TRAUB LIEBERMAN

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Traub Lieberman Attorneys Stephen D. Straus and Andrew N. Adler Prevail in Federal Appeal of Legal Malpractice Action Dismissal

Related Attorneys: Stephen D. Straus

Traub Lieberman Straus & Shrewsberry LLP ("TLSS") attorneys Stephen D. Straus and Andrew N. Adler recently obtained a federal appellate victory in a legal malpractice suit. Plaintiff filed suit against TLSS's client, alleging malpractice in connection with the handling of a matrimonial proceeding between plaintiff and his former spouse. Last year, the U.S. District Court granted TLSS's summary judgment motion in the malpractice action, holding that the statute of limitations had run. Plaintiff then appealed to the U.S. Court of Appeals for the Second Circuit.

The statute of limitations in New York for legal malpractice is three years, but the limitations period is tolled (i.e., extended) under the "continuous representation doctrine" so long as the lawyer and client maintain an ongoing, developing, and dependent professional relationship. The client cannot invoke the continuous representation toll when the attorney-client relationship does not formally terminate yet becomes irretrievably broken.

Plaintiff filed his malpractice lawsuit on filed on May 7, 2007. TLSS argued this was untimely based on a letter to the underlying matrimonial court that plaintiff began to write on May 2, 2004 (i.e., more than three years prior), asking the court to remove defendant as his counsel. Throughout the twelve-page, single-spaced letter, plaintiff excoriated defendant for allegedly serious misfeasance. During his deposition, plaintiff stated that he wrote the letter because he had lost trust in his lawyer. Plaintiff did not complete the letter until Sunday, May 6, 2004, which would be timely under applicable court rules if plaintiff could prove he did not lose faith in defendant until that day. Plaintiff testified in this regard that his letter "evolved" and his thoughts "crystallized" between May 2 and May 6.

TLSS replied that plaintiff could not discharge the burden to prove continuous representation where, as here, the letter is consistent in tone and content from start to finish and suggests no change of heart during the composition. The Court of Appeals agreed, concluding that both the letter and plaintiff's deposition testimony evince a loss of trust and confidence in defendant no later than May 2, 2004.

TLSS further argued that plaintiff's application dated May 10, 2004 to remove defendant as counsel did not establish an ongoing attorney-client relationship within the limitation period because the application was filed at that time solely as required to comply with the court-imposed deadline to do so. Moreover, legal services performed after the client has lost trust in the lawyer do not necessarily toll the statute. The court agreed that these circumstances did not restore a trusting relationship as required to toll the statute.

The Second Circuit summarily rejected plaintiff's other arguments and affirmed the ruling below. Braten v. Kaplan, No. 17-1145, 2018 U.S. App. LEXIS 12363, 2018 WL 2128614 (2d Cir. May 9, 2018) (summary order).

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