

<b>Anderson v Beranbaum</b>
2013 NY Slip Op 31821(U)
August 5, 2013
Sup Ct, New York County
Docket Number: 151918/2013
Judge: Anil C. Singh
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH  
SUPREME COURT JUSTICE  
*Justice*

PART 61

Index Number : 151918/2013  
ANDERSON, CHRISTINE C.  
vs  
BERANBAUM, JOHN A.  
Sequence Number : 001  
DISMISS ACTION

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

*Decided ~~in~~ in accordance with attached opinion*

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 8/5/13

Anil C. Singh, J.S.C.  
HON. ANIL C. SINGH  
SUPREME COURT JUSTICE

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 61

-----X  
CHRISTINE C. ANDERSON,

Plaintiff,

-against-

JOHN A. BERANBAUM and  
BERANBAUM MENKEN LLP,

Defendants.

-----X

DECISION AND  
ORDER

Index No.  
151918/13

HON. ANIL C. SINGH, J.:

Defendants John A. Beranbaum and Beranbaum Menken LLP (collectively “Bernanbaum”) move pursuant CPLR 3211(a)(1), (5) and (7) to dismiss plaintiff Christine Anderson’s legal malpractice action.

In her verified complaint filed March 3, 2013, Anderson alleges eight separate causes of action including: Breach of Contract, Breach of Fiduciary Duty, Negligence, Gross Negligence, Fraud, Malpractice, Breach of Duties of Loyalty and Good Faith, and Breach of Duty of Confidentiality. However, upon the facts alleged in the verified complaint, the court finds that the plaintiff has only alleged two instances of legal malpractice. The additional causes of action are duplicative of the legal malpractice claims, as they allege the same set of operative facts. The additional causes of action are therefore dismissed pursuant to well-established

precedent that duplicative claims of legal malpractice should be dismissed (see e.g., Ulico Cas. Co. v. Wilson, Elser, Moskowitz, Edelman & Dicker, 56 A.D.3d 1, 8-9 (1st Dept 2008); Proskauer Rose, LLP v. ASIA Electronics Holding Co., 2 A.D.3d 196 (1st Dept 2003); InKine Pharmaceutical Company, Inc. v. Coleman, 305 A.D.2d 151 (1st Dept 2003); Sonnenschine v. Giacomo, 295 A.D.2d 287 (1st Dept 2002)).

The first alleged incident of legal malpractice is based upon Beranbaum's representation of Anderson in an employment discrimination action filed against the State of New York in the Southern District (see Christine C. Anderson v. The State of New York et al., Case No. 07-9599). Anderson alleges that Beranbaum engaged in legal malpractice during the course of prosecuting the case, ultimately leading to an adverse result. Anderson appealed the result *pro se* on November 25, 2009, in an appeal that was ultimately rejected. Both parties deny that Anderson was offered or received any legal services from Beranbaum following Anderson's decision to appeal on November 25, 2009.

The second alleged incident of legal malpractice is based upon an email that Anderson's daughter received on March 4, 2010, from a "stranger" containing "attorney-client privileged information," including confidential medical information and details about her Southern District lawsuit. Anderson claims that she was "devastated" upon learning of the alleged breach of confidentiality, and seeks compensatory and punitive damages for this injury.

The legal standard of review for a pre-answer motion to dismiss is to accord the verified complaint every possible favorable inference in order to determine whether the complaint fits within a cognizable legal theory (Arnav Indus. v. Brown, Raysman, Millstein, Felder & Steiner, LLP, 96 N.Y.2d 300, 303-04 (2001)). A pre-answer motion to dismiss may be granted only when “documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (Id.). In the instant case, the pre-answer motion to dismiss provides such evidence.

The documentary evidence provided by the defendant conclusively shows that the first claim for malpractice falls outside the applicable statute of limitations. Under CPLR 214(6), all claims for legal malpractice, no matter whether they sound in tort or contract, have a three year statute of limitations. Case law further provides that the statute of limitations begins to toll upon the date that all elements of a legal malpractice have been fulfilled such that the injured party could have brought suit, regardless of whether the injured party was aware of the injury at the time (IDT Corp. v. Morgan Stanley Dean Witter & Co., 12 N.Y.3d 132, 140 (2009)).

Granting the plaintiff every possible favorable inference, the latest date that the first legal malpractice cause of action would begin to toll would be November 25, 2009, when Anderson dispensed with Beranbaum’s services in order to prosecute her case *pro se*. Assuming all of Anderson’s allegations are true, then

the latest Anderson could have chosen to commence a lawsuit would have been on November 25, 2012, alleging that Beranbaum's malpractice caused an adverse result in her lawsuit and resulted in the costs of her appeal. However, rather than file the legal malpractice claim on or before November 25, 2012, Anderson instead chose to commence her lawsuit on March 3, 2013. This date falls well outside CPRL 214(6)'s statute of limitations of three years for legal malpractice, and is therefore time-barred as a matter of law.


The second incident of legal malpractice is based on Beranbaum's alleged breach of confidentiality, which the plaintiff claims "devastated" her. Here, the plaintiff has failed to state a claim upon which relief may be granted. The only injuries that Anderson alleges from the legal malpractice are emotional, which are not considered compensable for legal malpractice claims (see Dombrowski v. Bulson, 19 N.Y.3d 347, 351 (2012); Wolkstein v. Morgenstern 275 A.D.2d 635, 637 (1st Dept 2000); Dirito v. Stanley, 203 A.D.2d 903 (4th Dept 1994)).

It is therefore

ORDERED that the defendant's motion to dismiss is granted.

The foregoing constitutes the decision and order of the court.

Date: Aug 5, 2013  
New York, New York

  
Anil C. Singh  
**HON. ANIL C. SINGH**  
**SUPREME COURT JUSTICE**