

## Alerts

### California Malicious Prosecution Claim Against Attorneys Governed by One-Year Malpractice Statute of Limitations

March 30, 2011

*Lawyers for the Profession® Alert*

*Vafi et al. v. McCloskey et al.*, B223237 (Cal.App. 2 Div. March 22, 2011)

#### Brief Summary

In a case of first impression, the California Court of Appeal held that a malicious prosecution claim against an attorney is limited by the one-year statute of limitations to bring claims against lawyers, rather than the two-year statute of limitations for tort actions.

#### Complete Summary

Plaintiff entrepreneur and his girlfriend thought of an innovative clothing design concept. The entrepreneur applied for a patent, while the girlfriend applied for a trademark. After their relationship soured, the girlfriend sued the entrepreneur for trademark infringement. The entrepreneur counter-sued and moved for summary judgment, which was denied.

Nearly two years later, the entrepreneur sued his ex-girlfriend and her attorneys for malicious prosecution. The law firm moved to strike on the basis that the claim was time-barred under California's one-year statute of limitations for claims brought against lawyers. The trial court dismissed the claim, and the Court of Appeal affirmed.

The court followed the maxim of construction that the more specific statute prevails over the more general. Here, the court concluded that the one-year statute of limitations for actions against lawyers controlled over the more general two-year limitations period for tort actions. The attorney provision applied to wrongful acts, including malicious prosecution, and contained no exception for malicious prosecution claims. Moreover, contrary to the entrepreneur's argument, the one-year statute of limitations did not pertain only to claims brought by a former client because the wording in the statute applies to actions brought by "the plaintiff," not only by a client.

#### Significance of Opinion

In a case of first impression in California, the court here engaged in a principled statutory analysis that applied well-established norms of statutory interpretation to reach a result that applies to malicious prosecution claims against lawyers.

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By extension, it would presumably also apply to a broad range of other actions against attorneys for an alleged wrongful act or omission, other than fraud, arising in the performance of professional services. Moreover, that would include claims not only by former clients but also by individuals or entities other than the lawyer's former clients.

For more information, please contact your regular [Hinshaw](#) attorney.

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