

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14561
X/cb

_____AD3d_____

Argued - February 27, 2007

REINALDO E. RIVERA, J.P.
DAVID S. RITTER
GLORIA GOLDSTEIN
DANIEL D. ANGIOLILLO, JJ.

2006-00454

DECISION & ORDER

Charles Gallina, respondent, v Linda F. Fedrizzi,
etc., et al., appellants, et al., defendant.

(Index No. 24303/04)

Linda F. Fedrizzi, Astoria, N.Y. (Walter Drobenko of counsel), appellant pro se.

Ginsberg & Katsorhis, P.C., Flushing, N.Y. (Jeffrey P. Brodsky of counsel), for
appellant Kerry John Katsorhis.

Kelner & Kelner, New York, N.Y. (Joshua D. Kelner of counsel), for respondent.

In an action to recover damages for legal malpractice, the defendant Kerry John Katsorhis appeals, as limited by his notice of appeal and brief, from so much of an order of the Supreme Court, Queens County (O'Donoghue, J.), dated November 21, 2005, as denied those branches of his motion which were pursuant to CPLR 3211(a)(5) and (a)(7) to dismiss the complaint insofar as asserted against him in his individual capacity, and the defendant Linda F. Fedrizzi separately appeals, as limited by her brief, from so much of the same order as denied her motion pursuant to CPLR 3211(a)(5), (a)(7), and (a)(8) to dismiss the complaint insofar as asserted against her in her individual capacity.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs to the respondent payable by the appellants appearing separately and filing separate briefs.

The Supreme Court properly denied those branches of the respective motions of the defendants Kerry John Katsorhis and Linda F. Fedrizzi which were pursuant to CPLR 3211(a)(7) to

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dismiss the complaint insofar as asserted against them in their individual capacities. Giving the allegations of the complaint the benefit of every favorable inference (*see Leon v Martinez*, 84 NY2d 83, 87; CPLR 3211[a][7]), we conclude that the complaint states a cause of action for legal malpractice against these defendants, individually (*see Arnav Indus., Inc. Retirement Trust v Brown, Raysman, Millstein, Felder & Steiner*, 96 NY2d 300, 303, 304; Business Corporation Law § 1505[a]). Contrary to their further contentions, Katsorhis and Fedrizzi failed to show that the time in which to sue had expired (*see CPLR 214[6]; Shumsky v Eisenstein*, 96 NY2d 164; *Pollicino v Roemer & Featherstonhaugh*, 260 AD2d 52, 53; *cf. Gravel v Cicola*, 297 AD2d 620; *Piliero v Adler & Stavros*, 282 AD2d 511).

Fedrizzi's remaining contention is without merit.

RIVERA, J.P., RITTER, GOLDSTEIN and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court