



THE COMPLAINT ADEQUATELY ALLEGED THE TOLLING OF THE STATUTE OF LIMITATIONS PURSUANT TO THE CONTINUOUS REPRESENTATION DOCTRINE AND THE EXISTENCE OF THE FUNCTIONAL EQUIVALENT OF PRIVACY BETWEEN PLAINTIFF AND THE DEFENDANT ARCHITECT; SUPREME COURT REVERSED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the complaint alleging architectural malpractice should not have been dismissed pursuant to CPLR 3211. Plaintiff leased the first floor of a building to operate a pizza restaurant. Plaintiff hired a contractor which in turn hired an architect for the heating, ventilation and air conditioning (HVAC) design. The gas line hookup was completed in 2014. Subsequently, in 2016, National Grid shut off the gas, alleging plaintiff was stealing gas. In 2017 the defendant architect allegedly attempted to remedy the problem with the gas line. The complaint adequately pled the statute of limitations was tolled by the continuous representation doctrine and a privity-like relationship between the plaintiff and the architect:

“The law recognizes that the supposed completion of the contemplated work does not preclude application of the continuous representation toll if inadequacies or other problems with the contemplated work timely manifest themselves after that date and the parties continue the professional relationship to remedy those problems” In support of its motion, the architect submitted documentary evidence which included a final invoice issued by it dated August 14, 2014, and a letter of completion issued by the New York City Department of Buildings to the architect stating that its work was completed on December 20, 2014. In opposition, the plaintiffs’ submissions, which included evidence of continuing communications between [plaintiff] and the architect, and evidence of the architect’s efforts to remedy the alleged error uncovered by National Grid regarding the gas line connection for the premises, raised a question of fact as to the application of the continuous representation doctrine and supported the denial of those branches of the architect’s motion which were pursuant to CPLR 3211(a)(1) and (5) to dismiss the amended complaint insofar as asserted against it Contrary to the architect’s contention, the fact that two years had elapsed between the completion of its services and its subsequent efforts to remedy the problem does not render the continuous representation doctrine inapplicable as a matter of law

We also reject the architect’s contention, as an alternative ground for affirmance, that dismissal of the amended complaint insofar as asserted against it was warranted pursuant to CPLR 3211(a)(1) and (7), on the ground that it was not in privity with the plaintiffs. The evidence submitted by the architect, which included a copy of the contract entered into between it and the contractor, failed to utterly refute the factual allegations supporting the plaintiffs’ contention that a relationship existed between them and the architect that was the “functional equivalent of privity” [Creative Rest., Inc. v Dyckman Plumbing & Heating, Inc., 2020 NY Slip Op 03499, Second Dept 6-24-20](#)