

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

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Argued - June 2, 2008

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
RANDALL T. ENG  
JOHN M. LEVENTHAL, JJ.

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2007-05123

DECISION & ORDER

Robert Stack, et al., appellants, v Midwood Chayim Aruchim Dialysis Associates, Inc., et al., defendants, Ropes & Gray LLP, respondent.

(Index No. 24936/06)

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K.C. Okoli, New York, N.Y., for appellants.

Ropes & Gray LLP, New York, N.Y. (William I. Sussman and Victor Hendrickson of counsel), respondent pro se.

In an action, inter alia, to recover damages for breach of fiduciary duty, the plaintiffs appeal from an order of the Supreme Court, Kings County (Ambrosio, J.), dated April 2, 2007, which granted the motion of the defendant Ropes & Gray LLP to dismiss the complaint insofar as asserted against it.

ORDERED that the order is reversed, on the law, without costs or disbursements, and the matter is remitted to the Supreme Court, Kings County, for further proceedings consistent herewith.

The plaintiffs, members of a limited liability company (hereinafter the LLC), brought this action individually and on behalf of the LLC, inter alia, to recover damages for breach of fiduciary duty against the other members of the LLC, the LLC's managers, and Ropes & Gray LLP (hereinafter R&G), a law firm that represented the LLC and several of the other defendants at various times. Relying on *Hoffman v Unterberg* (9 AD3d 386), the Supreme Court granted R&G's motion to dismiss the complaint insofar as asserted against it on the ground that the plaintiffs' claims against

R&G were derivative and members of an LLC do not have the right to bring derivative actions on behalf of an LLC. Since the time that motion was decided, *Hoffman* has been abrogated by the Court of Appeals in *Tzolis v Wolff* (10 NY3d 100), which held that members of an LLC may bring derivative suits on behalf of the LLC. Accordingly, we reverse the order and, since the Supreme Court did not address the remainder of the issues raised by R&G, we remit the matter to the Supreme Court, Kings County, for such a determination.

SPOLZINO, J.P., SANTUCCI, ENG and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court