

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

COIN ACCEPTORS, INC.,)	No. ED98702
)	
Appellant,)	Appeal from the Circuit Court
)	of the City of St. Louis
v.)	
)	
HAVERSTOCK, GARRETT)	Honorable Robert H. Dierker
& ROBERTS, LLP, et al.,)	
)	
Respondents.)	FILED: April 9, 2013

Coin Acceptors, Inc. (Coinco) appeals the trial court’s judgment in favor of the company’s former lawyers (Respondents) in an action for malpractice. Coinco alleges that Respondents’ bad advice and poor performance resulted in a \$27 million judgment against Coinco for infringing two patents (the ‘137 and ‘719 patents). The trial court dismissed as untimely Coinco’s malpractice claim as to the ‘137 patent because the underlying finding of infringement liability on that patent was rendered in 1999, and Coinco didn’t file its malpractice suit until 2008. Regarding the ‘719 patent, the trial court granted summary judgment for Respondents for lack of causation. In particular, the court found that Coinco’s expert’s opinion attributing Coinco’s loss to Respondents’ performance was purely speculative, and the U.S. District Court’s reversal of an earlier favorable decision was an independent intervening cause.

Coinco asserts two points of error: (1) that a genuine issue of fact exists as to whether Respondents’ performance was the proximate cause of Coinco’s loss in the ‘719 infringement case and (2) that Coinco’s claim regarding the ‘137 patent was timely because final judgment in that case wasn’t entered until 2007.

AFFIRMED.

DIVISION ONE HOLDS: (1) Summary judgment on the ‘719 claim was proper because there is no triable issue of fact on the element of causation. Allegations of inadequate preparation and argument are insufficient to create a jury question as to whether the outcome of the case turned on those deficiencies, particularly where the ultimate outcome is clearly attributable to intervening independent decisions. Coinco’s expert’s opinion that Coinco would have won the underlying case but for Respondents’ oral argument in a post-trial hearing was speculative. The U.S. District Court’s changed perception of the standard of proof and the weight of the evidence was a wholly independent cause, and its decision was affirmed on appeal. (2) Dismissal of Coinco’s malpractice claim on the ‘137 patent was proper because the claim, filed in 2008, was untimely. The statute of limitations began to run when the *fact* of Coinco’s damage from Respondents’ allegedly bad advice was capable of ascertainment, namely in 1999 when the District Court found Coinco liable for patent infringement. Only the *extent* of damage remained uncertain until final judgment was entered in 2007.

Opinion by: Clifford H. Ahrens, Presiding Judge Sherri B. Sullivan, J., concurs, and
Glenn A. Norton, J., dissents in a separate opinion.

Attorney for Appellant: Jeffrey J. Lowe

Attorney for Respondent: Gary Phillip Paul, Thomas J. Plunkert, Daniel Tobben

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
SHOULD NOT BE QUOTED OR CITED.**