

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D31552
G/kmb

_____AD3d_____

Submitted - May 17, 2011

WILLIAM F. MASTRO, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2010-04217

DECISION & ORDER

John Howish, respondent, v Peter J. Perrotta,
et al., defendants, Ronald M. Organ, appellant.

(Index No. 4299-08)

Ronald M. Organ, South Setauket, N.Y., appellant pro se.

Loturco & Martin, Huntington, N.Y. (Bradford J. Martin of counsel), for respondent.

In an action, inter alia, to recover damages for legal malpractice, the defendant Ronald M. Organ appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Gazzillo, J.), entered August 6, 2009, as denied that branch of his motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against him as time-barred.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied that branch of the appellant's motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against him as time-barred. Although the appellant met his prima facie burden of establishing that the complaint was time-barred insofar as asserted against him, in opposition, the plaintiff raised a question of fact as to whether the statute of limitations was tolled by the continuous representation doctrine (*see Kennedy v H. Bruce Fischer, Esq., P.C.*, 78 AD3d 1016, 1017-1018; *Lytell v Lorusso*, 74 AD3d 905, 907; *Symbol Tech., Inc. v Deloitte & Touche, LLP*, 69 AD3d 191, 195-196; *Rehberger v Garguilo & Orzechowski, LLP*, 50 AD3d 760).

MASTRO, J.P., DICKERSON, CHAMBERS and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan

Clerk of the Court

May 31, 2011

HOWISH v PERROTTA