

In Estate of Felipe A. Radelat, 2019 WL 5792652 (Tex. App. Nov. 7, 2019), the Texas Court of Appeals held that the trial court did not abuse its discretion in imposing “death penalty” sanctions by striking a statute of limitations defense where the sanctioned party engaged in discovery misconduct and violated court orders.

In this trusts and estates litigation, the daughter of the deceased sued her mother and brother over their handling of the estate. *Id.* at *1. Plaintiff alleged that she did not know that she was meant to be a co-trustee or beneficiary of the estate because defendants had withheld the will from her and misled her about its content. Defendants raised a statute of limitations defense, but plaintiff argued that defendant’s fraudulent concealment should toll the limitations statute.

The trial court determined that the defendants engaged in several forms of misconduct during the litigation — submitting a false accounting of rent to the court 70 days after the court-ordered deadline, “failing to provide a statutory accounting for the trusts even four years after [plaintiff] had demanded one, [and] failing to produce financial records despite an order compelling production.” *Id.* at *2-*3.

The trial court imposed death penalty sanctions, striking the defendants’ limitations defense. *Id.* at *2. In addition to identifying the myriad forms of misconduct, the trial court “incorporated detailed findings as to why the death-penalty sanction was directly related to appellants’ offensive conduct, why the sanction was not excessive, why lesser sanctions would not have sufficed, and why [defendants’] conduct justified a presumption that their claims and defenses lacked merit.” *Id.* at *3.

On appeal, defendants-appellants did not contest the factual findings of the trial court, claim that lesser sanctions were more appropriate or attack the damages calculations. Instead, the appeal argued only that “the misconduct should justify the presumption that the claim or defense lacks merit” and that where “the underlying claim or defense appears to have great merit ... there can be no death-penalty sanction.” *Id.* at *4.

The appellate court rejected appellants’ claims on two grounds. First, it pointed out that the merits of the case were not before it and distinguished other death penalty sanction cases in which appellate courts had considered the underlying merits. *Id.* at *4. In those cases, the court of appeals explained, the merits had already been resolved by trial or admission, whereas in the instant case there was “no concrete basis on which to judge the merits.” *Id.* at *4-*5. The appellate court concluded, “we do not believe that either due process or the rules of civil procedure require us to forecast how likely the sanctioned defendant would be to prevail in the absence of a sanction — and to do so based solely on the party’s pleadings.” *Id.* at *5.

Second, the court of appeals reasoned that even were the merits before it, appellants’ actions suggested that their limitations claim lacked merit. Under Texas law, “[t]o justify a presumption that the claim lacks merit, the misconduct must, at a minimum, reveal some detrimental truth about the sanctioned party’s claim or defense.” *Id.* (citation omitted). The appellate court highlighted a prior case holding that “[r]efusal to produce evidence that goes to the ‘heart of’ the case may warrant the belief that full and fair disclosure would be damning for the refusing party.” *Id.* (citing *Cire v. Cummings*, 134 S.W.3d 835, 841 (Tex. 2004)). Similarly, the court of appeals explained

that “pervasive and persistent obstruction of the discovery process in general” often speaks to the underlying merits.

As applied to the instant case, the court of appeals found that appellants’ misconduct went both generally and directly to the merits of the limitations defense. *Id.* at *6. “[D]iscovery abuses, refusal to cooperate, violations of a temporary injunction meant to protect trust property, and deception of the court ... generally favors the notion that appellants’ defenses lack merit.” Specific to the limitations claim, the appellate court noted that appellee had countered the limitations defense by arguing that fraudulent concealment should toll the limitations period. The appellate court held that “[t]he nature of appellants’ misconduct — a borderline fraud on the court — could have rationally persuaded the trial court that appellants also fraudulently concealed the truth from [appellee].”