

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

D54836
M/htr

_____AD3d_____

Argued - November 28, 2017

MARK C. DILLON, J.P.
LEONARD B. AUSTIN
SANDRA L. SGROI
BETSY BARROS, JJ.

2015-08349

DECISION & ORDER

John Ehrenkranz, et al., plaintiffs, v 58 MHR, LLC,
et al., defendants third-party plaintiffs-appellants,
et al., defendant; Martin Anderson, et al., third-
party defendants, LePatner & Associates, LLP,
third-party defendant-respondent.

(Index No. 4444/12)

Sam P. Israel, P.C., New York, NY (Timothy Savitsky of counsel), for defendants
third-party plaintiffs-appellants.

Housman & Associates, P.C., Tarrytown, NY (Mark Housman of counsel), for third-
party defendant-respondent.

Appeal from an order of the Supreme Court, Suffolk County (Emily Pines, J.), dated
May 27, 2015. The order, insofar as appealed from, granted that branch of the motion of the third-
party defendant LePatner & Associates, LLP, which was pursuant to CPLR 3211(a) to dismiss the
16th cause of action in the third-party complaint.

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

The underlying facts and procedural history of this case can be found in our decisions
and orders in a prior appeal in this action (*see Ehrenkranz v 58 MHR, LLC*, 127 AD3d 918), and two
appeals in a related action (*see Vivir of L I, Inc. v Ehrenkranz*, 145 AD3d 834; *Vivir of L I, Inc. v*
Ekrenkranz, 127 AD3d 962). Here, the third-party plaintiffs alleged in the 16th cause of action in
the third-party complaint that the third-party defendant LePatner & Associates, LLP (hereinafter
LePatner), a law firm, violated Judiciary Law § 487 in connection with its representation of John
Ehrenkranz and Andra Ehrenkranz in this action and the related action. LePatner moved, inter alia,

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pursuant to CPLR 3211(a) to dismiss the 16th cause of action in the third-party complaint based upon documentary evidence and for failure to state a cause of action. The Supreme Court granted that branch of the motion. The third-party plaintiffs appeal.

The Supreme Court properly granted that branch of LePatner's motion which was to dismiss the 16th cause of action in the third-party complaint, although the dismissal should have been pursuant to CPLR 3211(a)(7) and not CPLR 3211(a)(1) (*see Smalls v St. John's Episcopal Hosp.*, 152 AD3d 629). Accepting the facts alleged in the third-party complaint as true, and according the third-party plaintiffs the benefit of every favorable inference (*see Leon v Martinez*, 84 NY2d 83, 88; *Raach v SLSJET Mgt. Corp.*, 134 AD3d 792, 793), the third-party complaint failed to allege facts sufficient to find that LePatner acted "with intent to deceive the court or any party" (Judiciary Law § 487; *see Klein v Rieff*, 135 AD3d 910; *Savitt v Greenberg Traurig, LLP*, 126 AD3d 506; *Fleyshman v Suckle & Schlesinger, PLLC*, 91 AD3d 591, 592-593).

The third-party plaintiffs' remaining contentions are not properly before this Court.

DILLON, J.P., AUSTIN, SGROI and BARROS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court