IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7409

Summary Calendar

BILLY J. DICKERSON and
LINDSEY AUTOMOTIVE SERVICES, INC.,

Plaintiffs-Appellants,

versus

DANIEL, COKER, HORTON & BELL, P.A.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA-J92-0730(L)(N))

(December 20, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Plaintiffs, Billy John Dickerson and Lindsey Automotive Services, Inc., appeal from summary judgment on their claim for legal malpractice granted in favor of defendant, Daniel, Coker, Horton & Bell, P.A. We AFFIRM.

---

[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

This case turns on the right to lease premises in the control of the Board of Trustees of the Jackson Public School District. In May 1973, Maurice H. Joseph and Kenneth F. Pritchard entered with the Board into a lease of the premises. The lease would expire in 1990. In 1977, Lindsey Automotive Services acquired the right to a sublease from Joseph and Pritchard for a portion of those premises. The sublease in turn would expire in 1990.

The owner of the majority of the stock in Lindsey Automotive Services, Mr. A. P. Lindsey, decided in 1986 to sell his business to his employee, Billy John Dickerson. Dickerson owned the remainder of the shares of the stock in the company. To facilitate the sale, Lindsey intended to secure an additional ten year commitment on his sublease. Toward this end, he enlisted the assistance of his long-time lawyer, Joe H. Daniel. Mr. Daniel contacted Mr. Joseph by telephone to effect the extension. Mr. Daniel then confirmed their conversation by letter. The letter suggested that the parties had agreed to a renewal of the sublease for ten years under the conditions of the original sublease. The one alteration was an increase in the rent to allow Joseph and Pritchard to recover 25% in excess of the rent charged by the Board. Mr. Joseph's response to Mr. Daniel's letter requested an increase in rent to provide either 25% in excess of the rent charged by the Board or a 25% increase in the rent from the original sublease, whichever would prove greater. It also

conditioned the renewal on negotiation of a new lease between Joseph and Pritchard and the Board.

With this arrangement in place, Lindsey undertook to sell his business to Dickerson. As part of the sale, Lindsey agreed to assist Dickerson and Dickerson's company, Lindsey Automotive Services, in securing a sublease from Joseph and Pritchard.

Five months after this sale, Joseph and Pritchard sold their interest in the premises leased from the Board to Autocenter Development, Inc. In 1989, as the date for an extension of the sublease approached, Autocenter advised Dickerson that it intended to demand a substantial increase in rent.

Lindsey Automotive Services filed suit to enforce its alleged agreement with Joseph and Pritchard for a ten-year extension of the sublease, which it argued was binding on Autocenter as Joseph and Pritchard's successor. A Mississippi state court found that the lease could not be enforced on two separate grounds. First, the lease was not enforceable as it did not satisfy the requirements of a written document established by the statute of frauds. Second, the agreement made the extension contingent upon Joseph and Pritchard renewing their lease with the Board--a contingency which never transpired. The court ordered Lindsey Automotive Services to vacate the premises and pay damages as a wrongful holdover tenant.

Both Dickerson and Lindsey Automotive Services filed for bankruptcy. Dickerson and Lindsey subsequently initiated this suit against Daniel alleging that he had a duty to secure an extension

of the sublease on behalf of Lindsey Automotive Services and, by failing to obtain a written agreement, had not fulfilled that duty.

II

The district court granted summary judgment in favor of the defendant. In doing so, the district court noted that it was doubtful that Daniel owed a duty to Dickerson or Lindsey Automotive Services rather than merely to Mr. Lindsey. Mr. Daniel had only represented Mr. Lindsey.

The district court also suggested that the statute of limitations had run before Dickerson and Lindsey Automotive Services commenced this suit. The applicable statute of limitation in Mississippi is six years. See Miss. Code Ann. § 15-1-49 (1993). Plaintiffs filed suit more than six years after Daniel took any action in regard to the extension of the sublease.

Plaintiffs seize on this second conclusion, arguing that the district court did not identify properly the date on which their claim accrued. We need reach neither of these issues, however, because we affirm on separate grounds.

The only negligent act that the plaintiffs ascribe to Daniel was his failure to memorialize the agreement in proper written form. The district court notes that the plaintiffs did not allege in their complaint that Daniel should have secured an unconditional extension of the sublease. Moreover, the terms of the sale of Lindsey Automotive Services provided that Mr. Lindsey would assist Mr. Dickerson in securing an extension of the sublease but that "[t]he final decision [about the sublease] would be made by the

corporation." This language does not indicate that Lindsey or Daniel guaranteed the existence of a sublease. Indeed, to the contrary, the language appears inconsistent with such a commitment. The terms of the sale leave that decision to the discretion of the corporation.

The district court concluded that Daniel's failure to commit the terms of the extension of the sublease to proper written form did not cause the plaintiffs' injuries. The extension was contingent on Joseph and Pritchard renewing their lease, which they did not do. The agreement therefore would not have come into effect in any case.

The Mississippi state court that dismissed the plaintiffs' suit to enforce the sublease recognized this fact, as did the district court. So do we. We therefore AFFIRM.