

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

D34466  
C/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 8, 2012

REINALDO E. RIVERA, J.P.  
CHERYL E. CHAMBERS  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

2011-03362

DECISION & ORDER

Diedrich Holtkamp, et al., appellants, v Parklex Associates, et al., defendants, Flemming Zulack Williamson Zauderer, LLP, et al., proposed defendants-respondents.

(Index No. 14514/06)

Scher Law Firm, LLP, Carle Place, N.Y. (Austin Graff and Jonathan Scher of counsel), for appellants.

Tannebaum Helpern Syracuse & Hirschtritt LLP, New York, N.Y. (Vincent J. Syracuse, David J. Kanfer, and Maryanne C. Stallone of counsel), for proposed defendants-respondents.

In an action, inter alia, to recover damages for breach of contract and breach of fiduciary duty, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Demarest, J.), dated February 22, 2011, as denied that branch of their motion which was for leave to serve a supplemental summons and fourth amended complaint adding Flemming Zulack Williamson Zauderer, LLP, Mark C. Zauderer, and Jonathan D. Lupkin as defendants and asserting a cause of action against them pursuant to Judiciary Law § 487.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The conduct alleged by the plaintiffs occurred in part prior to the applicable three-year period of limitations (*see Lefkowitz v Appelbaum*, 258 AD2d 563, 563; *Jorgensen v Silverman*, 224 AD2d 665, 665-666). Further, the plaintiffs' allegations were not sufficient to set forth a cause of action against the respondents pursuant to Judiciary Law § 487 (*see DeStaso v Condon Resnick, LLP*,

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90 AD3d 809, 814; *Sabalza v Salgado*, 85 AD3d 436, 438; *Schwartz v Sayah*, 83 AD3d 926; *McCluskey v Gabor & Gabor*, 61 AD3d 646, 648; *Callaghan v Goldsweig*, 7 AD3d 361, 362; *Glorioso v DeBlasio*, 227 AD2d 588, 589). Therefore, the Supreme Court properly denied that branch of the plaintiffs' motion which was for leave to serve a supplemental summons and fourth amended complaint adding the respondents as defendants and asserting a cause of action against them pursuant to Judiciary Law § 487 (*see Lucido v Mancuso*, 49 AD3d 220, 229).

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

RIVERA, J.P., CHAMBERS, ROMAN and SGROI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court