

Continuous Representation Doctrine Not Necessarily Limited to Attorney-Client Relationship

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Jul 10, 2012

Soffler v. Isla, 2012 WL 2122615 (N.Y.A.D.2 Dept.)

Brief Overview

The Supreme Court, Appellate Division, Second Department of New York rejected plaintiff's assertion that the continuous representation doctrine should apply, and instead affirmed the dismissal of an action to recover damages for professional malpractice as time barred.

Complete Summary

At the time the action was commenced, defendant made a showing that the statute of limitations had expired. At that time, plaintiffs failed to argue either: (1) that the statute of limitations had tolled, or (2) that the statute of limitations was otherwise inapplicable.

In New York, actions for malpractice against nonmedical professionals are governed by a three-year statute of limitations. Accordingly, a cause of action alleging professional malpractice against an engineer will begin to accrue upon completion of performance under the contract and termination of the parties' professional relationship. In this case, the court found that defendant had established that the professional relationship between the parties had ended after defendant's response to plaintiff's final e-mail message.

Although the court considered whether the continuous representation doctrine should apply here, the court ultimately found that defendant did not actually provide continuous services to plaintiff. In addition, the court found that there was no mutual understanding among the parties that plaintiff required any further assistance from defendant.

Significance of Opinion

Engineers and other design professionals must be clear about the scope of services which they intend to provide to each client. This scope of services should be clearly designated in the contract itself, either through integration of a project specific proposal or through specific terms and conditions for the project. Because a client may utilize a single engineering or design professional company for many projects, it is vital to be clear about when each project is “completed,” in order that all parties will be on the same page when it comes to important legal limits, such as a statute of limitation pertaining to the work. In an attempt to overcome a statute of limitations defense, plaintiffs may argue that the “continuous representation” doctrine should apply, arguing that the professional’s continuing client relationship prevents the statutory time period from beginning to run. Specific milestones should be set, so all parties can determine what step marks project completion. If the intent of a contract is to continue through completion of particular milestones, the contract documents should so note, in order to eliminate chances of confusion later down the line.

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