

271 A.D.2d 208
 Supreme Court, Appellate Division,
 First Department, New York.

Jill DRUMMOND, Plaintiff–Respondent,

v.

Michael PETITO, CPA, et
 al., Defendants–Appellants,
 and

Robin Kumler, et al., Defendants.

April 4, 2000.

Synopsis

Client brought malpractice action against accountants. The Supreme Court, New York County, [Edward Lehner, J.](#), granted client's motion for leave to amend complaint and denied accountants' motion for summary judgment. Accountants appealed. The Supreme Court, Appellate Division, held that: (1) allowing amendment was proper in absence of evidence that accountants would be prejudiced, and (2) issues of fact as to whether statutory period had been tolled precluded dismissal of action as time-barred.

Affirmed.

West Headnotes (3)

[1] Pleading

🔑 Discretion of Court

Allowing amendment of complaint was proper exercise of discretion in absence of demonstration by defendants that grant of leave would be prejudicial to them. [McKinney's CPLR 3025\(b\)](#).

[Cases that cite this headnote](#)

[2] Limitation of Actions

🔑 Questions for Jury

Evidence suggesting that client had been continuously represented by accountants, even though not conclusive, was sufficient to raise triable issue as to whether limitations period had been tolled on client's claims and to

preclude pretrial dismissal of action as time-barred.

[Cases that cite this headnote](#)

[3] Limitation of Actions

🔑 Retroactive Operation

Action by client to recover damages for alleged malpractice by accountants was governed by six-year statute of limitations, where action was commenced prior to 1996. [McKinney's CPLR 214](#), subd. 6.

[Cases that cite this headnote](#)

Attorneys and Law Firms

****363** [Alice K. Jump](#), for Plaintiff–Respondent.

[Alan L. Korzen](#), for Defendants–Appellants.

SULLIVAN, P.J., [NARDELLI, TOM](#), [MAZZARELLI](#) and [WALLACH, JJ.](#)

Opinion

MEMORANDUM DECISION.

***208** Order, Supreme Court, New York County (Edward Lehner, J.), entered June 1, 1999, granting plaintiff's motion for leave to amend the complaint and denying defendants-appellants' cross motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

[1] [2] [3] The motion court properly exercised its discretion in granting plaintiff's motion for leave to amend her complaint since appellants, in opposing the motion, failed to demonstrate that the grant of leave would be prejudicial to them (*see*, [CPLR 3025\(b\)](#); [Edenwald Contr. Co., Inc. v. City of New York](#), 60 N.Y.2d 957, 471 N.Y.S.2d 55, 459 N.E.2d 164; [Martin v. Briggs](#), 235 A.D.2d 192, 199, 663 N.Y.S.2d 184). Also proper was the motion court's denial of appellants' motion to dismiss the action as time-barred, since the evidence presented by plaintiff in support of her claim that she had been continuously represented ***209** by appellants, even if not conclusive, was sufficient to raise triable issues as to whether the running of the statutory period

had been tolled (*see, Ackerman v. Price Waterhouse*, 252 A.D.2d 179, 204–206, 683 N.Y.S.2d 179; *Fred Smith Plumbing & Heating Co. v. Christensen*, 233 A.D.2d 207, 649 N.Y.S.2d 684). Moreover, **364 the appropriate limitations period is six years since the damages, as alleged, arise out of the contractual relationship between plaintiff and appellants and the action was commenced

prior to the 1996 amendment of CPLR 214(6)(*see, Ackerman, supra*).

All Citations

271 A.D.2d 208, 705 N.Y.S.2d 363, 2000 N.Y. Slip Op. 03326

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