

Chang v Yi Lin

2024 NY Slip Op 33338(U)

September 20, 2024

Supreme Court, New York County

Docket Number: Index No. 161222/2023

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 161222/2023

STEPHANIE MOOK YU CHANG

MOTION DATE 09/21/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

YI LIN, ESQ.

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for DISMISS

Upon the foregoing documents submitted by the *pro se* Defendant Yi Lin, Esq. (“Defendant”) and Erin C. Kormann, Esq. on behalf of Plaintiff Stephanie Mook Yu Chang (“Plaintiff”) on July 23, 2024, the *pro se* Defendant’s motion to dismiss Plaintiff’s Complaint is granted.

I. Background

This is a legal malpractice action. Plaintiff alleges Defendant represented her and her former husband in various real estate, immigration, and business-related matters (*see* NYSCEF Doc. 1 at ¶ 3). Plaintiff alleges Defendant represented her former husband in a divorce proceeding (*id.* at ¶ 15). Plaintiff further alleges that she consulted with Defendant prior to the divorce proceeding about her desire to divorce her husband. During the divorce proceeding, she believed Defendant was representing both her and her husband (*id.* at ¶ 16). Plaintiff was allegedly never told she should seek independent counsel (*id.* at ¶ 19).

Allegedly, it was only after consulting with a separate attorney that Plaintiff learned Defendant made numerous misrepresentations to Plaintiff during the divorce proceedings, and

there were assets omitted from the parties' divorce agreement (*id.* at ¶¶ 44-45). Plaintiff also alleges that pursuant to a 2020 telephone call from Defendant, she learned her name was not taken off certain marital liabilities.

Defendant filed a pre-answer motion to dismiss. Defendant argues that there is a three-year statute of limitations for legal malpractice and the divorce action was finalized on July 31, 2015. Defendant argues that the November 2020 telephone call regarding marital liabilities was made by Defendant on behalf of Plaintiff's former husband and in no way established an attorney-client relationship. Defendant argues that documentary evidence from the matrimonial action shows that he was only representing Plaintiff's former husband. Defendant argues the breach of fiduciary duty claim should be dismissed as duplicative. In opposition, Plaintiff argues the statute of limitations should be tolled due to Defendant's continuous representation of Plaintiff. She argues the breach of fiduciary duty cause of action should not be dismissed as untimely because her claim did not become enforceable until she was sued in Pennsylvania in 2022 due to Defendant's failure to effectuate the separation of marital assets. In reply, Defendant argues Plaintiff's motion papers are untimely. Defendant argues Plaintiff's unilateral and mistaken belief that there existed an attorney-client relationship is insufficient to give rise to a claim for legal malpractice. Defendant argues the continuous representation doctrine does not apply to toll the statute because there was no mutual understanding of the need for further representation.

II. Discussion

A defendant who moves to dismiss based on the statute of limitations bears the initial burden of proving that the time to sue has expired (*Lebedev v Blavatnik*, 144 AD3d 24 [1st Dept 2022]). CPLR § 214(6) provides for a three-year period of limitations for legal malpractice claims. As held by the Court of Appeals, most legal malpractice claims accrue from the day an actionable

injury occurs, even if the aggrieved party is ignorant of the wrong (*McCoy v Feinman*, 99 NY2d 295 [2002]; *see also Flintlock Const. Servs., LLC v Rubin, Fiorella & Friedman, LLP*, 188 AD3d 530 [1st Dept 2020]). Here, the alleged wrongs occurred during a divorce proceeding which was concluded in 2015 (*see Zorn v Gilbert*, 8 NY3d 933 [2007] [malpractice claim accrued, at the latest, when a judgment of divorce was entered in the underlying action]). The Complaint was not filed until November 15, 2023. Therefore, the claims related to the divorce are untimely.

Although Plaintiff is correct the continuous representation doctrine tolls the statute of limitations, this doctrine is only applicable where there is a mutual understanding of the need for further representation on the specific subject matter underlying the malpractice claim (*McCoy, supra* at 306). Here, there are no facts alleging any representation as to the divorce proceedings after 2015, aside from an isolated telephone call in 2020. However, it is only alleged that on the November 2020 telephone call, Defendant called Plaintiff to have Plaintiff's name removed from an SBA loan and the deeds and mortgage for various properties in Pennsylvania. This telephone call, which is the only timely legal interaction between Plaintiff and Defendant, is by itself insufficient to state a legal malpractice claim. This isolated phone call does not constitute a "mutual understanding" to invoke the continuous representation doctrine, especially where the documentary evidence in the form of Court filings specifically state that Defendant was only representing Plaintiff's former husband in the proceedings (*see also Farina v Katsandonis, P.C.*, 197 AD3d 1033 [1st Dept 2021] ["Plaintiff failed to allege sufficient facts showing there was a mutual understanding of the need for further representation"]).

Simply, there is no clear indicia of an ongoing, continuous, and dependent relationship between the client and attorney related to the divorce proceeding. There is only a conclusory and self-serving affidavit of Plaintiff which fails to list any conversations or ongoing legal work

between Plaintiff and Defendant after the divorce proceeding and prior to the November 2020 telephone related to the underlying divorce proceeding (*see* NYSCEF Doc. 13). Therefore, the legal malpractice cause of action predicated on Defendant's alleged representation of Plaintiff in her divorce proceeding is dismissed as time barred. While the Court does not condone Defendant's actions in representing Plaintiff's former husband in a divorce proceeding despite what appears to be a conflict of interest, the Court cannot toll the statute of limitations given the facts and allegations pled.

Plaintiff's breach of fiduciary duty claim is dismissed as duplicative of the legal malpractice claim. Where a breach of fiduciary duty claim and legal malpractice claim arise from identical facts and circumstances, and the damages that would flow from each are identical, the claims are duplicative (*Alphas v Smith*, 147 AD3d 557 [1st Dept 2017]; *see also InKine Pharm. Co. v Coleman*, 305 AD2d 151, 152 [1st Dept 2003]). These circumstances are present here, and therefore the breach of fiduciary duty claim may be dismissed as duplicative (*Courtney v McDonald*, 176 AD3d 645 [1st Dept 2019]). Thus, the Complaint is dismissed in its entirety.

Accordingly, it is hereby,

ORDERED that Defendant's motion to dismiss Plaintiff's Complaint is granted, and Plaintiff's Complaint is hereby dismissed; and it is further

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ORDERED that within ten days of entry, Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/20/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
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