

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

D32239
G/ct

_____AD3d_____

Argued - June 9, 2011

A. GAIL PRUDENTI, P.J.
RANDALL T. ENG
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2010-05387

DECISION & ORDER

Allan V. Rose, et al., appellants, v Arthur J. Gallagher
& Co., et al., respondents.

(Index No. 4322/09)

Jaspan Schlesinger LLP, Garden City, N.Y. (Steven R. Schlesinger and Seth A. Presser of counsel), for appellants.

Venable LLP, New York, N.Y. (Edwin M. Larkin of counsel), for respondents.

In an action, inter alia, to recover damages for negligence, professional malpractice, and breach of fiduciary duty, the plaintiffs appeal, as limited by their notice of appeal and brief, from so much of an order of the Supreme Court, Nassau County (Warshawsky, J.), entered May 7, 2010, as, upon converting those branches of the defendants' motion which were to dismiss the third, fourth, fifth, and sixth causes of action of the amended complaint into a motion for summary judgment dismissing those causes of action, granted those branches of the motion which were for summary judgment dismissing the third, fourth, and fifth causes of action in the amended complaint.

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

This action arises from the alleged failure of the defendants, in their capacity as insurance brokers, to provide the plaintiffs with an accurate quote for the cost of certain insurance coverage. The third, fourth, and fifth causes of action in the amended complaint, which are at issue on this appeal, allege negligence, professional malpractice, and breach of fiduciary duty, respectively. The only issue disputed by the parties is whether the conduct alleged in those three causes of action is governed by Louisiana law or New York law.

August 30, 2011

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The three causes of action in question sound in tort and, thus, contrary to the parties' contentions, the conflict-of-laws standard that applies in contract-based actions (*see Zurich Ins. Co. v Shearson Lehman Hutton*, 84 NY2d 309, 317-319) does not apply here. Since the laws alleged to be in conflict—including those regarding the availability of punitive damages, an important purpose of which is deterrence (*see Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 489) — are of a conduct-regulating nature, the law of the place of the tort applies (*see Padula v Lilarn Props. Corp.*, 84 NY2d 519; *Cooney v Osgood Mach.*, 81 NY2d 66, 72; *Schultz v Boy Scouts of Am.*, 65 NY2d 189, 198; *Shaw v Carolina Coach*, 82 AD3d 98, 101). In this case, the allegedly negligent quote was requested by the plaintiffs, and provided by the defendants, through e-mail communications that were sent from and received in New York. Thus, the tortious conduct alleged in the amended complaint is governed by New York law. Since the parties charted a procedural course in which the viability of the three causes of action in question depends upon whether they are governed by Louisiana law, the Supreme Court properly awarded the defendants summary judgment dismissing those causes of action.

PRUDENTI, P.J., ENG, HALL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court