



**QUESTION OF FACT WHETHER THE CONTINUOUS REPRESENTATION DOCTRINE TOLLED THE STATUTE OF LIMITATIONS IN THIS LEGAL MALPRACTICE ACTION; THE ATTORNEY HAD ATTEMPTED TO REMEDY THE FAILURE TO FILE OBJECTIONS IN AN ESTATE MATTER AFTER THE STATUTE HAD RUN; ABSENCE OF AN EXPERT'S REPORT FROM THE RECORD ON APPEAL PRECLUDED A RULING ON THE RELATED ISSUE (FOURTH DEPT).**

The Fourth Department, reversing (modifying) Supreme Court, determined plaintiff had raised a question of fact whether the continuous representation doctrine tolled the statute of limitations in this legal malpractice action. The attorney had attempted to remedy the failure to file objections in an estate matter after the statute had run. The Fourth Department noted that plaintiff's expert's report was missing from the record on appeal and therefore plaintiff was unable to argue on appeal that he had raised a related question of fact (concerning damages) before Supreme Court. Defendant had argued the damages were speculative (requiring dismissal) and Supreme Court did not rule on the issue (because the case was dismissed as untimely). The matter was remitted for a ruling on the damages issue:

We are unable to review plaintiff's contention that he raised a triable issue of fact with respect to ... damages by submitting an expert report inasmuch as plaintiff failed to include that document in the record on appeal. Thus plaintiff, as the party raising this issue on his appeal, "submitted this appeal on an incomplete record and must suffer the consequences" ... .

Defendant met his burden ... by establishing that the statute of limitations for legal malpractice is three years (see CPLR 214 [6]), that the estate cause of action accrued on November 1, 2010, the last date on which to file objections to the accounting ..., and that the estate cause of action was therefore untimely when this malpractice action was commenced on November 15, 2013. "The burden then shifted to plaintiff[] to raise a triable issue of fact whether the statute of limitations was tolled by the continuous representation doctrine" ... .

We agree with plaintiff that the court erred in determining that plaintiff failed to do so. It is well settled that, in order for the continuous representation doctrine to apply, "there must be clear indicia of an ongoing, continuous, developing, and dependant relationship between the client and the attorney which often includes an attempt by the attorney to rectify an alleged act of malpractice" ... . Here, plaintiff submitted evidence that defendant made several unsuccessful attempts to file the objections within the weeks after the deadline and that he made preparations to appear at a scheduled conference on the objections on November 23, 2010. Those efforts could be viewed as "attempt[s] by the attorney to rectify an alleged act of malpractice" ... , and thus plaintiff raised a triable issue of fact whether the statute of limitations was tolled by the continuous representation doctrine. [Leeder v Antonucci, 2019 NY Slip Op 05898, Fourth Dept 7-31-19](#)