

Katz v Paul, Hastings, Janofsky & Walker LLP
2008 NY Slip Op 31042(U)
April 3, 2008
Supreme Court, New York County
Docket Number: 0601854/2007
Judge: Doris Ling-Cohan
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. DORIS LING-COHAN

PRECEDENT.

Index Number : 601854/2007

PART 36

KATZ, RONALD

vs
PAUL HASTINGS

Sequence Number : 001

DISMISS COMPLAINT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to 5 were read on this motion to/for dismiss

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits... memo

Answering Affidavits -- Exhibits of memo

Replying Affidavits memo

PAPERS NUMBERED

1, 2

3, 4

5

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion to dismiss is denied
in accordance with the attached memorandum
decision.

FILED

APR 10 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/2/08

[Signature]
HON. DORIS LING-COHAN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 36

-----X
RONALD KATZ and KING LOUIE MINING, LLC,

Plaintiff,

-against-

Index No. 601854/07

PAUL, HASTINGS, JANOFSKY & WALKER LLP,
Defendant.

FILED
APR 10 2008
COUNTY CLERK'S OFFICE
NEW YORK

DORIS LING-COHAN, J.:

The defendant Paul, Hastings, Janofsky & Walker LLP (Paul Hastings) moves, pursuant to CPLR 3211 (a) (1), (5) and (7), for an order dismissing the complaint on the grounds of statute of limitations, documentary evidence and that the complaint fails to state a cause of action.

In 2004, Ronald Katz, and his investment vehicle, King Louie Mining LLC (plaintiffs), made a \$3,000,337.72 investment in an entity called Humitech. This is a legal malpractice action against the law firm that performed legal work for the plaintiffs in connection with the investment transaction which closed on May 21, 2004. The complaint alleges that Paul Hastings negligently failed to take steps to confirm that Humitech was the owner of the collateral, i.e., certain mineral rights and stock, to be transferred to the plaintiffs. The plaintiffs also have commenced two separate actions concerning the investment.

In support of its motion to dismiss, the defendant Paul Hastings argues that the complaint is time-barred, and that the plaintiffs cannot escape their admissions, contained in their own prior sworn pleadings, that they succeeded in obtaining the collateral. Paul Hastings also argues that

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the prior sworn pleadings in the two separate actions constitute admissions that the defendant is not the proximate cause of plaintiffs' injury.

In opposition to the motion, the plaintiffs argue that after the May 21, 2004 closing, Paul Hastings continued to represent the plaintiffs in connection with the Humitech transaction. As proof, the plaintiffs offer a bill from Paul Hastings for legal work performed after the closing. The plaintiff Ronald Katz alleges that due to Paul Hastings' failure to perform due diligence, he closed the transaction without knowing that Humitech was not the beneficial owner of the mineral collateral, and that the stock collateral was subject to encumbrances. Finally, it is alleged that the plaintiffs have yet to receive the collateral for which they bargained.

In reply, the defendant Paul Hastings alleges that its bill to the plaintiffs, for legal work it performed on behalf of the plaintiffs after the closing, does not constitute continuous representation.

On a motion to dismiss a complaint for legal insufficiency, the court accepts the facts alleged as true and determines simply whether the facts alleged fit within any cognizable legal theory (Arnav Indus., Inc. Retirement Trust v Brown, Raysman, Millstein, Felder & Steiner, L.L.P., 96 NY2d 300 [2001]; Morone v Morone, 50 NY2d 481 [1980]). The pleading is to be liberally construed, accepting all the facts alleged therein to be true and according the allegations the benefit of every possible favorable inference (Leon v Martinez, 84 NY2d 83 [1994]). Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss (EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11 [2005]). Any deficiencies in the complaint may be amplified by supplemental pleadings and other evidence (AG Capital Funding Partners, L.P. v State Street Bank and Trust Co., 5 NY3d 582 [2005]; Rovello v Orofino

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Realty Co., 40 NY2d 633 [1976]). On a motion to dismiss pursuant to CPLR 3211 (a) (1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (Goshen v Mutual Life Insurance Co. of N.Y., 98 NY2d 314 [2002]).

An action for legal malpractice requires proof of three elements: (1) that the attorney failed to exercise that degree of care, skill and diligence commonly possessed by a member of the legal profession; (2) that the negligence was a proximate cause of the loss sustained; and (3) actual damages (Prudential Insurance Co. of America v Dewey, Ballantine, Bushby, Palmer & Wood, 170 AD2d 108 [1st Dept 1991], affd 80 NY2d 377 [1992], rearg denied 81 NY2d 955 [1993]). The duty of the attorney depends on the nature and scope of the retainer, which is generally a question for the jury (Marshel v. Hochberg, 37 AD3d 559 [2d Dept 2007]). Whether or not the attorney's conduct meets the standard is generally a question of fact for the jury (Werle v Rumsey, 278 NY 186 [1938]).

Viewing the allegations in the complaint in the light most favorable to the plaintiffs (Leon v Martinez, 84 NY2d at 87-88), the complaint states a cognizable cause of action against the defendant Paul Hastings for legal malpractice. The allegations adequately state a cause of action for legal malpractice resulting from the failure of Paul Hastings to exercise reasonable skill and diligence commonly possessed by members of the legal profession.

Dismissal for failure to state a cause of action is not required at this time despite a complaint's failure to allege that the plaintiff actually sustained damages. It is sufficient at the pleading stage for the plaintiff to allege facts from which damages attributable to the defendant's conduct might reasonably be inferred (InKine Pharmaceutical Co., Inc. v Coleman, 305 AD2d

151 [1st Dept 2003]). In the instant case, the plaintiffs have gone further. In opposition to the motion, the plaintiffs affirmatively allege that they have not received the collateral for which they bargained through Paul Hastings' representation in the Humitech transaction. Therefore, the motion to dismiss for failure to state a cause of action is denied.

Turning to defendant's statute of limitations argument, to dismiss a cause of action pursuant to CPLR 3211 (a) (5), a defendant bears the initial burden of establishing prima facie that the time in which to sue has expired. Once this showing has been made, the burden shifts to the plaintiff to aver evidentiary facts establishing that the cause of action is timely (Savarese v Shatz, 273 AD2d 219 [2d Dept 2000]).

Here, the defendant Paul Hastings claims that the malpractice cause of action accrued on the date of the closing, May 21, 2004, and that this action was untimely commenced, more than three years later, on July 13, 2007 (CPLR 203 [a]; 214). In opposition, the plaintiffs offer a legal bill from Paul Hastings, for legal services rendered by Paul Hastings after the closing. In reply, Paul Hastings claims that the work was unrelated to the closing transaction and the collateral.

In McCoy v Feinman (99 NY2d 295 [2002]), the Court of Appeals held that the limitations period in a legal malpractice action, arising out of the defendant's representation of the plaintiff in a divorce action, was not tolled until the defendant ultimately ceased representing the plaintiff on all matters, many years after the divorce became final. The Court held that the continuous representation doctrine tolls the statute of limitations only where there is a mutual understanding of the need for further representation on the specific subject matter underlying the malpractice claim. Id. at 306. The Court of Appeals noted, however, the malpractice that caused such plaintiff's injury was the defendant's failures in connection with a stipulation and judgment

resolving the divorce action, and no further representation thereon was contemplated. Id.
Moreover, the defendant's representation of such plaintiff, in a subsequent Family Court action,
did not toll the limitations period, since that action was unrelated to the defendant's negligence in
the divorce action. Id.

Applying the above principals to the instant facts, obviously there is an unresolved issue
as to whether Paul Hastings represented the plaintiffs after the closing, and the nature of that
representation. If Paul Hastings's post-closing representation was either contemplated, or related
to the investment transaction, this action is timely. Resolution of whether or not there was a
mutual understanding of the need for further representation on the specific subject matter
underlying the malpractice claim must await a properly developed record.

Accordingly, it is

ORDERED that the motion to dismiss is denied; and it is further

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

ORDERED that within 30 days of entry of this order, plaintiffs shall serve a copy upon
defendant with notice of entry.

Dated: April 3, 2008

FILED
APR 10 2008
Hon. Doris Ling-Cohan, J.S.C.
COUNTY CLERK'S OFFICE
NEW YORK

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