

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

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_____AD3d_____

Argued - November 14, 2011

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2011-00360

DECISION & ORDER

Julie Soussis, plaintiff-respondent, v Lazer, Apthecker, Rosella & Yedid, P.C., et al., defendants third-party plaintiffs-appellants, et al., defendant; Benjamin Vinar, etc., third-party defendant-respondent.

(Index No. 17936/05)

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (Steven B. Prystowsky and Richard Granofsky of counsel), for defendants third-party plaintiffs-appellants.

Heller, Horowitz & Feit, P.C., New York, N.Y. (Eli Feit and Stuart A. Blander of counsel), for plaintiff-respondent.

The McDonough Law Firm, LLP, New Rochelle, N.Y. (Eli S. Cohn of counsel), for third-party defendant-respondent.

In an action to recover damages for legal malpractice, the defendants third-party plaintiffs appeal from an order of the Supreme Court, Nassau County (Parga, J.), dated October 12, 2010, which denied their motion to compel the third-party defendant to produce certain e-mail communications withheld from disclosure on the ground that they were protected by the attorney-client privilege.

ORDERED that the order is affirmed, with one bill of costs.

A waiver of the attorney-client privilege may be found where the client places the subject matter of the privileged communication in issue or where invasion of the privilege is required to determine the validity of the client's claim or defense and application of the privilege would

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deprive the adversary of vital information (*see Hurrell-Harring v State of New York*, 75 AD3d 667, 668; *601 Realty Corp. v Conway, Farrell, Curtin & Kelly, P.C.*, 74 AD3d 1179, 1179; *Raphael v Clune White & Nelson*, 146 AD2d 762, 763; *Jakobleff v Cerrato, Sweeney & Cohn*, 97 AD2d 834, 835). Moreover, a waiver may be found where a party engages in selective disclosure, “as a party may not rely on the protection of the privilege regarding damaging communications while disclosing other self-serving communications” (*Village Bd. of Vil. of Pleasantville v Rattner*, 130 AD2d 654, 655).

Contrary to the contention of the defendants third-party plaintiffs, under the circumstances presented, the plaintiff did not place the subject matter of the subject e-mail communications in issue and application of the privilege will not deprive them of vital information in defense of her claims. Nor is disclosure of the subject e-mails required under the doctrine of selective disclosure (*cf. Orco Bank v Proteinias Del Pacifico*, 179 AD2d 390, 390; *Village Bd. of Vil. of Pleasantville v Rattner*, 130 AD2d at 655). Accordingly, the Supreme Court properly denied the motion of the defendants third-party plaintiffs to compel the third-party defendant to produce certain e-mail communications withheld from disclosure on the ground that they were protected by the attorney-client privilege.

SKELOS, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court