question is when was plaintiff injured by the alleged deceptive act. *Soskel v Handler*, 189 Misc 2d 795 (Sup Ct, Nassau County 2001).

Plaintiffs' claims cannot be equitably tolled by the date of discovery rule. Plaintiffs repeatedly allege in the amended complaint that until investigative efforts were undertaken in the Fears action, plaintiffs had no factual basis to allege claims. ¶103, 124, 135. However, plaintiffs undermine themselves when they simultaneously allege that as early as 1980, the standard model contract disavowed that the manager would seek employment for the person being managed yet models were required to refer all inquiries for their employment to their agencies and the agency had the exclusive right to book the model. ¶ 149 and 160. Indeed, the contract's denial of employment services prompted a model to so challenge that which plaintiffs say they could not until the Fears discovery. ¶150. "Mere ignorance or lack of discovery of the wrong is not sufficient to toll the Statute of Limitations." *General Stencils, Inc. v Chiappa*, 18 NY2d 125, 127 (1966). Moreover, if models were unaware of DCA licensing requirements, then the modeling agencies themselves gave the models a clue when the standard contract was changed to explicitly deny the agency's obligation to be licensed. ¶161.

However, plaintiffs can rely on a continuing violation theory to toll the running of the Statute of Limitations. Plaintiffs argue that defendants' misrepresentations concerning their status as employment agencies in violation of the GBL

continue today. The doctrine will toll the limitations period to the date of the commission of the last wrongful act where there is a series of continuing wrongs. *Neufeld v Neufeld*, 910 FSupp 977, 982 (SDNY 1996). "[I]t may only be predicated on continuing unlawful acts and not on the continuing effects of earlier unlawful conduct." *Selkirk v State*, 249 AD2d 818 (3d Dept 1998)(doctrine did not apply to State's seizure of plaintiff's property; court rejected plaintiff/taxpayer's argument that she continued to suffer effects of property seizure). Under the doctrine a continuing violation occurred each time a landlord collected an illegal rent, *78/79 York Assocs. v Rand*, 175 Misc 2d 960 (Civ Ct, NY County 1998), affirmed, 180 Misc2d 316 (NY App Term, 1st Dept 1999) and each time a debtor defaulted on the loan, where creditor failed to accelerate loan. *Phoenix Acquisition Corp. v Campcore, Inc.*, 81 NY2d 138 (1993). Likewise, here each time plaintiffs paid defendants more than the statutory 10% fee, defendants would be in violation of Article 11.

For the same reasons, the Article 11 claim in the second cause of action is not time-barred.

Finally, however, the Court is constrained to dismiss the action because none of the remaining named plaintiffs allege a relationship with any of the remaining non-settling defendants. Plaintiffs may not rely on unidentified class members. *Tegnazian v Consol Edison, Inc.*, 189 Misc 2d 152, 156 (Sup Ct, NY County 2000), appeal withdrawn, 283 AD2d 1034 (1st Dept 2001). By

plaintiffs' failure to address this issue, the Court can only infer that plaintiffs concede it.

Therefore, the defendants' joint motion to dismiss is granted and the action is dismissed against: Joseph Hunter; Marion Smith; Company Models; Michael Flutie; Robert Flutie; ID Model Management; Paolo Zampolli; George Gallier; New York Models a/k/a New York Model Management; Diva Entertainment; T Model Management; Women Model Management; Paul Rowland; and Q Model Management a/k/a Que Model Management, the non-settling defendants who participated in the joint motion to dismiss. It is unnecessary to address the remaining defendants' individual motions to dismiss. The action continues against: Karin Models LLC; Jean-Luc Brunel; Metropolitan Model Agency, Inc.; Metropolitan Models Paris; Thomas Zeumer; Michel Levaton who have not settled and have not moved to dismiss.

Afterword

A jury is not likely to ever hear the important issues of whether defendants are "employment agencies," and thus subject to the GBL Article 11, as plaintiffs assert, or are subject to the "incidental booking exception," as defendants contend. The legislature and Governor take issue with litigation expenses incurred by modeling agencies in this and the Federal action initiated by models against modeling agencies for allegedly taking advantage of the models. They focus on the confusion over the term "personal manager," and overlook the serious allegations of institutional predation made by the models against the

modeling agencies. Article 11 is simply intended to protect vulnerable employees from more powerful and unscrupulous employers; a protection which has been afforded New York's employees since 1904. It is a "one-size" fits all statute which does not apparently fit the modeling industry. However, the proposed bill creates opportunities for abuse in other areas of the entertainment business, as recognized by Governor Pataki's veto.

Perhaps the solution is not to modify the "employment agency" statute by exempting modeling agencies and thus leaving models unprotected, but to enact a modeling agency statute which prohibits the abuses which are abhorred by all, especially the reputable modeling agencies which according to IMG's memorandum in support of A.8381-1/S5602 generate $250 million in business annually in NYC. With his veto, Governor Pataki directs his staff to work with drafters and the industry to find alternatives to the flawed proposed bill. Drafters would be wise to look to the settlement in the Fears Federal action wherein the settling modeling agencies agree to (1) disclose all compensation received by it on all bookings including service charges, mother agent fees, gross fee received for booking and any other charges or deduction; (2) use clear contracts which disclose all compensation terms and practices; and (3) use contracts that are not automatically renewable. *Fears v Wihelmina Model Agency Inc.*, 2005 US Dist Lexis 7961 (SDNY 2005) at page 8/25. Finally, Article 11, as well as any statute enacted to address the

modeling industry, should clearly indicate that an employee may seek a refund under GBL §186 without requesting the assistance from the DCA. In these times of significant budgetary constraints on government agencies, it seems obvious that just as an individual may rely on Article 11 defensively, an individual ought to be able to recover an excessive fee from either a licensed or unlicensed employment agency.

Accordingly, it is

ORDERED, that motion 3 and 4 are denied as moot without prejudice to renewal on 5 days notice; and it is further

ORDERED, that motion 5, dated November 25, 2003, by defendants ID Model Management and Paolo Zampolli, to dismiss the complaint is granted; and it is further

ORDERED, that motion 6, brought by order to show cause, dated December 5, 2003 to extend time to answer, move or otherwise respond to plaintiffs' amended complaint is granted and defendants' Joint Motion to Dismiss submitted as motion 8; and it is further

ORDERED, that motion 7, dated December 14, 2003, by defendants NY Model Management, Cory Bautista and Heinz Holba for dismissal of the complaint is granted; and it is further

ORDERED, that the Clerk is directed to correct the caption by adding Cory Bautista and Heinz Holba; and it is further

ORDERED, that defendants' motion 8, the Joint Motion, is granted and the action is dismissed; and it is further

ORDERED, that the Clerk is directed to remove Elite Model