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

D30405
C/kmb

_____AD3d_____ Argued - February 18, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2010-04272 DECISION & ORDER
2010-06178

SCG Architects, et al., respondents,
v Smith, Buss & Jacobs, LLP, appellant.

(Index No. 17799/07)

Traub Lieberman Straus & Shrewsberry LLP, Hawthorne, N.Y. (Stephen D. Straus and Gerard Benvenuto of counsel), for appellant.

Vouté, Lohrfink, Magro & Collins, LLP, White Plains, N.Y. (Ralph F. Schoene of counsel), for respondents.

In an action to recover damages for legal malpractice, the defendant appeals (1) from an order of the Supreme Court, Westchester County (Loehr, J.), entered March 23, 2010, which denied its motion, inter alia, for leave to amend its answer to assert the affirmative defense of res judicata, and (2), as limited by its brief, from so much of an order of the same court entered June 9, 2010, as denied that branch of its motion which was for leave to renew its prior motion.

ORDERED that the order entered March 23, 2010, is affirmed; and it is further,

ORDERED that the order entered June 9, 2010, is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the plaintiffs.

The Supreme Court providently exercised its discretion in denying that branch of the

defendant's motion which was for leave to amend its answer to assert the affirmative defense of res judicata, as the proposed amendment was patently devoid of merit (*see* CPLR 3025[b]; *Rector v City of New York*, 74 AD3d 771, 772; *Summit at Pomona, Ltd. v Village of Pomona*, 72 AD3d 797, 799; *Lucido v Mancuso*, 49 AD3d 220, 229).

The Supreme Court also properly denied that branch of the defendant's motion which was for leave to renew its prior motion, as the new facts proffered would not have changed the prior determination (*see* CPLR 2221[e][2]; *Garfinkle Ltd. Partnership II v 11 Mecox Bay Inn*, 52 AD3d 467; *Kletke v GOS Corp.*, 51 AD3d 875; *Worthy v Good Samaritan Hosp. Med. Ctr.*, 50 AD3d 1023, 1024).

The defendant's remaining contentions are without merit.

RIVERA, J.P., DICKERSON, ENG and LOTT, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court