

PROFESSIONAL LIABILITY UPDATE

February 24, 2003

Issue No. 147

Jennifer A. Becker

David P. Borovsky

Shoshana Y. Chazan

Chip B. Cox

Edward F. Donohue, III

Kathleen M. Ewins

Kathleen A. Foley

Bruce N. Furukawa

Howard M. Garfield

Jason A. Geller

J. Michael Higginbotham

John B. Hook

William L. Jacobson

Farand C. Kan

Anna Kapetanakos

Joseph P. McMonigle

Douglas J. Melton

Jessica B. Rudin

Richard J. Sciaroni

Steven Sharafian

Jennifer W. Suzuki

Jeanette Traverso

Karen L. Uno

Seth E. Watkins

Gerald G. Weisbach

Irene K. Yesowitch

STATUTE OF LIMITATIONS

California Law

by Jennifer A. Becker

An attorney may be equitably estopped from raising the bar of the statute of limitations.

Leasequip, Inc. v. Dapeer (2002) 103 Cal.App.4th 394

Between 1994 and 1999 Philip Dapeer advised the sole shareholder of Leasequip, Jonathan Lampel, that he need not observe corporate formalities such as maintaining minutes or filing information required by the State. Dapeer told Lampel the corporation would be "suspended" but that it could be renewed by paying the back taxes at any time without affecting any of Leasequip's business or legal claims. Lampel was advised to prosecute Leasequip's claims in his own name. Dapeer returned closed litigation files on October 23, 1997 and ceased his representation of Leasequip on those files. Leasequip's corporate powers were suspended on July 16, 1998 and not reinstated until September 13, 1999

On October 22, 1998 Leasequip filed suit against Dapeer in connection with the closed files. After two amendments Dapeer's demurrer was granted without leave to amend. The trial court ruled that the claims were barred because Leasequip's corporate powers were suspended at the time the lawsuit was

filed, and had not been reinstated prior to expiration of the statute of limitations.

The Court of Appeal noted that a corporation whose powers have been suspended is not entitled to file actions on its behalf, although the statute of limitations on the action is not tolled. The legal malpractice action was filed within the statute of limitations, but Leasequip did not have the authority to prosecute claims at the time the action was initiated.

The Court of Appeal found that it was proper to apply principles of equitable estoppel to Dapeer's defense of the statute of limitations. The four elements of equitable estoppel are (1) the party to be estopped must know the facts; (2) intend that his conduct be acted on or that he act in such a way that the party asserting estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant about the true state of the facts; and (4) he must rely on the conduct to his detriment.

601 Montgomery Street, Suite 900
San Francisco, California 94111
Telephone (415) 397-2222
Facsimile (415) 397-6392
www.longlevit.com

3130 Wilshire Boulevard, 2nd Floor
Santa Monica, California 90403-2300
Telephone (310) 829-0977
Facsimile (310) 829-0991
www.longlevit.com

It was Dapeer who advised Lampel that Leasequip need not comply with corporate formalities, that any problems could be rectified, that Leasequip's legal claims would not be affected, and that Lampel could pursue Leasequip's causes of action. If Leasequip could prove that Dapeer rendered legal advice that he intended Leasequip to rely upon, that Leasequip was ignorant of the true facts, and that Leasequip relied on Dapeer's advice to its detriment, Leasequip could establish a classic case of estoppel. The Court found that it would be unjust to allow Dapeer, who rendered legal advice to Leasequip for close to twenty years, to hide behind his own erroneous legal advice to avoid liability.

The Court distinguished *Gordon v. Law Offices of Aguirre & Meyer* (1999) 70 Cal.App.4th 972 that held equitable tolling could not toll the legal malpractice statute of limitations. C.C.P. § 340.6 states that its tolling provisions are exclusive. However equitable estoppel does not toll the statute of limitations, rather it precludes Dapeer from asserting the defense.

Comment: Leasequip may embolden plaintiffs to file claims that would otherwise be time barred under C.C.P. § 340.6.