

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

D25332
C/prt

_____AD3d_____

Argued - November 6, 2009

PETER B. SKELOS, J.P.
RANDALL T. ENG
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2008-04494
2009-03234

DECISION & ORDER

Kristin Dupree, appellant, v Oliver Raymond
Voorhees III, defendant, Karyn A. Villar,
et al., respondents.

(Index No. 30508/06)

Kenneth Cooperstein, Centerport, N.Y., for appellant.

In an action, inter alia, to recover damages for legal malpractice, abuse of process, and violation of Judiciary Law § 487, the plaintiff appeals (1) from an order of the Supreme Court, Suffolk County (Palmieri, J.), dated May 1, 2008, which granted the motion of the defendants Karyn A. Villar and Dorothy A. Courten, in effect, pursuant to CPLR 3211(a)(7), to dismiss the third cause of action alleging abuse of process and the fourth cause of action alleging a violation of Judiciary Law § 487, and (2) from so much of an order of the same court dated March 23, 2009, as, upon renewal, adhered to so much of the order dated May 1, 2008, as granted those branches of the motion of the defendants Karyn A. Villar and Dorothy A. Courten which were to dismiss the third cause of action alleging abuse of process and the fourth cause of action alleging a violation of Judiciary Law § 487 insofar as asserted against the defendant Dorothy A. Courten.

ORDERED that the appeal from the order dated May 1, 2008 is dismissed, without costs or disbursements, as that order was superseded by the order dated March 23, 2009, made upon renewal; and it is further,

ORDERED that the order dated March 23, 2009, is modified, on the law, by deleting the provision thereof, upon renewal, adhering to so much of the determination in the order dated May

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1, 2008, as granted that branch of the motion of the defendants Karyn A. Villar and Dorothy A. Courten which was to dismiss the fourth cause of action alleging a violation of Judiciary Law § 487 insofar as asserted against the defendant Dorothy A. Courten, and substituting therefor a provision, upon renewal, vacating so much of the original determination in the order dated May 1, 2008, as granted that branch of the motion of the defendants Karyn A. Villar and Dorothy A. Courten which was to dismiss the fourth cause of action alleging a violation of Judiciary Law § 487 insofar as asserted against the defendant Dorothy A. Courten, and thereupon denying that branch of the motion; as so modified, the order dated March 23, 2009, is affirmed insofar as appealed from, without costs or disbursements.

Based upon events which occurred in an underlying divorce action, the plaintiff commenced this action against her former attorney, Oliver Raymond Voorhees III, her former husband's attorney, Karyn A. Villar, and Villar's law partner, Dorothy A. Courten. As is relevant to this appeal, the third cause of action sought damages for abuse of process against Villar and Courten, alleging that Villar made certain misrepresentations in applying for a receivership order in the underlying action. In the fourth cause of action, the plaintiff seeks treble damages against Villar and Courten under Judiciary Law § 487, alleging that Villar intended to deceive the court in connection with a receivership application. The complaint further alleged that because Courten and Villar were partners in the same law firm, Courten was vicariously liable for the damages the plaintiff sustained as a result of Villar's alleged wrongdoing.

Villar and Courten moved to dismiss the complaint insofar as asserted against them, in effect, pursuant to CPLR 3211(a)(7). The court granted Villar and Courten's motion. The plaintiff thereafter moved, inter alia, for leave to renew. The court determined that a subsequent decision of the Court of Appeals in *Amalfitano v Rosenberg* (12 NY3d 8) provided a reason for granting renewal, and, upon renewal, to deny that branch of the motion which was to dismiss the complaint as against Villar with respect to the Judiciary Law § 487 cause of action. The court, however, denied the plaintiff relief with respect to the Judiciary Law § 487 cause of action against Courten, noting that Judiciary Law § 487 is rooted in the criminal law and that it would be inconsistent with this history and the statute itself to hold a second attorney responsible for the deceit of another unless the attorney participated in or ratified the wrongdoer's actions. We disagree.

Partnership Law § 24 provides that “[w]here, by *any wrongful act* or omission of any partner acting in the ordinary course of the business of the partnership, or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act” (Partnership Law § 24 [emphasis added]). Partnership Law § 26(a)(1) provides that “all partners are liable . . . [j]ointly and severally for everything chargeable to the partnership under section[] twenty-four.” The pivotal test for liability in this regard is whether the wrong was committed on behalf of and within the reasonable scope of the partnership business, not whether the wrongful act was criminal in nature, or whether the other partners condoned the offending partner's actions (*see Rudow v City of New York*, 642 F Supp 1456, *affd* 822 F2d 324; *Muka v Williamson*, 53 AD2d 950; *see also Clients' Sec. Fund v Grandeau*, 72 NY2d 62). Therefore, the Supreme Court erred in adhering to the determination in the order dated May 1, 2008, dismissing the Judiciary Law § 487 cause of action against Courten.

However, the Supreme Court correctly dismissed the third cause of action seeking damages for abuse of process against both Villar and Courten. Where process is used for the purpose for which it was intended, a cause of action to recover damages for abuse of process does not lie (*see Curiano v Suozzi*, 63 NY2d 113, 117; *Aluminum Mill Supply Corp. v Larkin*, 129 AD2d 542; *Raved v Raved*, 105 AD2d 735, 736).

The plaintiff's remaining contentions are without merit or have been rendered academic in light of our determination.

SKELOS, J.P., ENG, LEVENTHAL and CHAMBERS, 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