

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

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_____AD3d_____

Argued - May 28, 2010

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
JOHN M. LEVENTHAL, JJ.

2008-11370

DECISION & ORDER

601 Realty Corp., et al., respondents, v Conway,
Farrell, Curtin & Kelly, P.C., et al., appellants, et al.,
defendants (and a third-party action).

(Index No. 9103/07)

McManus, Collura & Richter, P.C., New York, N.Y. (Scott C. Tuttle of counsel),
for appellants.

Gleich, Siegel & Farkas, Great Neck, N.Y. (Jonathan H. Freiburger of counsel), for
respondents.

In action to recover damages for legal malpractice, the defendants Conway, Farrell,
Curtin & Kelly, P.C., Angela Pantony, and Richard W. Dawson appeal, as limited by their brief, from
so much of an order of the Supreme Court, Nassau County (Phelan, J.), dated November 7, 2008,
as denied their motion to compel the plaintiffs to respond to items 3 and 6 in their notice for discovery
and inspection dated January 11, 2008.

ORDERED that the order is reversed insofar as appealed from, on the law, on the
facts, and in the exercise of discretion, with costs, and the appellants' motion to compel the plaintiffs
to respond to items 3 and 6 in their notice for discovery and inspection dated January 11, 2008, is
granted.

Under the circumstances of this case, the appellants' motion to compel the plaintiffs
to respond to items 3 and 6 in their notice for discovery and inspection dated January 11, 2008,
should have been granted. The invasion of the attorney-client privilege with respect to the subject

June 22, 2010

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communications and documents is required in order for the appellants to assert their defense to the action at trial (*see Orco Bank v Proteinas Del Pacifico*, 179 AD2d 390, 390-391; *Jakobleff v Cerrato, Sweeney & Cohn*, 97 AD2d 834, 835; *Goldberg v Hirschberg*, 10 Misc 3d 292, 295).

The parties' remaining contentions either need not be addressed in light of our determination, have been rendered academic, or are without merit.

SKELOS, J.P., ANGIOLILLO, DICKERSON 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