

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

D36905
W/hu

_____AD3d_____

Argued - October 22, 2012

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
L. PRISCILLA HALL, JJ.

2011-05803

DECISION & ORDER

H.P.S. Management Company, Inc., et al., appellants,
v St. Paul Surplus Lines Insurance Company, et al.,
respondents.

(Index No. 19847/10)

Henry M. Grubel, P.C., Freeport, N.Y. (Henry M. Grubel, named herein as Henry Grubel, pro se, of counsel), for appellants.

Litchfield Cavo LLP, New York, N.Y. (Vincent J. Velardo of counsel), for respondents St. Paul Surplus Lines Insurance Company and Travelers Companies, Inc.

Farrell Fritz, P.C., Uniondale, N.Y. (James M. Wicks and Hillary A. Frommer of counsel), for respondents Marsh & McLennan Companies, Inc., Seabury & Smith, Inc., and Marsh Affinity Group Services.

White and Williams LLP, New York, N.Y. (Robert Wright and Jaime M. Merritt of counsel), for respondent Wilton Reassurance Life Company of New York.

Keidel, Weldon & Cunningham, LLP, White Plains, N.Y. (Christopher B. Weldon, Robert J. Grande, and Zachary A. Mengel of counsel), for respondents Babchik & Young, LLP, and Jack Babchik.

In an action, inter alia, to recover damages for breach of contract, legal malpractice, and fraud, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Driscoll, J.), dated May 12, 2011, as granted those branches of the motion of the defendants St. Paul Surplus Lines Insurance Company and Travelers Companies, Inc., which were pursuant to CPLR 3211(a) to dismiss the second, third, fourteenth, and fifteenth causes of

December 26, 2012

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action, all without leave to replead, granted that branch of the same motion which was pursuant to CPLR 3211(a) to dismiss so much of the tenth cause of action as sought an award of an attorney's fee against those defendants, granted that branch of the separate motion of the defendants Seabury & Smith, Inc., Marsh & McLennan Companies, Inc., and Marsh Affinity Group Services which was pursuant to CPLR 3211(a) to dismiss the eleventh cause of action, without leave to replead, granted those branches of the separate motion of the defendant Wilton Reassurance Life Company of New York which were pursuant to CPLR 3211(a) to dismiss the eighth, twelfth, and thirteenth causes of action, all without leave to replead, and granted that branch of the separate motion of the defendants Babchik & Young, LLP, and Jack Babchik which was pursuant to CPLR 3211(a) to dismiss, insofar as asserted against those defendants, the fourth cause of action.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable to the defendants appearing separately and filing separate briefs.

Contrary to the plaintiffs' contention, the Supreme Court applied the proper standard in reviewing the defendants' motions to dismiss various causes of action in the amended complaint that were asserted against each of them (*see generally Garner v China Natural Gas, Inc.*, 71 AD3d 825, 826; *Davis v Davis*, 71 AD3d 13, 19; *Ruffino v New York City Tr. Auth.*, 55 AD3d 817, 818). The Supreme Court did not err in directing the dismissal of the causes of action that are the subject of this appeal, as they either failed to state a cause of action, were untimely interposed, or were duplicative of other causes of action that were asserted (*see generally* CPLR 214[4]; *Chase Scientific Research v NIA Group*, 96 NY2d 20, 30; *Colasacco v Robert E. Lawrence Real Estate*, 68 AD3d 706, 708; *Kantrowitz v Allstate Indem. Co.*, 48 AD3d 753, 754; *Paterra v Nationwide Mut. Fire Ins. Co.*, 38 AD3d 511, 512-513; *LoPresti v Massachusetts Mut. Life Ins. Co.*, 30 AD3d 474, 476; *Tortura v Sullivan Papain Block McGrath & Cannavo, P.C.*, 21 AD3d 1082, 1083; *Laruccia v Forchelli, Curto, Schwartz, Mineo, Carlino & Cohn*, 295 AD2d 321, 322). The Supreme Court also properly denied the plaintiffs' requests for leave to replead that are raised on this appeal (*see generally Janssen v Incorporated Vil. of Rockville Ctr.*, 59 AD3d 15, 27; *Smith-Hoy v AMC Prop. Evaluations, Inc.*, 52 AD3d 809, 811). Accordingly, the order must be affirmed insofar as appealed from.

SKELOS, J.P., ANGIOLILLO, DICKERSON and HALL, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court