

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

BANK OF SAIPAN, as executor of the Estate of Larry L. Hillblom, Plain tiff,)	Civil Action No. 98-0973
)	
v.)	DECISION AND ORDER
)	DENYING MOTION
CARLSMITH BALL WICHMAN CASE & ICHIKI, and DAVID R. NEVITT)	TO DISMISS
)	
Defendants.)	
-----)	

I. INTRODUCTION

Defendants Carlsmith Ball, formerly Carlsmith Ball Wichman Case & Ichiki, and David R. Nevitt (collectively, “Carlsmith”) bring this motion to dismiss the complaint, arguing that the two year statute of limitations has run. The Bank of Saipan (“Executor”) argues that attorney malpractice and breaches of fiduciary duty fall under a six year statute of limitations which has not yet run. The court, having reviewed all briefs, declarations, exhibits, and having heard and considered the arguments of counsel now renders its written decision. [p. 2]

II. FACTS

Larry Lee Hillblom (“Hillblom”) died on or about May 21, 1995 in a plane crash off the waters of Saipan.¹ In his 1982 will, Hillblom nominated the Bank of Saipan to serve as executor of his estate.

Carlsmith initially became involved in this matter at the request of Mr. Peter J. Donnici

¹ “[C]ourts are generally required to follow legal decisions of the same or a higher court in the same case....” Wabol v. Villacrusis, 4 N.M.I. 314, 318 (1995). This court has taken judicial notice of prior decisions made that involve the same subject matter, though are entitled with different action numbers, and follows the factual findings previously made.

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(“Donnici”), one time legal counsel to DHL, the air express company established by Hillblom. At his death, Hillblom owned approximately sixty percent (60%) of DHL, the domestic U.S. company and twenty-two percent (22%) of DHLI, the international company. Donnici currently serves as a board member of DHLI. After performing services for Donnici, Carlsmith was engaged to represent the Executor.

By an August 20, 1996 order, the Superior court, sitting in probate, found conflicts of interest and breaches of duty by Carlsmith which led it to disqualify Carlsmith from representing the Executor. In addition, the court suspended the Bank of Saipan as executor of the estate of Larry Hillblom. The court did permit Carlsmith to continue to represent the suspended Executor on pending appellate litigation through November 29, 1996.

While attempting to settle malpractice claims out of court, the parties drafted a tolling agreement, effective June 12, 1997. The tolling agreement provided that the Executor would refrain from bringing an action until notice provisions were met. In exchange, Carlsmith agreed to waive the statute of limitations or laches defense and toll the applicable statute of limitations during the agreement.

On July 9, 1998, the Executor gave written notice it intended to terminate the tolling period and filed this action for malpractice against Carlsmith on September 8, 1998.

III. ISSUES

1. Whether this action is governed by the two year or the six year statute of limitations.

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2. Whether the continuing representation doctrine tolled the statute of limitations.

3. Whether the tolling agreement is enforceable.

IV. ANALYSIS

When considering a motion to dismiss for failure to state a claim for which relief may be granted under Com. R. Civ. P. 12(b)(6), the complaint is construed in the light most favorable to the plaintiff and its allegations are assumed to be true. Bolalin v. Guam Publications, Inc., 4 N.M.I. 176 (1994). Dismissal is improper unless the court is absolutely certain that the plaintiff can prove no

set of facts in support of his claim which would entitle him to relief. Govendo v. Micronesian Garment Mfg., Inc., No. 90-013 (N.M.I. Sept. 10, 1991).

Carlsmith argues that the two year statute of limitations applies to legal malpractice actions.

7 CMC §2503 states in part:

The following actions shall be commenced only within two years after the cause of action accrues: . . .

(d) Actions for injury to or for the death of one caused by the wrongful act or neglect of another, or a depositor against a bank for the payment of a forged or raised check, or a check which bears a forged or unauthorized endorsement. This subsection shall not apply to actions for injury to the former Saipan Credit Union or its depositors, shareholders, investors, or guarantors on account of their interest therein; provided, that such actions are brought within 10 years of the date of discovery of the injury.

If 7 CMC §2503 does not apply, then the six year statute of limitations provided by 7 CMC §2505 will apply.

In Mariana Islands Airport Authority v. Ralph M. Parsons, Co., the court analyzed 6 TTC §303(4), the predecessor and source of authority for 7 CMC §2503.² 1 C.R. 181 (D.N.M.I. Tr. Div. 1981). The Trust Territory Code two year statute of limitations included:

[a]ctions for injury to or for the death of one caused by the wrongful act or neglect of another..., or a depositor against a bank for the payment of a forged or raised check, or a check which bears a forged or unauthorized endorsement. 6 TTC §303(4)

[p. 4] The Parsons court held that because the language of 6 TTC 303(4) referred to human beings, the statute only applied to personal injury and wrongful death actions. Id at 185. This holding was later adopted by the Appellate Division of the District Court, which found it “persuasive and well thought out.” Magofna v. Estate of Rufina Castro, 1 C.R. 685, 690 (D.N.M.I. Ct.App. 1983) (app. disp., December 7, 1983, 9th Cir.).

Recently, the Federal District Court, in applying CNMI law to third party claims for

² Cases published by the Commonwealth Reporter are cited as legal authority in the CNMI. Com. R. Civ. P. 83.2(a). Further, CNMI courts have relied on interpretations of Trust Territory statutory language when interpreting similar provisions in the Commonwealth Code. See Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801, Section 505; Robinson v. Robinson, 1 N.M.I. 81, 88 (1990).

malicious prosecution, abuse of process, and tortious breach of contract, found that 7 CMC §2503 encompassed all torts or “injuries” to the person. Northwest Airlines, Inc. v. Camacho, Civ. Action No. 98-0011, (U.S.D.C. N.M.I. Oct. 28, 1999). In expanding CNMI law, the District Court compared a California statute identical to 7 CMC §2503 and resulting California case law. Id. The District Court found that the claims of malicious prosecution and abuse of process were considered “injuries to the person,” and were therefore subject to the two year statute of limitation. Id. at 3. In addition, the claim of tortious interference with contract was found to be a “repeat of [the] claim for abuse of process,” and also considered a personal injury. Id. at 4. Although the District Court’s decision is not formally binding on this court, this court respects its opinions.³ Accordingly, because there may be different interpretations of Parsons, this court will look to the statute itself.

First, it is necessary to look to the plain meaning of the language of 7 CMC §2503. Nansay Micronesia Corp. v. Govendo, 3 N.M.I. 12 (1992). As the Parsons court reasoned, any reference to “death” must necessarily involve a person. Mariana Islands Airport Authority v. Ralph M. Parsons, Co., 1 C.R. 181 (D.N.M.I. Tr. Div. 1981). The word “one” is linked in the sentence structure to both “death” and “injury.” As a result, the words “one” and “another” must refer only to personal injury or wrongful death actions. Id. The only missing element in the Parsons analysis, which was discerned by the District Court, was a clear definition for the words “personal injury.” Personal injury claims can encompass many types of tort claims. When the Parsons court held that 6 TTC §303(4) only applied to personal injury and wrongful death, it did not specifically limit the types of actions which encompass personal injury.

When examining a statute, interpretations that defy common sense or lead to absurd results [p. 5] should be avoided. Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc., 2 N.M.I. 212 (1991). The District Court correctly found that personal injury claims may include actions which sound in tort. Therefore, determining whether an action is a personal injury under 7 CMC §2503 requires an examination of the type of action filed.

An action for legal malpractice, though it can be regarded as a tort, should be treated as a

³ See Milne v. Hillblom, No. 97-16618 (U.S. Ct. App., 9th Cir. Jan. 19, 1999).

contract action for purposes of the statute of limitations. Most tellingly, the lawyer-client relationship springs out of a contractual relationship. See Helfand v. Gerson, 105 F.3d 530, 538 (9th Cir. 1997). In Helfand, the court, in applying Hawaiian law, cited to Higa v. Mirikitani, which reasoned that the “fundamentally consensual quality of the attorney-client relationship, and also the usually intangible nature of any injury resulting therefrom” suggests a contractual statute of limitations. Id. at 538, citing Higa v. Mirikitani, 517 P.2d 1, 5 (1973). This court agrees that attorney malpractice springs out of a contractual relationship and must be treated as such for a statute of limitations analysis.

Further evidence that the legislature did not intend to include legal malpractice in 7 CMC §2503 is the provision for claims of medical malpractice. Part (c) states that the following shall be commenced within two years:

Actions for malpractice, error, or mistake against physicians, surgeons, dentists, medical or dental practitioners, and medical or dental assistants. 7 CMC §2503

The clarity of the words as well as the internal cohesion of the sections of a piece of legislation are determinative of its meaning as a whole. Pressley v. Capital Credit & Collection Service, 760 F.2d 922 (9th Cir. 1985); see In re Estate of Rofag, 2 N.M.I. 18 (1991). The fact that the legislature purposely included medical malpractice yet did not mention legal malpractice is significant. The six year statute of limitations exists to include all causes of action not enumerated by the legislature. 7 CMC §2505. Professional malpractice is a recognized cause of action with a separate statutory provision in many states. By not specifying a professional malpractice cause of action, while very specifically enunciating other types of actions included, the legislature has expressed an intent to exclude legal malpractice from 7 CMC §2503.

Accordingly, legal malpractice actions are not included within 7 CMC §2503 because they are not considered a personal injury for statute of limitation purposes and they were not intended to [p. 6] be included by the legislature. As a result, the applicable statute of limitations is 7 CMC §2505. Whether Carlsmith’s representation of the Executor ended on August 20, 1996 by Superior Court order or on November 29, 1996, the last appellate appearance, this action has been brought well within the applicable six year statute of limitations.

V. CONCLUSION

Carlsmith's motion to dismiss is denied for the reasons stated above. Because the six year statute of limitations applies, it is not necessary for the court to reach the other issues raised.

So ordered this 3 day of March, 1999.

/s/ Edward Manibusan
EDWARD MANIBUSAN, Presiding Judge