

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

D25365
O/kmg

_____AD3d_____

Argued - November 17, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
HOWARD MILLER
SHERI S. ROMAN, JJ.

2008-09070

DECISION & ORDER

Stan Stuart, d/b/a Silver River Marina, respondent,
v Linda Tennen Kushner, appellant.

(Index No. 8373/05)

Thomas F. Liotti, Garden City, N.Y. (Lucia Maria Ciaravino of counsel), for appellant.

Thomas J. Bailey & Associates, P.C., Hicksville, N.Y. (Nancy Pavlovic of counsel), for respondent.

In an action, inter alia, to recover damages for legal malpractice, the defendant appeals from so much of an order of the Supreme Court, Nassau County (McCarty, J.), dated August 21, 2008, as denied those branches of her motion which were to dismiss the first, second, and third causes of action pursuant to CPLR 3211(a)(7) for failure to state a cause of action.

ORDERED that the order is modified, on the law, by deleting the provisions thereof denying those branches of the defendant's motion which were to dismiss the second and third causes of action pursuant to CPLR 3211(a)(7) for failure to state a cause of action and substituting therefor provisions granting those branches of the defendant's motion; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

Affording the complaint a liberal construction, accepting all facts as alleged in the complaint to be true, and according the plaintiff the benefit of every favorable inference as required on a motion to dismiss pursuant to CPLR 3211(a)(7) (*see Leon v Martinez*, 84 NY2d 83, 87-88; *Shaya B. Pac., LLC v Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 AD3d 34, 38), the Supreme Court properly denied that branch of the defendant's motion which was to dismiss the first

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cause of action to recover damages for legal malpractice (*see Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 442).

However, the Supreme Court should have granted those branches of the defendant's motion which were to dismiss the second and third causes of action seeking to recover damages for negligence and fraud, as those causes of action are duplicative of the legal malpractice cause of action (*see Turner v Irving Finkelstein & Meirowitz, LLP*, 61 AD3d 849, 850; *Sitar v Sitar*, 50 AD3d 667, 670; *Iannucci v Kucker & Bruh*, 42 AD3d 436, 437; *Town of Wallkill v Rosenstein*, 40 AD3d 972, 974).

The defendant's remaining contentions are without merit or need not be considered in light of our determination.

RIVERA, J.P., DILLON, MILLER and ROMAN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court