



## Alerts

### N.Y. Appellate Court Holds Statute of Limitations Started Running When Architect's Services Ended

September 22, 2011

*Professional Lines Alert*

Defendant architect entered into a contract with plaintiff owner to provide a design for the rehabilitation of a bridge in 2003. The plans were submitted in 2005 and a final bill was submitted that same year. The bridge was completed in 2007. At the end of 2007 cracking was discovered. The owner hired another engineering firm to perform tests which revealed problems in the design. In 2008, the owner contacted the architect and asked it to pay for repairs. In 2009, the owner sued the architect for malpractice.

A New York appellate court held that the subject professional malpractice statute of limitations was not tolled by the continuous representation doctrine where the parties to the architectural agreement had no expectation that the relationship would continue. The owner's request to the architect, two and one-half years after a project was completed, to review its design as part of the owner's efforts to address problems that arose with the structure, did not toll the statute of limitations.

#### Questions Before the Court and How the Court Decided Them

Following are the issues considered by the court and how it decided them.

*Issue 1:* Did the three-year statute of limitations applicable to malpractice actions apply in the owner's action by the owner against the design architect?

Yes. The owner's damages allegations were based on the architect's refusal to fully cover the costs of repairing an allegedly defective bridge.

*Issue 2:* When did the malpractice claim against the architect accrue?

The complaint accrued when the services called for in the underlying contract were completed and the parties' relationship terminated. The architect had no obligation to conduct inspections or provide supervision during construction, and a contract provision that called for providing additional services was contingent on events that did not occur.

*Issue 3:* Did the continuous representation doctrine toll the statute of limitations?

No. The court found significant that there was a two and one-half year interval

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between the owner's communications with the architect and that the subsequent contacts were a resumption rather than a continuation of their relationship.

*Issue 4:* Did the doctrine of equitable estoppel prevent the architect from invoking a statute of limitations defense?

The doctrine of equitable estoppel did not toll the statute of limitations because the architect merely reviewed its design and attempted to devise a solution. Equitable estoppel only applies where a defendant has engaged in deception, fraud or misrepresentation.

### **What the Court's Decision Means For Practitioners**

In New York, a claim against a design engineer accrues when the contract to provide a design is completed. Language in a contract whereby the architect is to provide additional services during construction if the owner requests it does not on its own constitute a "continuous representation" if those additional services are never called for and provided. A design architect who receives a complaint from an owner years after a contract has been completed, should contact its attorneys/ insurance carrier before providing a response to such a complaint.

*City of Binghamton v. Hawk Engineering*, 2011 WL 2375978 (N.Y. App. Div. June 16, 2011).