

**Clinton Assoc. for a Renewed Env't., Inc. v
Monadnock Constr., Inc.**

2013 NY Slip Op 30224(U)

January 11, 2013

Sup Ct, New York County

Docket Number: 104856/2011

Judge: Eileen Bransten

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 3

-----X
CLINTON ASSOCIATION FOR A RENEWED
ENVIRONMENT, INC., CLINTON PARKVIEW
APARTMENTS, L.P., CLINTON APARTMENTS
HOUSING DEVELOPMENT FUND CORPORATION,
ans CLINTON PARKVIEW APARTMENTS GP, INC.,

Plaintiffs,

-against-

Index No.: 104856/2011
Mot. Seq. No.: 001
Motion Date: 5/21/2012

MONADNOCK CONSTRUCTION, INC., TING & LI
ARCHITECTS, P.C., STEPHEN TING and
GILSANZ, MURRAY, STEFICEK, LLP.,

Defendants.

-----X
BRANSTEN, J.

Defendants Stephen Ting (“Ting”) and Ting & Li Architects, P.C. (“Ting & Li”) (collectively “Defendants”) move to dismiss the complaint pursuant to CPLR 3211(a)(1) and (a)(5).¹ Plaintiffs Clinton Associates for a Renewed Environment, Inc. (“Clinton Associates”), Clinton Parkview Apartments (“Clinton Parkview LP”), Clinton Apartments Housing Development Fund Corporation (“Clinton Fund”) and Clinton Parkview Apartments CP, Inc. (“Clinton Parkview GP”) (collectively “Plaintiffs”) oppose.

I. BACKGROUND

On February 28, 2001, plaintiff Clinton Associates entered into a contract (the “Contract”) with Ting & Li to provide architectural services for the Clinton Parkview

¹ Defendants Monadnock Construction, Inc. and Gilsanz, Murray, Steficek, LLP do not join in the instant motion.

Apartments located at 555 West 52nd Street in Manhattan (the "Premises"). Affidavit of Stephen Ting ("Ting Aff."), Ex. F ("Compl."), ¶ 3. In the Contract, Defendants also agreed to provide contract administration services, including hiring and oversight of contractors. Affidavit of Michael Piantadosi ("Piantadosi Aff."), ¶ 4.

In accordance with the Contract, Defendants prepared architectural plans for the Premises. Compl. at ¶ 26. Defendants' plans included specifications for the design system and choice of materials for the exterior masonry wall system. *Id.*

The Certificate of Substantial Completion for the Premises was signed on March 29, 2006. Piantadosi Aff., ¶ 5. As of the date of Substantial Completion, the masonry work on the Premises had begun to crack, causing the walls to bulge and take on water. *Id.* Plaintiffs recently discovered that the walls were not designed to withstand the freeze and thaw cycles to which the Premises is frequently exposed. *Id.*

Plaintiffs claim that Defendants worked extensively with Plaintiffs to remediate the flaws in the masonry walls following the Substantial Completion of the Premises. *Id.* at ¶ 7. Defendants endeavored to identify the causes of and potential solutions for the problems with the walls. *Id.* Plaintiffs claim that Defendants created remedial plans and design drawings and carried out materials testing, field investigations and approval and critique of the remedial work proposed by Monadnock Construction, Inc. *Id.* at ¶ 6. Plaintiffs claim that Defendants continued to work to repair the faulty walls until August 18, 2008, when

Ting executed an Architect's Certificate approving the repairs that were to be made to the Premises. Piantadosi Aff., Ex. B.

Plaintiffs commenced the instant action on April 22, 2011. Defendants now move to dismiss on the grounds that Plaintiffs' claims against them are time-barred.

II. STANDARD OF LAW

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction." *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994). The court accepts the facts as alleged in the non-moving party's pleading as true and accords the non-moving party the benefit of every possible favorable inference. *Id.* "[A] court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one." *Id.* (internal citations omitted).

III. ANALYSIS

The limitations period for malpractice actions sounding in tort or contract against an architect is three years. *See* CPLR § 214(6). Generally, "[a]n owner's claim against a design professional accrues upon the termination of the professional relationship between the parties, when the designer completes its performance of significant (i.e., non-ministerial) duties under the parties' contract." *Parsons, Brinckerhoff, Quade & Douglas v. EnergyPro Constr. Partners*, 271 A.D.2d 233, 234 (1st Dep't 2000). Furthermore, it is well established that, in malpractice cases involving architects, "[t]he 'continuous treatment' doctrine operates

to toll the running of the statute of limitations so long as the parties continue their professional relationship to rectify the alleged act of malpractice.” *City of New York v. Castro-Blanco, Piscioneri & Assocs., P.C.*, 222 A.D.2d 226, 228 (1st Dep’t 1995).

Defendants argue that the language of the Contract bars the application of the “continuous treatment” doctrine in this case. The Contract provides that:

Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence not later than either the date of Substantial Completion for the acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate of Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect’s services are substantially completed.

Ting Aff., Ex. A, p. 10.

Defendants interpret the last sentence of this provision as prohibiting any tolling of the limitations period. Plaintiffs, on the other hand, assert that the court cannot determine the meaning of the provision on a motion to dismiss because the meaning of the clause is ambiguous.

“Whether a contract is ambiguous is a question of law.” *South Rd. Assoc. V. IBM Corp.*, 4 N.Y.3d 272, 278 (2005). “[A] contract is ambiguous if on its face it is reasonably susceptible of more than one interpretation. If the court concludes that a contract is ambiguous, it cannot be construed as a matter of law, and dismissal . . . is not appropriate.” *China Privatization Fund (Del), L.P. v. Galaxy Entm’t Group Ltd.*, 95 A.D.3d 769, 770 (1st Dep’t 2012).

The Contract is ambiguous as to whether it purports to limit the application of the “continuous treatment” doctrine to toll the three-year limitations period. In the Contract, “Substantial Completion” is a defined, capitalized term. However, the Contract says that the limitations period will begin to run no “later than the date when the Architect’s services are substantially completed.” Ting Aff., Ex. A, p. 10. The Contract is ambiguous as to whether the time when “services are substantially completed” is referring to the defined date of “Substantial Completion.” *Id.* The time that “services are substantially completed” could reasonably be read as referring to the time when work on the project was mostly complete rather than the date of Substantial Completion.

According to Plaintiffs, Defendants carried out a significant amount of work after the date of Substantial Completion. Therefore, Defendants’ “services” may not have been “substantially completed,” even though Defendants had already issued the Certificate of Substantial Completion.

Because the Contract is ambiguous, its meaning cannot be determined as a matter of law on a motion to dismiss. *China Privatization Fund (Del), L.P.*, 95 A.D.3d at 770. Defendants’ motion to dismiss on the grounds that the Contract unambiguously bars tolling of the statute of limitations is therefore denied.

Defendants alternatively contend that the “continuous treatment” doctrine should not toll the three-year statute of limitations because Defendants carried out only ministerial work following the issuance of the Certificate of Substantial Completion.

Plaintiffs assert that Defendants worked extensively with Plaintiffs in an effort to identify the cause of and repair the cracking in the Premises' masonry walls. As evidence of their claims, Plaintiffs submit numerous e-mails and letters to and from Defendants discussing the damaged walls. *See Piantadosi Aff., Exs. C-GG.* Plaintiffs further contend that Defendants' August 18, 2008 issuance of the Architect's Certificate was not a ministerial act, but was rather a crucial factor in Plaintiffs' ability to obtain financing for the Premises.

Factual disputes exist as to (1) the extent of the work Defendants carried out after the date of Substantial Completion and (2) whether the relationship between the parties was sufficiently continuous to fall within the "continuous treatment" doctrine. Accepting all of Plaintiffs facts as true and according Plaintiffs the benefit of every possible favorable inference as it must on a motion to dismiss, *Leon*, 84 N.Y.2d at 88, Plaintiffs have adequately alleged that the parties continued their professional relationship until August 18, 2008. *Castro-Blanco, Piscioneri & Assocs., P.C.*, 222 A.D.2d at 228. Plaintiffs brought the instant suit within three years of this date. Thus, Defendants' motion to dismiss on statute of limitations grounds is denied.

The court's order follows on the next page.

IV. CONCLUSION

For the reasons set forth above, it is hereby


ORDERED that defendants Ting & Li Architects P.C. and Stephen Ting's motion to dismiss the complaint is denied; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 442, 60 Centre Street, on February 26, 2013, at 10:00 AM.

Dated: New York, New York
January 11, 2013

ENTER:


Hon. Eileen Bransten, J.S.C.