

Adeli v Ballon Stoll Bader & Nadler, P.C.

2013 NY Slip Op 32993(U)

November 22, 2013

Sup Ct, NY County

Docket Number: 154685/12

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SALIANN SCARPULLA
Justice

PART 19

Index Number : 154685/2012
ADELI, KATAYONE
vs.
BALLON STOLL BADER & NADLER,
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 _____

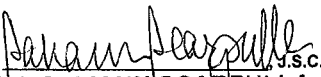
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

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

^{is}
motion and ~~cross motion~~ are decided in accordance
with accompanying memorandum decision.

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

Dated: 11/22/13


HON. SALIANN SCARPULLA, J.S.C.

- 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: CIVIL TERM: PART 19

-----X
KATAYONE ADELI,

Plaintiff,

Index No: 154685/12
Submission Date: 9/25/13

-against-

DECISION AND ORDER

BALLON STOLL BADER & NADLER, P.C.,
HOWARD BADER, SUSAN SCHNEIDERMAN and
CHRISTOPHER MULARADELIS

Defendants.

-----X

For Plaintiff:
Matthew H. Sheppe, Esq.
425 Madison Avenue, 19th Floor
New York, NY, 10017

For Defendants:
Anthony D. Grande, Esq.
One Chase Manhattan Plaza, 39th Floor
New York, NY, 10005

Papers considered in review of the motion to dismiss:

Notice of Motion/Affirm. Of Counsel/Memo of Law/Exhibits	1
Plaintiff's Memo of Law in Opposition	2

HON. SALIANN SCARPULLA, J.:

In plaintiff Katayone Adeli's ("Adeli") action to recover damages for legal malpractice, defendants Ballon Stoll Bader & Nadler P.C., Howard Bader, Susan Schneiderman, and Christopher Mularadelis ("BSBN") move to dismiss the complaint.

Adeli commenced this action in or about July 2012. In her complaint, Adeli alleged that on or about December 17, 2003, Richard Sachs, an investor in her company and holder of a defaulted loan which Adeli had personally guaranteed, sued both Adeli and her company for breach of personal guarantee and fraud ("Sachs action"). In or about early 2004, Adeli retained BSBN to represent her in the Sachs action, and in or about April 2005, the First Department granted Sachs judgment against Adeli.

BSBN sought an interim stay while it appealed the First Department's decision. Adeli alleged that BSBN advised her that Sachs' lawyers would not abide by a stay, and would nevertheless, seek to enforce the judgment against her. According to Adeli, BSBN then advised her to move her assets to friends of hers to protect them from judgment; Adeli transferred her assets in or about early summer of 2005, and subsequently filed for bankruptcy in or about early September 2005. The bankruptcy court granted her bankruptcy discharge on or about March 27, 2008, but, based on her transfer of assets in 2005, the Bankruptcy Panel of the Ninth Circuit Court of Appeals reversed that bankruptcy discharge on or about March 24, 2009.

Adeli asserted a legal malpractice claim, alleging that because she followed BSBN's advice and transferred her assets to her friends, she was denied a bankruptcy discharge and suffered monetary damages.

BSBN now moves to dismiss the complaint. First, BSBN argues that the action should be dismissed because Adeli lacks legal capacity to bring suit. Second, BSBN argues that the action should be dismissed because it was commenced beyond the applicable statute of limitations. Finally, BSBN argues that the action should be dismissed because Adeli's complaint fails to establish the damages element for legal malpractice. In support of its motion, BSBN provides a court document relieving BSBN as attorney for Adeli's company in 2006. BSBN also submits two affidavits from BSBN attorneys stating that the relationship between BSBN and Adeli ended in 2005.

In opposition to the motion, Adeli argues that she has capacity to sue because she had no knowledge of the legal malpractice claim until March 2009, when the Ninth

Circuit denied her bankruptcy discharge. Adeli also argues that continuous representation doctrine tolls the statute of limitations, and that she has properly pleaded damages for legal malpractice. In support of her opposition, Adeli submits the bankruptcy court's findings of fact and conclusions of law, and the 2005 judgment against her.

Discussion

CPLR § 214(6) requires “an action to recover damages for malpractice other than medical, dental or podiatric malpractice” to be commenced within three years. “An action to recover damages for legal malpractice accrues when the malpractice is committed,” not when it was discovered. *Williamson ex re. Lipper Convertibles L.P. v. PricewaterhouseCoopers LLP.*, 9 N.Y.3d 1, 7 (2007); *McCoy v. Feinman*, 99 N.Y.2d 295, 301 (2002); *Shumsky v. Eisenstein*, 96 N.Y.2d 164, 166 (2001).

Continuous representation doctrine tolls the statute of limitations for legal malpractice actions until the representation is completed. Under this doctrine, it is presumed that commencing a malpractice suit against one's attorney will affect the professional relationship; by tolling the statute of limitations for a malpractice suit, the doctrine allows the client to avoid jeopardizing the attorney-client relationship while attorney's representation on the matter is ongoing. *Glamm v. Allen*, 57 N.Y.2d 87, 93 (1982). Application of the doctrine is “generally limited to the course of representation concerning a specific legal matter,” and is not applicable to a client's “continuing general relationship with a lawyer involving only routine contact unrelated to the matter upon which the allegations of malpractice are predicated.” *Williamson*, 9 N.Y.3d 1, 9 (2007); *Shumsky*, 96 N.Y.2d 164, 168 (2001).

Here, Adeli's legal malpractice claim accrued in or about April 2005 when BSBN allegedly told her to transfer her assets so that they would be protected from judgment in the Sachs matter, and thus the statute of limitations for this claim expired in or about April 2008.

Contrary to Adeli's assertions, the continuous representation doctrine does not apply here because her attorney-client relationship with BSBN ended in 2005. Her allegations of malpractice are predicated upon BSBN's advice in the Sachs matter, and are unrelated to the bankruptcy proceeding, thus it cannot be said that BSBN continued to represent her after 2005. Even if the continuous representation doctrine did apply, it only tolled the statute of limitations until March 24, 2009, when the Ninth Circuit reversed the bankruptcy court's decision and denied Adeli her bankruptcy discharge. Therefore, at the latest, the statute of limitations expired on March 24, 2012, months before Adeli filed this action in July 2012.

In accordance with the foregoing, it is hereby

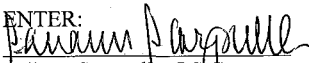
ORDERED that defendants Ballon Stoll Bader & Nadler P.C., Howard Bader, Susan Schneiderman, and Christopher Mularadelis' motion to dismiss the action is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: New York, New York
November 22, 2013

ENTER:


Saliann Scarpulla, J.S.C.