APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Way Family Trust v. Sagepoint Fin., Inc.

2020 NY Slip Op 06410 (N.Y. Ct. App. 2020) · No. Appeal No. 12323; Case No. 2020-02252; Index No. 161431/18 · Decided November 10, 2020

SUMMARY

The New York Appellate Division, First Department affirmed dismissal of a breach of fiduciary duty action as time-barred. The court held that the claim accrued when the broker left the defendants' employment in 2009 and that neither continuous representation, the discovery rule, nor equitable estoppel rendered the 2018 action timely.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Friedman, J.P.; Renwick, J.; Oing, J.; Mendez, J.
JURISDICTION	New York
DECIDED	November 10, 2020
DOCKET	Appeal No. 12323; Case No. 2020-02252; Index No. 161431/18
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed an order granting defendants' motion to dismiss the complaint as time-barred.
STANDARD OF REVIEW	The Appellate Division reviewed the dismissal of the complaint as time-barred and affirmed the lower court's legal determination.
PRECEDENTIAL VALUE	precedential
PARTIES	Way Family Trust, by and through its Co-Trustees Gregory Elmore v. Sagepoint Financial, Inc., et al.

TOPICS

statute of limitations · motions to dismiss · trusts · commercial litigation · civil procedure

PRACTICE AREAS

trusts · commercial litigation · civil procedure

QUESTIONS PRESENTED

1. Whether plaintiff's breach of fiduciary duty claim was barred by the applicable three- or six-year statute of limitations.
2. Whether the continuous representation doctrine tolled the limitations period.
3. Whether the discovery rule delayed accrual or otherwise shielded the claim from dismissal.
4. Whether defendants should be equitably estopped from asserting the statute of limitations based on alleged fraudulent conduct.

HOLDINGS

1. The breach of fiduciary duty claim was time-barred under either the three-year or six-year statute of limitations because it accrued in 2009, when the broker left defendants' employ.
2. The continuous representation doctrine did not render plaintiff's claims timely.
3. The discovery rule did not shield plaintiff's claim from dismissal.
4. Plaintiff could not invoke equitable estoppel to prevent defendants from asserting the statute of limitations.

FACTUAL BACKGROUND

Plaintiff invested approximately $1.4 million and instructed its broker or investment adviser that the paramount goal was preservation and safety of the investments. The broker allegedly placed the funds in risky investments, causing losses of approximately $550,000, and left defendants' employment in 2009. Plaintiff allowed the broker to continue servicing its financial needs through other institutions and commenced the action in 2018.

PROCEDURAL HISTORY

Supreme Court, New York County, granted defendants' motion to dismiss the complaint as barred by the statute of limitations. The Appellate Division, First Department, unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Starr v. Fuoco Group LLP, 137 A.D.3d 634, 634 (1st Dep't 2016), leave dismissed, 28 N.Y.3d 1083 (2016)
- Leather v. United States Trust Co. of N.Y., 279 A.D.2d 311, 311-312 (1st Dep't 2001)
- Aozora Bank, Ltd. v. Credit Suisse Group, 144 A.D.3d 437, 438 (1st Dep't 2016), leave denied, 28 N.Y.3d 914 (2017)
- Gutkin v. Siegal, 85 A.D.3d 687, 688 (1st Dep't 2011)
- Knobel v. Shaw, 90 A.D.3d 493, 494 (1st Dep't 2011)
- Kaufman v. Cohen, 307 A.D.2d 113, 122 (1st Dep't 2003)

OPINION

PER CURIAM.

Way Family Trust v Sagepoint Fin., Inc. (2020 NY Slip Op 06410) Way Family Trust v Sagepoint Fin., Inc. 2020 NY Slip Op 06410 Decided on November 10, 2020 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: November 10, 2020 Before: Friedman, J.P., Renwick, Oing, Mendez, JJ. Index No. 161431/18 Appeal No. 12323 Case No. 2020-02252 [*1]Way Family Trust, by and through its Co-Trustees Gregory Elmore, etc., Plaintiff-Appellant, vSagepoint Financial, Inc., et al., Defendants-Respondents. Jonathan E. Neuman, Fresh Meadows, for appellant. Winget, Spadafora & Schwartzberg, LLP, New York (Steven E. Mellen of counsel), for respondents.

Order, Supreme Court, New York County (Jennifer G. Schecter, J.), entered on or about September 27, 2019, which granted defendants' motion to dismiss the complaint as time-barred, unanimously affirmed, without costs. Plaintiff alleges that it invested some $1.4 million in investments, and that it instructed its broker/investment advisor (broker) that its paramount goal was the safety of those investments.

Plaintiff alleges that the broker instead placed the funds in risky investments, which consequently lost about $550,000. The broker left defendants' employ in 2009, and plaintiff permitted him to continue servicing its financial needs at other financial institutions. Plaintiff commenced this action in 2018. Supreme Court properly found that plaintiff's breach of fiduciary claim against defendants, whether analyzed under the three or six-year statute of limitations, is time-barred because the accrual date occurred in 2009, when the broker left defendants' employ.

As defendants are not "professionals" for purposes of the continuous representation doctrine, plaintiff may not avail itself of that doctrine to render its claims here timely (see Starr v Fuoco Group LLP, 137 AD3d 634, 634 [1st Dept 2016], lv dismissed 28 NY3d 1083 [2016]; Leather v United States Trust Co. of N.Y., 279 AD2d 311, 311-312 [1st Dept 2001]).

In any event, the continuous representation doctrine so as to toll the limitations period does not apply because plaintiff no longer had a relationship with defendants as of 2009. Nor does the discovery rule shield this claim from dismissal.

The substantial investment losses —about 39% in a short time — should reasonably have put plaintiff on notice that the investments made by the broker were not the "safe" ones it had been promised (see Aozora Bank, Ltd. v Credit Suisse Group, 144 AD3d 437, 438 [1st Dept 2016], lv denied 28 NY3d 914 [2017]; Gutkin v Siegal, 85 AD3d 687, 688 [1st Dept 2011]). Furthermore, plaintiff's contention that defendants' fraudulent conduct should equitably estop them from raising the statute of limitations, is unavailing.

The misrepresentations underlying the claim of estoppel are the same as those constituting the breach of fiduciary duty (see Knobel v Shaw, 90 AD3d 493, 494 [1st Dept 2011]; Kaufman v Cohen, 307 AD2d 113, 122 [1st Dept 2003]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: November 10, 2020