the sale of the Property; (5) summary judgment was warranted on Mr. Chrisman's claims that Mr. Solomon's misrepresentations and failure to provide appropriate information to Propst caused Mr. Chrisman to be sued by Propst; and (6) Mr. Chrisman failed to state a claim against SP Title, as all claims had been asserted against Mr. Solomon in his capacity as Mr. Chrisman's attorney in connection with the sale of the Property.

Mr. Chrisman filed a response to the motion for summary judgment. He argued that the legal malpractice claim was not time barred by the statute of limitations because he did not discover Mr. Solomon's fraudulent concealment of the traffic shed analysis until sometime after the lawsuit was filed against him in December 2016. He further argued that the legal malpractice claim was for the jury to decide because (1) there was material evidence in the record that Mr. Solomon made unauthorized communications to Propst and failed to disclose that he had been replaced by Mr. Chrisman in connection with the negotiation of the sale of the Property and (2) there was material evidence that Mr. Solomon's misconduct resulted in Mr. Chrisman being sued by Propst and having a lien lis pendens placed on the Property. Lastly, he argued that SP Title should not be dismissed as a party because it had admitted in its answer that it was vicariously liable for the actions of Mr. Solomon in connection with the sale of the Property.

In June 2022, the trial court entered an order granting in part and denying in part the motion for summary judgment. First, the court granted summary judgment as to the legal malpractice claim for fraudulent concealment based upon the statute of limitations. The court observed that Mr. Solomon clearly had a fiduciary duty to act in Mr. Chrisman's best

interest and that he likely breached his duty. However, the court explained that Mr. Chrisman was on notice "long before the period encompassed by the tolling agreement," and therefore the claim was not tolled by the tolling agreement. Second, the court denied summary judgment as to the legal malpractice claim that Mr. Solomon continued to act as Mr. Chrisman's attorney in connection with the sale of the Property after Mr. Chrisman had given him instruction that he no longer had authority to act as his attorney. The court explained that Mr. Solomon continued to communicate with the attorney for Propst regarding the sale of the Property after November 27, 2016, and therefore the claim was tolled by the tolling agreement. Third, the court granted summary judgment as to the respondeat superior claim against SP Title. It held that SP Title could not be jointly liable and dismissed Mr. Chrisman's claim against SP Title. Mr. Chrisman filed a motion to reconsider and revise the summary judgment order, which was denied by the court. Mr. Chrisman then filed a notice of voluntary dismissal of his only remaining legal malpractice claim against Mr. Solomon, and the court entered an order of voluntary dismissal dismissing the claim without prejudice. Thereafter, Mr. Chrisman timely filed an appeal.

II. Issues Presented

Mr. Chrisman presents the following issues for review on appeal, which we have slightly restated:

1. Whether Mr. Chrisman's separate and discrete legal malpractice claim of fraudulent concealment accrued before Mr. Chrisman discovered it; and
2. Whether SP Title was immune from vicarious liability for Mr. Solomon's misconduct when it admitted that his actions with respect to Mr. Chrisman fell within the scope of his employment with SP Title.

Mr. Solomon and SP Title present the following issues for review on appeal, which we have slightly restated:

1. Whether the trial court properly held Mr. Chrisman's legal malpractice claim against Mr. Solomon for the alleged concealment of a traffic shed analysis was barred by the statute of limitations;
2. Whether the trial court properly dismissed a claim against SP Title via respondeat superior.

For the following reasons, we reverse in part, vacate in part, and remand for further proceedings consistent with this opinion.

III. Standard of Review

A trial court's decision on a summary judgment motion is reviewed de novo with no presumption of correctness. *Kershaw v. Levy*, 583 S.W.3d 544, 547 (Tenn. 2019) (citing

Beard v. Branson, 528 S.W.3d 487, 494 (Tenn. 2017)). "Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Rye v. Women's Care Ctr. Of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015) (quoting Tenn. R. Civ. P. 56.04)). Under this standard of review, "we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Id.* (citing *Estate of Brown*, 402 S.W.3d 193, 198 (Tenn. 2013)). In doing so, "we must determine whether the moving party satisfied its burden of production '(1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence at the summary judgment stage is insufficient to establish the nonmoving party's claim or defense.'" *Story v. Bunstine*, 538 S.W.3d 455, 463 (Tenn. 2017) (quoting *Rye*, 477 S.W.3d at 264); *see* Tenn. Code Ann. § 20-16-101 (setting forth the requirements to prevail on a motion for summary judgment for the moving party who does not bear the burden of proof at trial).

IV. DISCUSSION

A. Legal Malpractice

Mr. Chrisman raises an issue concerning whether, contrary to the Tennessee Supreme Court's holding in *Story v. Bunstine*, his separate and discrete legal malpractice claim of fraudulent concealment accrued before he discovered it. He argues there was no affirmative evidence that he had actual or constructive knowledge of the alleged misconduct prior to November 27, 2016. Therefore, he asserts that the trial court erred in granting summary judgment on grounds of statute of limitations. Mr. Solomon and SP Title argue that the trial court correctly found the legal malpractice claim was barred by the statute of limitations because Mr. Chrisman had constructive knowledge of the alleged misconduct prior to November 27, 2016.

Tennessee law requires an action alleging legal malpractice to be "commenced within one (1) year after the cause of action *accrued* . . . ." Tenn. Code Ann. § 28-3-104(c)(1) (emphasis added). The Tennessee Supreme Court has explained that "[t]he concept of accrual relates to the date on which the applicable statute of limitations begins to run." *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 457 (Tenn. 2012) (citing *Columbian Mut. Life Ins. Co. v. Martin*, 175 Tenn. 517, 136 S.W.2d 52, 56 (1940)). In legal malpractice cases, "the date that the statute of limitations begins to run is determined by applying the discovery rule." *Story*, 538 S.W.3d at 463 (citing *John Kohl & Co. P.C. v. Dearborn & Ewing*, 977 S.W.2d 528, 532 (Tenn. 1998); *Shadrick v. Coker*, 963 S.W.2d 726, 733 (Tenn. 1998)). Tennessee's discovery rule has been summarized as follows:

> Under this rule, a cause of action accrues when the plaintiff knows or in the

> exercise of reasonable care and diligence should know that an injury has been sustained as a result of wrongful or tortious conduct by the defendant.
>
> In legal malpractice cases, the discovery rule is composed of two distinct elements: (1) the plaintiff must suffer legally cognizable damage—an actual injury—as a result of the defendant's wrongful or negligent conduct, and (2) the plaintiff must have known or in the exercise of reasonable diligence should have known that this injury was caused by the defendant's wrongful or negligent conduct. An actual injury occurs when there is the loss of a legal right, remedy or interest, or the imposition of a liability. An actual injury may also take the form of the plaintiff being forced to take some action or otherwise suffer "some actual inconvenience," such as incurring an expense, as a result of the defendant's negligent or wrongful act. However, the injury element is not met if it is contingent upon a third party's actions or amounts to a mere possibility.
>
> The knowledge component of the discovery rule may be established by evidence of actual or constructive knowledge of the injury. Accordingly, the statute of limitations begins to run when the plaintiff has actual knowledge of the injury as where, for example, the defendant admits to having committed malpractice or the plaintiff is informed by another attorney of the malpractice. Under the theory of constructive knowledge, however, the statute may begin to run at an earlier date—whenever the plaintiff becomes aware or reasonably should have become aware of facts sufficient to put a reasonable person on notice that an injury has been sustained as a result of the defendant's negligent or wrongful conduct. We have stressed, however, that there is no requirement that the plaintiff actually know the specific type of legal claim he or she has, or that the injury constituted a breach of the appropriate legal standard. Rather, the plaintiff is deemed to have discovered the right of action if he is aware of facts sufficient to put a reasonable person on notice that he has suffered an injury as a result of wrongful conduct. It is knowledge of facts sufficient to put a plaintiff on notice that an injury has been sustained which is crucial. A plaintiff may not, of course, delay filing suit until all the injurious effects or consequences of the alleged wrong are actually known to the plaintiff. Allowing suit to be filed once all the injurious effects and consequences are known would defeat the rationale for the existence of statutes of limitations, which is to avoid the uncertainties and burdens inherent in pursuing and defending stale claims.

Id. at 463-64 (quoting *John Khol & Co. P.C.*, 977 S.W.2d at 532-33 (internal citations and quotation marks omitted)).

Mr. Chrisman filed a third-party complaint against Mr. Solomon and SP Title on

November 7, 2018. We reiterate that Mr. Chrisman and Mr. Solomon executed a tolling agreement and an amendment to the tolling agreement, which together tolled any assertion of Mr. Chrisman's claims until November 27, 2018. The tolling agreement did not affect any time-related defenses existing prior to its effective date, which was identified as November 27, 2017. Therefore, if Mr. Chrisman had actual or constructive knowledge of any misconduct committed by Mr. Solomon prior to November 27, 2016, then any legal malpractice claim related to that misconduct would be barred by the one-year statute of limitations. Mr. Chrisman maintains on appeal, as he did in the trial court, that he did not have actual or constructive knowledge of the first traffic shed analysis prior to November 27, 2016. Rather, he asserts that he became aware of its existence sometime after he was sued by Propst and Parks Holdings in December 2016.

The trial court found that any legal malpractice claim surrounding a failure to disclose or a conflict of interest was time barred. The court explained in its order in pertinent part as follows:

> The Court finds that because [Mr.] Chrisman was on notice of [Mr.] Solomon's conflict of interest, long before the period encompassed by the tolling agreement, this claim is time barred. While [Mr.] Solomon very clearly had a fiduciary duty to act in [Mr.] Chrisman's best interest, one that was likely breached, this claim is time barred by the statute of limitations for legal malpractice actions. Tenn. Code Ann. § 28-3-104(c)(1).

The court concluded that Mr. Chrisman's claim of legal malpractice predicated upon Mr. Solomon's alleged conflict of interest "accrued no later than November 16, 2016, the statute of limitations began to run, and the claim was not tolled by the Tolling Agreement." In concluding so, it appears the court appended the legal malpractice claim of fraudulent concealment to Mr. Chrisman's knowledge of a conflict of interest.

On appeal, Mr. Chrisman contends that he asserted separate and distinct legal malpractice claims with different dates of accrual and relies on the Tennessee Supreme Court's holding in *Story*. Particularly, he explains that his legal malpractice claim of fraudulent concealment arising from the first traffic shed analysis was a discrete legal malpractice claim separate and apart from his concerns of conflict of interest that arose in October and November 2016. In *Story*, the plaintiffs filed a legal malpractice action against their former attorneys who had represented them in an underlying lender liability lawsuit. *Id.* at 459. The Tennessee Supreme Court found that the plaintiffs had asserted, "at a minimum, three separate claims for legal malpractice" against their former attorneys: (1) that the attorneys negligently advised the plaintiffs to pursue weak claims against the defendant banks in the underlying lender liability suit; (2) that the attorneys negligently allowed the individual underlying defendant to be dismissed; and (3) that the attorneys negligently advised the plaintiffs to voluntarily dismiss their claims against the remaining underlying defendant in the lender liability suit. *Id.* at 475. In reversing both the trial court

and this Court, our Supreme Court held that the third claim regarding the attorneys' negligence in voluntarily dismissing the underlying lender liability lawsuit, which resulted in a previously entered summary judgment order being rendered final, amounted to a "discrete" legal malpractice claim that was separate from the plaintiffs' claims related to the summary judgment order.[6] *Id.*; *but cf. Christus Gardens, Inc. v. Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.*, No. M2007-01104-COA-R3-CV, 2008 WL 3833613, at *5 (Tenn. Ct. App. Aug. 15, 2008) (holding that, for purposes of appeal under Tennessee Rule of Civil Procedure 54.02, the plaintiff had brought three causes of action presenting three different theories of legal malpractice, but the alternative theories pursued one recovery and arose from an aggregate set of operative facts so the plaintiff had not stated multiple claims).

Mr. Solomon and SP Title do not deny that each legal malpractice claim had a separate accrual analysis. Therefore, the issue concerning whether Mr. Chrisman asserted separate and distinct legal malpractice claims with different dates of accrual is undisputed on appeal. Instead, Mr. Solomon and SP Title argue that Mr. Chrisman's legal malpractice claim of fraudulent concealment accrued before November 27, 2016, because he had requisite knowledge of the injury.

Mr. Chrisman had knowledge of the results of the second traffic shed analysis in June 2016 when Mr. Parks provided those results to him and Mr. Solomon. At this time, he was aware that the number of approved lots would be significantly reduced from the 175 lots as contemplated by Parks Holdings in the Agreement and that the purchase price would also be reduced as a consequence. Yet, the results of the second traffic shed analysis did not apprise Mr. Chrisman of the fact that there was a first traffic shed analysis in January 2016. Moreover, the result of the second traffic shed analysis did not apprise Mr. Chrisman of the fact that his attorney, Mr. Solomon, was aware of the first traffic shed analysis in January 2016 and failed to disclose how it might adversely affect the Agreement. "When there is a relationship involving trust and confidence between the parties which would impose a duty to make a full disclosure of the material facts, mere silence or nondisclosure may constitute concealment." *Shadrick v. Coker*, 963 S.W.2d 726, 735-36 (Tenn. 1998).

In October 2016, Mr. Chrisman began to suspect that Mr. Solomon was not informing him of everything occurring with respect to the sale of the Property. In an email to his accountant, he indicated that Mr. Solomon "could easily lose his license." As a

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[6] In a Tennessee Human Rights Act case, the Tennessee Supreme Court applied similar reasoning when addressing a statute-of-limitations issue and contrasted ongoing discriminatory pay, which is a continuing act, with discrete acts, "such as termination, failure to promote, denial of transfer, or refusal to hire[.]" *Booker v. The Boeing Co.*, 188 S.W.3d 639, 646 (Tenn. 2006). In doing so, the Court defined the term "discrete," stating that "[s]omething is 'discrete' if it is 'separate and distinct; not attached to others; unrelated.'" *Id.* at 648 (quoting *Webster's New World Dictionary* (2d ed. 1980)); *see Discrete*, Black's Law Dictionary (11th ed. 2019) (defining discrete as "individual; separate; distinct").

result, he consulted with another attorney about his situation, but the correspondence between them does not establish that he was informed by this attorney of any potential legal malpractice claim against Mr. Solomon. At the end of October 2016, he expressed his concerns directly to Mr. Solomon via text message. He later admitted that he had lost trust in Mr. Solomon at this point. In November 2016, his suspicions continued to grow and his relationship with Mr. Solomon further unraveled. On November 16, 2016, Mr. Chrisman accused Mr. Solomon and Mr. Parks of giving him misleading information and lying to him. However, he made no reference to Mr. Solomon's nondisclosure of the January 2016 traffic shed analysis. As of November 27, 2016, Mr. Chrisman still had no actual knowledge that there was a traffic shed analysis conducted in January 2016 or that Mr. Solomon was aware of this traffic shed analysis and failed to disclose it to him. Moreover, he had not been informed by Mr. Solomon of any legal malpractice nor had any other attorney informed him of any legal malpractice committed by Mr. Solomon. Thus, the question is whether Mr. Chrisman, in light of his growing suspicions of Mr. Solomon in October and November 2016, had constructive knowledge of Mr. Solomon's nondisclosure of the first traffic shed analysis prior to November 27, 2016. That is, whether Mr. Chrisman "should have become aware of facts sufficient to put a reasonable person on notice that an injury has been sustained as a result of the defendant's negligent or wrongful conduct." *John Kohl & Co.*, 977 S.W.2d at 532 (citing *Carvell v. Bottoms*, 900 S.W.2d 23, 29 (Tenn. 1995)).

Under the summary judgment standard, "we consider the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor." *Stamps v. Starnes*, 649 S.W.3d 403, 408 (Tenn. Ct. App. 2021) (citing *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002)). With this in mind, we determine that the evidence supports more than one reasonable conclusion as to whether Mr. Chrisman had constructive knowledge of Mr. Solomon's nondisclosure of the first traffic shed analysis prior to November 27, 2016. As such, we conclude that the issue of whether Mr. Chrisman had constructive knowledge of his separate and distinct legal malpractice claim of fraudulent concealment "presents a question of disputed, material fact." *Luna v. St. Thomas Hosp.*, 272 S.W.3d 577, 581 (Tenn. Ct. App. 2007) *perm. app. denied* (Tenn. May 5, 2008); *see Fluri v. Fort Sanders Reg'l Med. Ctr.*, No. E2005-00431-COA-R3-CV, 2005 WL 3038627, at *5 (Tenn. Ct. App. Nov. 14, 2005) ("Whether Plaintiffs had constructive knowledge of Defendants' allegedly wrongful conduct under these circumstances is an issue of fact, and summary judgment was inappropriately granted because the facts and their reasonable inferences support more than one reasonable conclusion.") (citing *Seavers v. Methodist Med. Ctr. of Oak Ridge*, 9 S.W.3d 86, 91 (Tenn. 1999) (stating that summary judgment is only appropriate when the facts lead to only one reasonable conclusion); *Buddy Lee Attractions, Inc. v. William Morris Agency, Inc.*, 13 S.W.3d 343, 347 (Tenn. Ct. App. 1999) *perm. app. denied* (Tenn. Mar. 6, 2000) (stating that summary judgment must be overruled "if there is doubt as to whether or not . . . [a] genuine issue remains for trial")). "The determination of when a reasonable person should know that his injury was caused by some wrongful or negligent act is generally a question for the trier of fact." *McIntosh v. Blanton*,

164 S.W.3d 584, 586 (Tenn. Ct. App. 2004) *perm. app. denied* (Tenn. Jan. 24, 2005).

Accordingly, we reverse the trial court's decision granting summary judgment as to Mr. Chrisman's legal malpractice claim of fraudulent concealment and remand to the trial court for further proceedings.

B. Admission

Mr. Chrisman raises another issue concerning whether SP Title was immune from vicarious liability for Ms. Solomon's misconduct when it admitted that his actions fell within the scope of his employment with SP Title. He argues that SP Title is vicariously liable for Mr. Solomon's misconduct because SP Title was bound by its admission. He also clarifies that he is not alleging that SP Title is subject to liability for legal malpractice. Rather, he alleges that SP Title is vicariously liable for Mr. Solomon's misconduct because it stood to profit from such misconduct. Mr. Solomon and SP Title argue on appeal that the trial court correctly dismissed SP Title because Mr. Chrisman asserted a legal malpractice claim which fell outside of the scope of Mr. Solomon's employment with SP Title.

The Tennessee Supreme Court has explained that "vicarious liability is based on an agency relationship between a principal and the principal's negligent agent, such as the family purpose doctrine or respondeat superior." *Ali v. Fisher*, 145 S.W.3d 557, 564 (Tenn. 2004) (citing *Browder v. Morris*, 975 S.W.2d 308, 311-12 (Tenn. 1998)). As for the doctrine of respondeat superior, it "renders employers vicariously liable for the torts their employees commit while acting within the scope of their employment." *Tenn. Farmers Mut. Ins. Co. v. Am. Mut. Liability Ins. Co.*, 840 S.W.2d 933, 937 (Tenn. Ct. App. 1992) *perm. app. denied* (Tenn. Oct. 26, 1992) (citations omitted); *see Gen. Elec. Co. v. Process Control Co.*, 969 S.W.2d 914, 916 (Tenn. 1998) (explaining that "the doctrine of respondeat superior permits vicarious liability due to an agency-type relationship . . . ."). A party seeking to impose liability on the employer must establish: "(1) that the person who caused the injury was an employee, (2) that the employee was on the employer's business, and (3) that the employee was acting within the scope of his employment when the injury occurred." *Id.* (citing *Hamrick v. Spring City Motor Co.*, 708 S.W.2d 383, 386 (Tenn. 1986); *Midwest Dairy Prods. Co. v. Esso Standard Oil Co.*, 193 Tenn. 553, 555-56, 246 S.W.2d 974, 975 (1952)). As for the third element, this Court has explained:

> Generally, whether an employee is acting within the scope of his or her employment is a question of fact. *Craig v. Gentry*, 792 S.W.2d 77, 80 (Tenn. Ct. App. 1990). However, it becomes a question of law when the facts are undisputed and cannot support conflicting conclusions. *Blackman v. Great Am. First Sav. Bank*, 233 Cal. App.3d 598, 284 Cal. Rptr. 491, 493 (1991); *Henderson v. Professional Coatings Corp.*, 72 Haw. 387, 819 P.2d 84, 89 (1991); *Sedalia Mercantile Bank & Trust Co. v. Loges Farms, Inc.*, 740

S.W.2d 188, 202 (Mo. Ct. App.1987).

Id. As such, "whether an employee is acting within the scope of his employment can be reviewed as a question of law when the employee's acts are clearly beyond the scope of his authority." *Id.* (citing *Brown v. Housing Auth.*, 23 Conn. App. 624, 583 A.2d 643, 646 (1991); *Home Stores, Inc. v. Parker*, 179 Tenn. 372, 379, 166 S.W.2d 619, 622 (1942) (holding that the issue is a question of law when an employee's departure from the employer's business is "of marked and decided character")).

We observe that Mr. Chrisman filed a third-party complaint but amended it during the pendency of this case. In doing so, the amended third-party complaint became the operative pleading.[7] The amended third-party complaint named Mr. Solomon and SP Title as third-party defendants in the caption of the pleading. However, "legal pleadings should be construed based on their substance rather than their caption." *Pickard v. Tenn. Dep't of Env't and Conservation*, No. M2011-01172-COA-R3-CV, 2012 WL 3329618, at *10 (Tenn. Ct. App. Aug. 14, 2012) (citing *Gordon v. Greenview Hosp. Inc.*, 300 S.W.3d 635, 643 (Tenn. 2009)). In the opening statement of the amended third-party complaint, it provides in pertinent part as follows:

> [Mr. Chrisman] brings this Amended Third[-]Party Complaint for legal malpractice against his former attorney, third[-]party defendant Keith Solomon, and against SP Title, LLC, as his principal and employer, for acts and omissions, both negligent and intentional, committed by [Mr.] Solomon after [Mr.] Solomon had agreed to facilitate the sale of [the Property] . . . , and to represent [Mr.] Chrisman and the Trusts as the Seller of the Property.

It alleged that all work performed by Mr. Solomon for Mr. Chrisman in regard to the sale of the Property was done by Mr. Solomon as an agent for SP Title and within the scope of his employment with SP Title. Mr. Solomon and SP Title admitted to this allegation in their answer to the amended third-party complaint. Moreover, as an affirmative defense, their answer stated that "[a]t all times when [Mr.] Solomon was representing [Mr.] Chrisman in the sale of the property he was acting within the scope of his authority as an

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[7] "It has long been the rule in Tennessee that 'an original complaint is superseded, and its effect as a pleading destroyed, by filing amended complaint complete in itself, [ ] which does not refer to or adopt the original as part of it.'" *Ingram v. Gallagher*, --- S.W.3d ----, No. E2020-01222-SC-R11-CV, 2023 WL 3487083, at *6 (Tenn. May 17, 2023) (quoting *Louisville & N.R. Co. v. House*, 104 Tenn. 110, 56 S.W. 836, 836 (1900)). When an amended complaint is complete in itself and does not refer to or adopt the original as part of it, it supersedes and destroys the effectiveness of the original complaint. *Id.* In contrast, "[a]n 'amendment to' a complaint merely modifies the existing complaint, which remains before the trial court as modified." *H.G. Hill Realty Co., L.L.C. v. Re/Max Carriage House, Inc.*, 428 S.W.3d 23, 35 (Tenn. Ct. App. 2013) *perm. app. denied* (Tenn. Nov. 14, 2013) (citation omitted). In this case, the amended third-party complaint was complete in itself and did not refer to or adopt the original third-party complaint as part of it. Therefore, the amended third-party complaint superseded and destroyed the effectiveness of the original third-party complaint.

officer, employee and agent of SP Title . . . ." The amended third-party complaint also demanded judgment against both Mr. Solomon and SP Title, jointly and severally, for compensatory and punitive damages in its claim for relief. Nevertheless, in its section setting forth the causes of action, it asserted claims against Mr. Solomon only, which were related to his acts or omissions committed in his capacity as Mr. Chrisman's attorney. Specifically, it alleged that Mr. Solomon had breached the standard of care required of an attorney.[8]

At the summary judgment stage, Mr. Solomon and SP Title argued that Mr. Chrisman failed to state a claim against SP Title, as all claims had been asserted against Mr. Solomon in his capacity as Mr. Chrisman's attorney in connection with the sale of the Property.[9] Mr. Chrisman argued that SP Title should not be dismissed as a party because it had admitted in its answer that it was vicariously liable for the actions of Mr. Solomon in connection with the sale of the Property. Ultimately, the trial court granted summary judgment as to this issue. The court's order stated as follows:

> Finally, [Mr.] Chrisman asserts a claim against SP Title via *respondeat superior*, arguing that [Mr.] Solomon acted within the scope of his employment while committing malpractice. The Court finds this argument [is] without merit. SP Title is a *title* company, not a law firm. While [Mr.] Solomon may have acted within the scope of his employment regarding business endeavors, he could not be acting within his duties as an attorney. Further, the Tennessee Rules of Professional Conduct expressly state that "a lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the [practice] of law."[10] Since [Mr.] Chrisman is asserting a claim of attorney malpractice, not business malpractice, he cannot hold SP Title jointly liable for [Mr.] Solomon's actions. Therefore, summary judgment is **GRANTED** regarding the *respondeat superior* claim.

Respectfully, we find that the trial court's ruling as to this issue is deficient. *See Vaughn v. DMC-Memphis, LLC*, No. W2019-00886-COA-R3-CV, 2021 WL 274761, at *11 (Tenn. Ct. App. Jan. 27, 2021) (finding that the trial court's ruling was deficient because there was "very little discussion of the trial court's actual legal reasoning regarding its ultimate conclusion"). It is not entirely clear whether the trial court based its decision on the ground

[8] In the paragraph preceding the section setting forth the causes of action, it alleged that Mr. Solomon was a fiduciary and breached his fiduciary duties, such as the duties of honesty, care, loyalty, and good faith, which were "owed to his client," Mr. Chrisman.

[9] We note that a defendant may present "its defense of failure to state a claim upon which relief can be granted in a motion, in its answer, in an amendment to its answer, in 'a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits . . . .'" *Blankenship v. Anesthesiology Consultants Exch., P.C.*, 446 S.W.3d 757, 760 (Tenn. Ct. App. 2014) *perm. app. denied* (Tenn. June 24, 2014) (quoting Tenn. R. Civ. P. 12.08).

[10] Tenn. S.Ct. R. 8, RPC 5.4(b).

of failure to state a claim, which was the only ground raised by Mr. Solomon and SP Title in their motion for summary judgment regarding the liability of SP Title. From reading the order, the court partly based its decision on RPC 5.4(b), which states that "[a] lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." Tenn. S.Ct. R. 8, RPC 5.4(b). In relying on RPC 5.4(b), the trial court not only assumed compliance with the Rule, but it also appears to have decided this issue on a legal ground which was not raised or addressed by the parties.[11]

We also reiterate the issue before us on appeal concerns Mr. Solomon's and SP Title's admission that Mr. Solomon was acting as an agent for SP Title and within the scope of his employment with SP Title. Notably, the trial court did not make any specific ruling in its order as to the effect of this admission. Additionally, "[t]he trial court shall state the legal grounds upon which the court denies or grants the motion [for summary judgment], which shall be included in the order reflecting the court's ruling." Tenn. R. Civ. P. 56.04. "The purpose of Rule 56.04 is to ensure that we need not guess as to the basis of the trial court's ruling." *Calzada v. State Volunteer Mut. Ins. Co.*, No. M2020-01697-COA-R3-CV, 2021 WL 5368020, at *12 (Tenn. Ct. App. Nov. 18, 2021). As such, the trial court "has a duty to ensure its rulings are adequately explained," which requires "an explanation as to 'why a particular result is correct based on the applicable legal principles[.]'" *Vaughn*, 2021 WL 274761, at *11 (quoting *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 313 (Tenn. 2014)). Without that, we are left to fill in the gaps and read between the lines of the trial court's order, neither of which are within the province of this Court.

This has complicated our ability to review the trial court's decision. *Smith*, 439 S.W.3d at 313-14. Accordingly, we conclude that we must vacate the trial court's ruling as to this issue and remand for further consideration of whether summary judgment is appropriate on this issue.

V. CONCLUSION

For the aforementioned reasons, we reverse the trial court's decision regarding the legal malpractice claim of fraudulent concealment and vacate the trial court's decision regarding the respondeat superior claim. We remand to the trial court for further proceedings consistent with this opinion. Costs of this appeal are taxed to appellees, SP

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[11] When a trial court grants summary judgment on a ground not raised, it "essentially act[s] sua sponte." *Evans v. Piedmont Nat. Gas Co., Inc.*, No. M2014-01099-COA-R3-CV, 2015 WL 9946268, at *7 (Tenn. Ct. App. Aug. 18, 2015). The Tennessee Supreme Court has said that "[s]uch action should be taken only in rare cases and with meticulous care." *Id.* (quoting *Griffis v. Davidson Cnty. Metro. Gov't*, 164 S.W.3d 267, 284 (Tenn. 2005)). Moreover, "the party against whom summary judgment is rendered must have had notice and a reasonable opportunity to respond to all the issues to be considered." *Id.* (quoting *Griffis*, 164 S.W.3d at 284). Mr. Chrisman filed a motion to reconsider and revise the court's summary judgment, asserting that the trial court's ruling was in error for this very reason. However, the trial court denied his motion.

Title, LLC and Keith Solomon, for which execution may issue if necessary.

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CARMA DENNIS MCGEE, JUDGE