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New York Federal Judge Declines to Reconsider Decision That Continuous Representation Doctrine Does Not Toll Statute of Limitations

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Link Motion, Inc. v. DLA Piper LLP (US), et al., No. 22 Civ. 8313 (VM), 2023 U.S. Dist. LEXIS 106567 (S.D.N.Y. June 20, 2023)

Brief Summary

A federal judge for the Southern District of New York declined to reconsider his dismissal of Link Motion's legal malpractice suit against DLA Piper, finding that its motion inappropriately relitigated issues already decided and did not present any basis for the extraordinary remedy of reconsideration.

Complete Summary

DLA Piper LLP (US) (DLA Piper) briefly represented Link Motion in *Baliga v. Link Motion, Inc.*, No. 18 Civ. 11642 (VM)(S.D.N.Y.) (the Underlying Action), a shareholder derivative action filed on December 14, 2018. Shortly after filing the complaint in the Underlying Action, the plaintiff sought an *ex parte* Temporary Restraining Order (TRO), which was granted, and the appointment of a receiver. The court requested that the parties advise on whether the TRO should be converted into a preliminary injunction. On January 21, 2019, DLA Piper, on behalf of Link Motion, executed a stipulation that Link Motion did not oppose the preliminary injunction or the appointment of a receiver (the Stipulation). On February 1, 2019, the court entered an order granting the preliminary injunction and appointing a receiver, who assumed full control of Link Motion. One month later, on March 1, 2019, the court granted DLA Piper's request to withdraw due to Link Motion's lack of cooperation by failing to respond to DLA Piper's inquiries, as well as Link Motion's failure to pay outstanding legal fees despite repeated requests. More than a year after DLA Piper withdrew, the argument that the plaintiff lacked standing to bring a derivative action under the controlling laws was raised for the first time by an interested third-party. On September 12, 2022, Link Motion filed a legal malpractice action against DLA Piper in New York State Supreme Court, New York County, alleging that DLA Piper was negligent when it failed to advise Link Motion that the plaintiff in the Underlying Action lacked standing to bring a derivative action. The matter was removed from state court to federal court.

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DLA Piper moved to dismiss Link Motion's complaint as time-barred by the three-year statute of limitations. Under New York law, a legal malpractice cause of action accrues on the date of the alleged improper action. The court determined that the statute of limitations began running on January 21, 2019, the date that DLA Piper executed the Stipulation. The Court rejected Link Motion's argument that the statute of limitations was tolled under the continuing representation doctrine until March 1, 2019, finding that DLA Piper's representation of Link Motion was nominal at best and did not constitute ongoing representation. Further, the court found that there was clearly an erosion of trust and confidence between DLA Piper and Link Motion almost immediately after DLA Piper executed the Stipulation. In its motion to withdraw, DLA Piper stated that Link Motion failed to cooperate by not responding to its inquiries, making effective representation almost impossible. Further, only days after the Stipulation was executed, Link Motion gave its consent for DLA Piper to withdraw from representation. This cemented the court's conclusion that there were no facts to support the application of the continuing representation doctrine.

Ordinarily, the statute of limitations would have expired on January 21, 2022, but Link Motion argued that it was tolled 228 days by New York Executive Order 202.8, an order issued in response to COVID-19. Even if this order applied here, which the court was not convinced of, it would not save Link Motion's complaint. The three-year statute of limitations period plus 228 days, running from January 21, 2019, expired on September 5, 2022, a week before Link Motion filed suit.

Link Motion also argued that equitable tolling extended the statute of limitations because the Receiver, who had complete control over Link Motion, did not allow Link Motion to bring a legal malpractice claim against DLA Piper. In order to prove equitable tolling, a plaintiff must show that he pursued his rights diligently and that some extraordinary circumstances stood in his way of filing suit. The two theories of "extraordinary circumstances" are fraudulent concealment and adverse domination. The court found that neither fraudulent concealment nor adverse domination was applicable in these circumstances and thus rejected Link Motion's equitable tolling argument.

Ultimately, the court concluded that Link Motion's legal malpractice claim against DLA Piper was barred by the statute of limitations and dismissed the complaint. Link Motion moved for reconsideration of the court's dismissal, arguing that the court overlooked controlling New York law regarding the statute of limitations, the continuous representation doctrine, and equitable tolling. The court reviewed its decision but was not persuaded by any of Link Motion's arguments. The court held that Link Motion was seeking to "inappropriately relitigate issues already decided," and none of Link Motion's arguments warranted the court's deployment of the "extraordinary remedy of reconsideration." *Link Motion, Inc. v. DLA Piper LLP, et. al.,* 2023 U.S. Dist. LEXIS 106567, *4 (S.D.N.Y. June 20, 2023). In fact, the court concluded that the cases Link Motion cited in its motion for reconsideration bolstered the court's decision that the complaint was time-barred. Link Motion recently filed an appeal to the Second Circuit Court of Appeals.

Significance of Decision

This decision is significant because it upholds the theory that a notice of appearance does not, by itself, constitute ongoing representation for statute of limitations purposes. The decision further demonstrates that there must be a foundation of trust and confidence extending *both ways* between the attorney and the client. While New York does apply the continuing representation doctrine in legal malpractice actions generally, the courts have affirmed the argument that ongoing representation of a client with trust and confidence can end before the attorney-client relationship is formally terminated. Without this, the court concluded, the statute of limitations could be extended even if the client is fully aware of the alleged negligence.