

Bank of Saipan,
Plaintiff,
v.
Carlsmith Ball Wichman Case & Ichiki, a law partnership;
Donnici Kerwin & Donnici, a law partnership; Peter Donnici,
an individual; David Nevitt, an individual; and Does 1-50,
Defendants.
Original Action No. 99-004
October 20, 1999

Argued and Submitted August 19, 1999

Counsel for Plaintiff: S. Joshua Berger, Saipan; Robert A. Goodin, San Francisco, CA.

Counsel for Defendants: Jesus C. Borja, Saipan; John F. Sharer, Mary S. Thomas, Los Angeles, CA.

BEFORE: DEMAPAN, Chief Justice, TAYLOR, Justice Pro Tem, and LAMORENA, Justice Pro Tem.

DEMAPAN, Chief Justice:

¶1 On March 19, 1999, the Honorable Alex R. Munson, Chief Judge of the United States District Court for the Northern Mariana Islands, certified a question for interpretation of local law, on an issue that has not yet been considered or determined by this Court.

¶2 [1] We have jurisdiction pursuant to Rule 5 of the Commonwealth Rules of Appellate Procedure.

QUESTION

¶3 The question, as certified by the United States District Court states:

Are claims for legal malpractice, and related claims of fraud-intentional misrepresentation, fraud- suppression of fact, negligent misrepresentation and breach of fiduciary duty governed by the two-year statute of limitations for “injuries to one caused by the wrongful act or neglect of another,” 7 CMC § 2503 (d), or are they governed by the six-year statute of limitations applying to “[a]ll actions other than those covered in 7 CMC §§ 2502, 2503, and 2504. . .” 7 CMC § 2505, or both?¹

STANDARD OF REVIEW

¶4 [2] We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution. N.M.I. Const., art. IV, § 3.

¹ *Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, Civ. No. 98-0057 (D. N.M.I. March 19, 1999) (Certification of Question to Commonwealth’s Supreme Court at 3).

¶5 [3] We review a certified legal question *de novo*. *Sonoda v. Cabrera*, 1997 MP 5 ¶ 3, 5 N.M.I. 57, 57; *In re Tenth Legislature Bills*, 1998 MP 3 ¶ 1, 5 N.M.I. 155, 155.

STATEMENT OF THE CASE

¶6 On September 8, 1998, the Bank of Saipan (“Bank”), in its corporate capacity, filed a Complaint against the law firm of Carlsmith Ball Wichman Case & Ichiki,² David Nevitt, (collectively “Carlsmith”) and others in the Superior Court of the Commonwealth of the Northern Mariana Islands.³ The Complaint against Carlsmith alleged claims of fraud-intentional misrepresentation, fraud-suppression of fact, negligent misrepresentation, attorney malpractice, attorney malpractice–representation of adverse interests, and breach of fiduciary duty.

¶7 On October 7, 1998, the action was removed to the United States District Court of the Northern Mariana Islands. Carlsmith moved to dismiss the Complaint on the grounds that the Bank’s claims were barred by 7 CMC § 2503(d), which provides for a two-year statute of limitations. The Bank opposed the motion and stated that the claims were governed by 7 CMC § 2505, which provides a six-year statute of limitations.⁴

¶8 On February 25, 1999, the U.S. District Court entered an order staying Carlsmith’s motion pending certification of the question of the statute of limitations to the Commonwealth Supreme Court.

ANALYSIS

¶9 [4,5] An attorney who fails to perform professional duties resulting in actual loss to the client is liable for the damages sustained. However, the defendant-attorney may interpose the statute of limitations as a bar to an attorney malpractice action. DEBRA T. LANDIS, ANNOTATION, WHAT STATUTE OF LIMITATIONS GOVERNS DAMAGE ACTION AGAINST ATTORNEY FOR MALPRACTICE, 2 A.L.R. 4th 284 § 2[a] (1980). The Commonwealth does not have a specific attorney malpractice statute. The relevant statutes determining the time period in which to file an attorney malpractice claim would therefore place

² Carlsmith Ball Wichman Case & Ichiki officially changed its name to Carlsmith Ball on August 3, 1998.

³ The Bank of Saipan, in its capacity as the Executor of the Estate of Larry L. Hillblom, also filed a complaint against Carlsmith, in which Carlsmith also filed a motion to dismiss based on the statute of limitations for the action having expired. On March 3, 1999, the Superior Court denied Carlsmith’s motion to dismiss and held that the six-year statute of limitations applied to legal malpractice and related claims since a legal malpractice claim is not a claim for personal injury. *Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, Civ. No. 98-0973 (N.M.I. Super. Ct. March 3, 1999) (Decision and Order Denying Motion to Dismiss).

⁴ The Bank also contended that (1) even if the two year statute of limitations applied, the Bank’s claims were timely as a result of an alleged tolling agreement; and (2) even if the tolling agreement were invalid under the Commonwealth law, Carlsmith was equitably estopped from asserting its validity. The District Court held that tolling agreements are invalid as a matter of law and that Carlsmith was not equitably estopped from asserting the validity of the alleged tolling agreement. *Bank of Saipan v. Carlsmith. Ball Wichman Case & Ichiki*, Civ. No. 98-0057 (D. N.M.I. February 25, 1999).

such a claim under either the shorter statute or under the catch-all six year general statute. Thus, from the given statutes this Court must hold which statute of limitations will be applicable to an attorney malpractice action.

¶10 [6] Title 7, Section 2503 of the Commonwealth Code states that the following actions shall be commenced within two years after the cause of action accrues:

(a) Actions for assault and battery, false imprisonment, or slander;

(b) Actions against the Director of Public Safety, a police officer or another person duly authorized to serve process, for any act or omission in connection with the performance of official duties;

(c) Actions for malpractice, error, or mistake against physicians, surgeons, dentists, medical or dental practitioners, and medical or dental assistants;

(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, shareholder, 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.

7 CMC § 2503.

¶11 Carlsmith contends that the Bank's claims are tort-like and fall within subsection (d) of 7 CMC § 2503, which states that there is a two-year statute of limitations for "an action for injury to . . . one caused by the wrongful act or neglect of another." 7 CMC § 2503(d).

¶12 The Bank contends claims of attorney malpractice and related claims are governed by the six-year statute of limitations in 7 CMC § 2505, since attorney malpractice is not specifically enumerated in 7 CMC § 2503.

¶13 [7] Section 2505 states: "[a]ll actions other than those covered in 7 CMC §§ 2502, 2503, and 2504 shall be commenced within six years after the cause of action accrues. . . ." 7 CMC § 2505. Analysis of a statute must begin with the plain language of the statute. A basic principle of statutory construction is that the language must be given its plain meaning. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362, 368 (1990); *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12, 18 (1992); *Govendo v. Micronesian Garment Mfg. Inc.*, 2 N.M.I. 270, 284 (1991); *Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 265 (1995); *Office of the Attorney General v. Dealala*, 3 N.M.I. 110, 117 (1992); *King v. Board of Elections*, 2 N.M.I. 398, 403 (1991) (When the language is clear, the court will not construe it contrary to its plain meaning.); *Commonwealth Ports Auth. v. Hakubotan Saipan Enter., Inc.*, 2 N.M.I. 212, 221 (1991); *In re Estate of Rofag*, 2 N.M.I. 18, 29 (1991) (It is therefore necessary to give [language] the meaning that the legislature intended.); *Commonwealth v. Nethon*, 1 N.M.I. 458, 461 (1990); and *Commonwealth v. Hasinto*, 1 N.M.I. 377, 382 (1990).

¶14 [8] In *King v. Board of Elections*, 2 N.M.I. 398, 404-05 (1991), the Court, in construing the

plain meaning of a public law, found when the law did not address the specific issue, the silence was significant.⁵ Speculation that the legislature decided to cover all malpractice actions under § 2503(d) would not be a permitted interpretation of the statute. One may not “construe a statute on the basis of a mere surmise as to what the legislature intended and to assume that it was only by inadvertence that it failed to state something other than what it plainly stated.” *United States v. Deluxe Cleaners and Laundry, Inc.* 511 F.2d 929, 929 (4th Cir. 1975).

¶15 [9, 10] The California Supreme Court, construing statutory language identical to the CNMI statute, held legal malpractice did not fit within a statute of limitations covering actions for “injury to or for the death of one caused by the wrongful act or neglect of another.” (CAL. CIV. PROC. CODE § 340(3) (West 1905)). The court stated that “failure to make changes in a given statute in a particular respect when the subject is before the legislature, and changes are made in other respects, is indicative of an intention to leave the law unchanged in that respect.” *Alter v. Michael*, 413 P.2d 153, 155 (Cal. 1966).⁶

¶16 [11] Section 2503, of Title 7 of the Commonwealth Code expressly sets forth the actions, which must be filed within the two-year statute of limitations. Absence of an action indicates a legislative intent to exclude such an action from its provisions. 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).

¶17 [12] 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 § 2503. 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. *Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, Civ. No. 98-0973 (N.M.I. Super. Ct. March 3, 1999) (Decision and Order Denying Motion to Dismiss).

¶18 Therefore, we find that attorney malpractice and its related claims are governed by 7 CMC § 2505

⁵ “If the Legislature wanted to withdraw the jurisdiction of the [Board of Elections] concerning voter challenges, it would have clearly stated it in Public Law 5-7. It did not. Its silence is significant. It knew of the voter challenge procedure, yet it kept quiet on the matter when it enacted Public Law 5-7.” *King v. Board of Elections*, 2 N.M.I. 398, 404-05 (1991).

⁶ *Alter* was decided prior to the California Legislature’s enactment in 1977, of CAL. CIV. PROC. CODE § 340.6, which specifically governs legal malpractice actions. Although *Neel v. Magana, Olney, Levy, Cathcart & Gelfand*. 491 P.2d 421, 430 n.29 (Cal. 1971) disapproved language in *Alter* concerning accrual of a cause of action, *Neel* reaffirmed the holding of *Alter* concerning the applicable limitations period for legal malpractice. *Id.* at 424.

and the applicable statute of limitations is six years.⁷

CONCLUSION

¶19 For the forgoing reasons, this Court finds that claims for legal malpractice and related claims are governed by the six-year statute of limitations pursuant to 7 CMC § 2505.⁸

⁷ “Although the courts should try, whenever possible, to construe statutes to avoid a constitutional infirmity, they may not, in doing so, rewrite the statute or do violence to its plain language. . . . This is a legislative function – not a judicial function.” *In re Seman*, 3 N.M.I. 57, 74 (1992).

⁸ We are aware that a six year statute of limitations for attorney malpractice can result in claims becoming stale. We encourage the legislature to consider amending the code to include a specific statute of limitations governing attorney malpractice. In those states with a statute specifically directed toward attorney malpractice, the limitations period is relatively short. *See* CAL. CIV. PROC. CODE § 340.6 (Deerings 1998) (1 year unless for actual fraud); LA. REV. STAT. ANN. 9:§5605 (West 1999) (1 year); TENN. CODE ANN. § 28-3-104 (1999) (1 year); and N.Y. C.P.L.R. 214 (Consol. 1999) (3 years).