

**Anderson v Pimm**

2019 NY Slip Op 34036(U)

May 13, 2019

Supreme Court, Kings County

Docket Number: 519135/18

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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DOUGLAS ANDERSON,  
Plaintiff, Decision and order

- against -

Index No. 519135/18

CANDACE STANLEY PIMM, as the Executrix of  
the Estate of Thomas Barrett Stanley,  
Defendant,

*ms # 2*

May 13, 2019

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PRESENT: HON. LEON RUCHELSMAN

The defendant has moved seeking to dismiss the lawsuit pursuant to CPLR §3211 on the grounds the action is barred by the statute of limitations and in any event many of the causes of action are improper. The plaintiff opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

The plaintiff alleges that on December 26, 2005 he entered into an agreement with Thomas Stanley an architect whereby Stanley agreed to prepare architectural plans concerning a proposed four story condominium at 46 Decatur Street in Kings County. Stanley prepared plans that were filed during 2006 and 2007. Indeed, the final plans were filed with the Department of Buildings on June 14, 2007. In 2008 the plaintiff realized the plans needed revisions, however, the project was placed on hold when the plaintiff ran out of funds. The Complaint states that "over the course of

the next five years, Plaintiff struggled to make his mortgage and loan payments on the Subject Property" (see, Complaint, § 87). In March 2015 the plaintiff reached out to Stanley to try and finish the project and the parties entered into another agreement. Stanley provided architectural plans, however, they were subsequently rejected by the Department of Buildings. On March 13, 2018 the parties entered into another agreement and further plans submitted by Stanley were again rejected by the Department of Buildings. The plaintiff instituted the current action and asserts five causes of action including negligence, breach of contract and malpractice. The defendant has now moved seeking to dismiss the lawsuit on the grounds the action is barred by the statute of limitations.

#### Conclusions of Law

"[A] motion to dismiss made pursuant to CPLR §3211[a][7] will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law" (see, e.g. AG Capital Funding Partners, LP v. State St. Bank and Trust Co., 5 NY3d 582, 808 NYS2d 573 [2005], Leon v. Martinez, 84 NY2d 83, 614 NYS2d 972, [1994],

Hayes v. Wilson, 25 AD3d 586, 807 NYS2d 567 [2d Dept., 2006], Marchionni v. Drexler, 22 AD3d 814, 803 NYS2d 196 [2d Dept., 2005]. Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, EBC I, Inc. v. Goldman Sachs & Co., 5 NY3d 11, 799 NYS2d 170 [2005]).

It is well settled that "a cause of action to recover damages against an architect for professional malpractice is governed by a three-year statute of limitations, which accrues upon 'termination of the professional relationship'—that is, when it 'completes its performance of significant (i.e., non-ministerial) duties under the parties' contract'" (New York School Construction Authority v. Ennead Architects LLP, 148 AD3d 618, 49 NYS3d 462 [1<sup>st</sup> Dept., 2017]). The defendant argues the statute has run since Stanley has not performed under the contract since 2008. The plaintiff counters the relationship between the parties never terminated, thus the statute of limitations has not run. The plaintiff provides two reasons why this is true. First, the plaintiff argues the 2005 agreement itself states that in order to abandon or terminate the services of the architect the plaintiff is

required to "give written notice" (see, Agreement, Article VI) and since no such writing ever took place the contract was never abandoned and Stanley is still bound by its terms.

Second, the plaintiff asserts that Stanley provided continuous work throughout the period from 2005 to 2015 and thus pursuant to the continuous representation doctrine Stanley never abandoned working for the plaintiff any statute of limitations is tolled and thus may be sued based upon the 2005 agreement.

First, the determinative factor whether an architect has continuously served pursuant to a contract are not the provisions of the contract but whether or not the architect actually provided any services. Thus, the party seeking to rely on a continuous representation doctrine must demonstrate its reliance upon a continued course of services related to the original professional services provided (Sendar Development Co. LLC v. CMA Design Studio P.C., 68 AD3d 500, 890 NYS2d 534 [1<sup>st</sup> Dept., 2009]). Thus, "continuity of representation may be found to exist where the professional and the client explicitly contemplate the periodic performance of professional services in the future" (see, Regency Club of Wallkill LLC v. Appel Design Group, 112 AD3d 603, 976 NYS2d 164 [2d Dept., 2013]).

In this case the complaint does not describe in any manner any such contemplation between the parties concerning any performance by Stanley after 2008. Further, the 2015 agreement further supports the fact there was no continuous representation as argued by plaintiff. In fact, the complaint states that "Stanley claimed that the architectural services required were outside the scope of work reflected in the 2005 Agreement, and therefore, the parties needed to amend the terms of their original agreement" (see, Complaint § 92). This clearly demonstrates that Stanley did not engage in any continuous representation and that in 2015 when the relationship resumed a new agreement was required.

Lastly, the plaintiff's affidavit does not raise any question of fact whether Stanley was working as an architect between 2008 and 2015.

Therefore, based on the foregoing the motion of defendant seeking to dismiss the complaint is granted.

So ordered.

ENTER:



DATED: May 13, 2019  
Brooklyn N.Y.

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Hon. Leon Ruchelsman  
JSC

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