



Alerts

Continuous Representation Doctrine Does Not Toll Statute of Limitations Where Attorney Withdraws in Appellate Court

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Huyen Nguyen v. Karen Ellen Ford, No. H046809, 2020 Cal. App. LEXIS 411, at *1 (Ct. App. Apr. 24, 2020).

Brief Summary

The court held that plaintiff's claims for legal malpractice and breach of fiduciary duty against her former lawyer and her firm ("defendants") were barred by the statute of limitations, and not tolled under the continuous representation doctrine, based on plaintiff's argument that the defendants failed to secure a court order, permitting their withdrawal in both the district court and the Ninth Circuit. The court held that there was no reasonable expectation the defendants were going to continue providing the former client with legal services.

Complete Summary

Plaintiff retained defendants to represent her in a discrimination lawsuit against her former employer in federal district court. The representation agreement between plaintiff and defendants specifically excluded appeals. In the underlying district court lawsuit, summary judgment was entered in favor of plaintiff's former employer. Plaintiff then retained defendants to represent her in the appeal, and plaintiff signed a separate retainer agreement. Defendants then filed the appeal in the Ninth Circuit. Plaintiff alleged defendants then started "charging exorbitant fees" and "causing unnecessary delays." Defendants filed a motion for withdrawal as counsel in the Ninth Circuit, which was granted on April 17, 2015. Plaintiff retained other counsel to finish the appeal. On April 30, 2015, defendants filed a notice of withdrawal of counsel in the district court case, stating that they had been granted leave to withdraw as attorney of record by the Ninth Circuit, and attaching the Ninth Circuit's order and a proof of service on plaintiff.

In November 2018, plaintiff filed suit against defendants, alleging legal malpractice and breach of fiduciary duty. Defendants demurred to both causes of action on the grounds that they were barred by California's one-year statute of limitations under §340.6(a). Defendants asserted the latest plaintiff could have filed suit against defendants was May 2016, one year after defendants were granted leave to withdraw. In support of the demurrer, defendants

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submitted documents for the court to take judicial notice—including those demonstrating plaintiff made no payments for legal services after October 2014—and that plaintiff refused to communicate with defendants.

In response, plaintiff asserted defendants continued to represent plaintiff in the district court case after defendants withdrew as counsel in the Ninth Circuit appeal. Plaintiff argued defendants were also required to withdraw as counsel in the district court to comply with local rules. Since defendants did not obtain a withdrawal order from the district court, defendants were "attorney of record" in the district court until at least May 22, 2018, when the Ninth Circuit affirmed judgment against plaintiff in the underlying litigation. Because there were two separate representation agreements, plaintiff argued defendants did not inform her that defendants wanted to terminate the legal services agreement related to the district court action. However, plaintiff failed to allege any ongoing contacts with defendants related to the case after 2015.

The trial court sustained the demurrer without leave to amend. Plaintiff appealed, arguing defendants continued to represent her in the district court case, thus tolling the one-year statute of limitations contained in section 340.6(a). She relied on the two different representation agreements, the local rules, and the fact that there was only a withdrawal in the Ninth Circuit, to support her contention that she believed defendants still represented her. Plaintiff argued that defendants' failure to inform plaintiff about her withdrawal as attorney of record from the district court case constituted a breach of fiduciary duty, amounting to "actual fraud" taking the cause of action outside § 340.6(a) and triggering a three or four-year statute of limitations.

Section 340.6(a) has two distinct limitations periods: one year after actual or constructive discovery or four years after the occurrence of the wrongful act or omission, whichever occurs first. The appellate court found plaintiff was at least on inquiry notice about potential malpractice when the district court awarded judgment against her in August 2014. Therefore, the one year began running on that date—unless one of § 340.6(a)'s tolling provisions applied. Plaintiff argued the "continuous representation" tolling provision applied, tolling the statute of limitations while an attorney continues to represent the plaintiff. The court of appeals noted that whether termination of representation has ended for purposes of § 340.6(a)(2) did not depend on whether the attorney has formally withdrawn from representation, such as by securing a court order. The inquiry into whether representation was terminated is not based on the client's subjective belief, but instead, the test is objective; representation and tolling ends "when the client actually has or reasonably should have no expectation that the attorney will provide further legal services." While usually a question of fact, if the facts support only one conclusion, it is proper to be addressed on demurrer.

The appellate court concluded that once defendants filed the notices in the district court case describing herself as plaintiff's "former attorney," any objectively reasonable client would have understood that defendants were no longer representing plaintiff in the district court case. Additionally, the appellate court found that plaintiff's breach of fiduciary duty claim fell within section 340.6(a) and was not "actual fraud," making it subject to the three or four-year statute of limitations. Although section 340.6(a)'s time bar applies to claims that an attorney violated a "professional obligation" in the course of providing professional services, the time bar does not apply to nonprofessional wrongdoings. Because plaintiff never made an argument that defendants violated a nonprofessional obligation, the longer statute of limitations did not apply and the dismissal was proper.

Significance of Decision

In California, the continuous representation doctrine (which tolls a statute of limitations) is not based on plaintiff's subjective belief of when the representation ended. Instead, tolling ends when "a client has no reasonable expectation that the attorney will provide further legal services."