

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

D30121
C/hu

_____AD3d_____

Argued - January 24, 2011

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-02773

DECISION & ORDER

Tara Snolis, et al., appellants, v Timothy W. Clare,
defendant, William J. Poisson, etc., et al., respondents.

(Index No. 4354/05)

Cerussi & Gunn, P.C. (Thomas Torto and Jason Levine, New York, N.Y., of counsel), for appellants.

L'Abbate, Balkan, Colavita & Contini, LLP, Garden City, N.Y. (Peter L. Contini and Daniel M. Maunz of counsel), for respondents.

In an action to recover damages for legal malpractice and breach of contract, the plaintiffs appeal from so much of an order of the Supreme Court, Suffolk County (Molia, J.), dated February 1, 2010, as denied their cross motion for leave to renew their prior motion for summary judgment on their cause of action to recover damages for legal malpractice insofar as asserted against the defendants William J. Poisson and Poisson & Hackett, Esqs., which had been denied in an order of the same court dated August 17, 2009.

ORDERED that the order dated February 1, 2010, is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied the plaintiffs' cross motion for leave to renew their prior motion for summary judgment on their cause of action to recover damages for legal malpractice insofar as asserted against the defendants William J. Poisson and Poisson & Hackett, Esqs. The motion was based on an expert's affidavit submitted for the first time. However, the plaintiffs failed to offer a reasonable justification for failing to present this evidence on their original

February 22, 2011

SNOLIS v CLARE

Page 1.

motion (see CPLR 2221[e]; *Brown Bark I, L.P. v Imperial Dev. & Constr. Corp.*, 65 AD3d 510, 512; *Reshevsky v United Water N.Y., Inc.*, 46 AD3d 532, 533). In any event, under the circumstances, the affidavit was insufficient to warrant a change of the prior determination (see *Brown Bark I, L.P. v Imperial Dev. & Constr. Corp.*, 65 AD3d at 512; *Reshevsky v United Water N.Y., Inc.*, 46 AD3d at 533).

SKELOS, J.P., DICKERSON, AUSTIN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court