Taylor v Paskoff & Tamber, LLP
2011 NY Slip Op 30939(U)
March 30, 2011
Supreme Court, New York County
Docket Number: 119108/2006
Judge: Paul Wooten
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[* 1]
SCANNED ON 4/7/2011

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

MARK S. TAYLOR and NINA Z. PARKS-TAYLOR,
Plaintiffs,

Index No.: 119108/2006

seq. # 012

- against -

PASKOFF & TAMBER, LLP, STEPHEN IRA TAMBER, and ADAM PASKOFF,
Defendants.

PASKOFF & TAMBER, LLP, STEPHEN IRA TAMBER, and ADAM PASKOFF,
Third-Party Plaintiffs,

Index No.: 590598/2010

- against -

FILED

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NEW YORK
COUNTY CLERK'S OFFICE

LAURIE B. GOLDHEIM,
Third-Party Defendant.

In the following papers defendants and third party-defendant, inter alia, move, pursuant to CPLR 3211, for an order dismissing the plaintiffs' amended complaint and the third-party-complaint.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits (Memo)	
Replying Affidavits (Reply Memo)	

Cross-Motion: ☐ Yes ■ No

Motion sequences 008, 009, 010, 012, and 013 are hereby consolidated for disposition[1].

This legal malpractice action arises from defendants' Paskoff and Tamber, LLP, Stephen Ira Tamber (Tamber) and Adam Paskoff (Paskoff) (collectively, defendants)'s representation of plaintiffs Mark S. Taylor (Taylor) and Nina Z. Parks-Taylor (Parks-Taylor) in connection with an adoption of a child. Defendants are attorneys in the law firm Paskoff and Tamber, LLP. Defendants, as third-party plaintiffs, proceeded with a third-party action against

[1]Motion sequence 014, plaintiff's motion for summary judgment was stayed pending plaintiff's appointment of new counsel. Plaintiff's counsel was disqualified as counsel on November 17, 2010, while this motion was pending in Trial Support Submissions, Room 130.

third-party defendant, attorney Laurie B. Goldheim (Goldheim), who was the plaintiffs' successor counsel. Plaintiffs filed an amended complaint against defendants, alleging a cause of action for legal malpractice and a cause of action for deceit and violation of Judiciary Law § 487. Motion sequences 008, 009, 010, 012, and 013 are hereby consolidated for disposition.

In motion sequence 008, defendants move, pursuant to CPLR 3211 (a) (1), (5) and (7), for an order dismissing the amended complaint.[2]

In motion sequence 009, plaintiffs move, pursuant to CPLR 1010, for an order severing the third-party action against Goldheim.

In motion sequence 010, defendants move, pursuant to 22 NYCRR 202.21 (e), to vacate the note of issue dated August 6, 2010.

In motion sequence 012, third-party defendant Goldheim moves for an order, pursuant to CPLR 3211 (a) (1) and (7), dismissing the third-party complaint. Alternatively, Goldheim seeks to sever the third-party action from the main action.

In motion sequence 013, Goldheim moves, pursuant to 22 NYCRR 202.21 (e) for an order vacating the plaintiffs' note of issue, or, in the alternative, extending Goldheim's time to move for summary judgment.

BACKGROUND AND FACTUAL ALLEGATIONS

In September 2003, plaintiffs met with defendants with respect to a potential private adoption proceeding between plaintiffs and the birth mother. According to plaintiffs, they informed defendants that the birth mother wanted the child to be adopted as quickly as possible, and that the birth mother did not even want her family knowing about her pregnancy (Defendants' Exhibit B, Amended Complaint, ¶ 9). Apparently, the birth mother did not realize she was pregnant until she was seven months along. She had tried to have an abortion but was told that she was too far along for this procedure. The birth mother told the plaintiffs that

[2]Defendants' original motion also had a request for summary judgment on the amended complaint, pursuant to CPLR 3212. However, plaintiffs state that this request has been formally withdrawn, which defendants do not dispute.

[* 3]

she did "not want to see or hear from the adoptive parents again" (*Id.*, ¶ 16). Plaintiffs claim that defendants represented to them that they could competently handle private placement adoptions (*Id.*, ¶ 10).

On September 23, 2003, plaintiffs signed a retainer agreement by which defendants were to perform legal services "in connection with an adoption matter" (Defendants' Exhibit I). Plaintiffs also contend that, as per defendants' instructions, although it was illegal to "buy" a baby, they could pay for the birth mother's expenses in the two to three months leading up to the birth, which they did (Goldheim's Exhibit G, Letter to Grievance Committee from Plaintiffs, at 1). Plaintiffs also state that defendants advised them that they could complete a home study to become credentialed after the baby was already in their home (*Id.*).

According to plaintiffs, although defendants told them that an attorney for the birth mother was not necessary, plaintiffs insisted on having an attorney represent the birth mother for the adoption proceeding (Amended Complaint, ¶ 13). The attorney, Valery L. Molot (Molot), spoke Russian, as did the birth mother. The birth mother met with Molot on November 6, 2003 and plaintiffs paid for this consultation (Paskoff Affidavit, ¶ 15).

Plaintiffs were given a document entitled "Agreement for Temporary Custody and Adoption of Infant Under Fourteen" for the birth mother and the plaintiffs to sign after the baby's birth. According to plaintiffs, even though they requested defendants' presence for the signing of the adoption papers between the birth mother and the plaintiffs, they were advised by defendants that defendants need not be present.

On November 9, 2003, the birth mother gave birth to the child. At that time, the birth mother represented to plaintiffs that she was unmarried and the birth certificate does not list a father. On November 10, 2003, while still in the hospital, the birth mother claimed that she did not want to use Molot anymore as her lawyer and that she had found another Russian-speaking lawyer, Fred Vitaly (Vitaly), in the phone book. The birth mother gave plaintiffs the wrong phone number for Vitaly, and they were unable to find him.

[* 4]

On November 10, 2003, with consent from the birth mother, and, also relying upon the advice of defendants, plaintiffs took the baby from the hospital to their home. The child then continued to reside with plaintiffs.

That same day, plaintiffs contend that defendants then "frightened them terribly" when they informed plaintiffs that they did "not have custody of the infant in our care, and told us it was our responsibility to sign the document ... or that we could be charged with kidnaping" (Plaintiffs' Letter to the Grievance Committee, at 3).

On November 18, 2003, in front of a notary, the plaintiffs and the birth mother signed the documents that had been prepared by defendants, which included the Agreement for Temporary Custody and Adoption of Infant Under Fourteen (Adoption Agreement) (Defendants' Exhibit 2). Defendants were not present during the signing, nor did they advise plaintiffs to videotape the signing (Amended Complaint, ¶ 21). The Adoption Agreement contained the following provisions, in pertinent part:

> WHEREAS, The said adoptive parents are desirous of adopting, pursuant to the provisions of the State of New York Domestic Relations Law, Sections 109-117, as amended, a minor child born on the 9th day of November, 2003, and agree to treat said child as their own lawful child, and to extend to said child all the benefits, privileges and rights contemplated by said statute; and
> WHEREAS, a proceeding for the adoption of said child is to be commenced in the Family Court of New York ...
> WHEREAS, said [birth mother] approves and consent to said contemplated adoption of said child;
>
> ***
>
> That pending said adoption the [plaintiffs] shall have full and complete custody of said infant child free from the interference and control of the party of the [birth mother].
> The consents contained herein shall become irrevocable upon execution or acknowledgment before a judge or surrogate of the court in which the adoption proceeding is to be commence, but in the event that said consents are not executed or acknowledged before a judge or surrogate of the court in which the adoption proceeding is to be commenced, they shall become irrevocable forty-five (45) days after the commencement of the adoption proceeding unless written notice of revocation thereof shall have been received by the court within said forty-five days (Defendants' Exhibit 2, at 1-2).

Plaintiffs made repeated attempts to contact Vitaly. There was no Vitaly in the court administration records and the number supplied by the birth mother reached a pay phone. After

many attempts to contact the birth mother, plaintiffs finally spoke to the birth mother on December 2, 2003, who assured plaintiffs that she would provide plaintiffs with the correct number for Vitaly. When the birth mother did not call again, plaintiffs then made several attempts from December 2, 2003 to December 9, 2003 to contact the birth mother (*see* Defendants' Exhibit H, Plaintiffs' Notes).

On December 10, 2003, Paskoff, on behalf of defendants, sent plaintiffs a letter stating the following, in pertinent part:

> I apologize, apparently the letter I referenced to you was not sent out as I thought. As we discussed, the Court will require you to be certified as qualified adoptive parents ... I suggest we wait until after I meet with [the birth mother's] attorney so we finalize the petition. I would like to time your certification with the adoption petition. Technically, you should have been certified prior to taking custody, but this was an unusual situation. ***
> I have not yet heard from anyone purporting to be [the birth mother's] attorney. We should concentrate our efforts on drafting the petition based upon information we are awaiting from [the birth mother]

(Defendants' Exhibit 4, at 1-2).

On December 11, 2003, plaintiffs spoke to defendants about getting fingerprints done. Plaintiffs got their fingerprints taken on December 17, 2003. Defendants' records indicate that plaintiffs left defendants a message regarding the adoption on December 24, 2003 (Defendants' Exhibit G).

On December 24, 2003, plaintiffs met with a social worker, who, when informed about the documents the birth mother had signed, advised plaintiffs to seek new counsel (Paskoff Affidavit, ¶ 11). Plaintiffs then voided a check that they had made out to defendants. Plaintiffs claim that they tried to speak to one lawyer who told them that they had "kidnaped a child, were going to jail, and that she would not touch this case with a ten-foot-pole" (Plaintiffs' Letter to Grievance Committee, at 4).

On December 29, 2003, plaintiffs met with Goldheim for the purposes of completing the adoption. That same day, Goldheim sent defendants a letter seeking a consent to change counsel, and also requesting the plaintiffs' file. Goldheim stated that she was officially retained

by plaintiffs on December 30, 2003 (Goldheim Affidavit, ¶ 5).

Goldheim states that she was presented with the Adoption Agreement, which she believed was to "serve as an extra-judicial consent in accordance with the requirements of [Domestic Relations Law] DRL § 115-b" (*Id.*, ¶ 7). Goldheim's initial concern was that plaintiffs had been advised to take physical custody of the child without being certified by the court pursuant to DRL § 115 (b), and also had a potentially problematic extrajudicial consent which could subject the plaintiffs to kidnaping charges (*Id.*, ¶ 8). Goldheim also states that, where physical custody is transferred to parents pursuant to an extrajudicial consent, DRL § 115-c mandates that the parents must either file a petition with the court for adoption or a petition for temporary guardianship within 10 court days of taking physical custody[3] (*Id.*, ¶ 9). At the point that Goldheim met with plaintiffs, almost two months had passed without either option being executed or any court notification that the plaintiffs had the child.

Since the plaintiffs had yet to be certified as qualified adoptive parents, according to Goldheim, she then proceeded to submit both a petition for certification and a petition for temporary guardianship. In her cover letter to the court dated January 21, 2004, Goldheim advised the court that the plaintiffs were counseled by defendants to take the baby without being certified from the hospital after it was born. Goldheim writes, "[Plaintiffs] now understand that they were ill-advised" (Goldheim's Exhibit D, at 2). Goldheim's letter also mentions that the birth mother told plaintiffs that she had met with an attorney about the Adoption Agreement.

Also on January 21, 2004, Goldheim drafted an extrajudicial consent form which complied with DRL § 115-b for execution by the birth mother. Goldheim states that this was to "cure the potential defects" of the document that had been drafted by defendants (Goldheim Affidavit, ¶ 12). Goldheim also had the extrajudicial consent form translated into Russian. This extrajudicial consent form had the required at least 18-point font, and also informed the birth

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[3] As an aside, defendants maintain that, since an extrajudicial consent was never prepared, DRL § 115-c would not apply.

mother, among other things, that she had 45 days to revoke her consent and that she was entitled to counseling and to an attorney. The extrajudicial consent also indicated, in the at least 18-point font, the following:

> IF THE ADOPTIVE PARENTS CONTEST THE REVOCATION, TIMELY NOTICE OF REVOCATION WILL NOT NECESSARILY RESULT IN THE RETURN OF THE CHILD TO THE PARENT, AND THE RIGHT OF THE PARENT TO THE CUSTODY OF THE CHILD WILL NOT BE SUPERIOR TO THOSE OF THE ADOPTIVE PARENTS. A HEARING BEFORE A JUDGE WILL BE REQUIRED ... [caps in original] (Goldheim's Exhibit F, at 5).

On February 4, 2004, the plaintiffs met with the birth mother.[4] During this meeting, however, the birth mother became hostile and threatened to kidnap the child if the plaintiffs did not assist in bringing her three other children to the United States. Plaintiffs stated that the birth mother threatened to kidnap the child three different times and that they "felt very frightened" (Paskoff Affidavit, ¶ 26). Plaintiffs had intended on having the birth mother sign the extrajudicial consent at this meeting, but, as a result of the birth mother's hostility, never did so (Defendants' Exhibit M, at 21).

According to the plaintiffs, the birth mother called them in March 2004 and said "[y]ou do nothing. I give baby, what no citizenship, no children here? I take baby when you not looking. I take baby out of country" (*Id.* at 21).

On June 29, 2004, the plaintiffs were informed by the Family Court that, as a condition to proceeding with the adoption, the plaintiffs needed to file a grievance against defendants with the Appellate Division, First Department.

On November 2, 2004, Goldheim submitted the plaintiffs' petition for adoption for filing. Goldheim states that she had to submit the Adoption Agreement because she had no alternative at this point (Goldheim Affidavit, ¶ 17). Goldheim states that she argued that the Adoption Agreement should serve as a valid extrajudicial consent because the alterative, which would be to seek a judicial consent, would require the birth mother to appear in court and

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[4]This date is sometimes referenced as February 3, 2004.

consent to the adoption. Given the last meeting between the plaintiffs and the birth mother, Goldheim did not see this as a good option.

On April 7, 2005, Goldheim filed an amended petition for adoption which included another allegation that the birth mother abandoned the child. Goldheim maintains that she included this alternative as a way for the adoption to proceed if the temporary custody agreement was not determined to be binding on the birth mother (*Id.*, ¶ 20).

The Family Court found that the Adoption Agreement did not comply with the DRL and directed plaintiffs to serve the birth mother with a notice of adoption. After taking almost a year to locate the birth mother, she was served in April 2006.

In May 2006, the birth mother informed the court that she would be revoking her consent to the adoption, and, in September 2006, a hearing was held. The Family Court (Bednar, J.) issued a decision in January 2007, ruling in favor of the plaintiffs. Judge Bednar determined that the birth mother did indeed intend to give up the child for adoption when she signed the Adoption Agreement, and did understand what she was doing. Judge Bednar did not find the birth mother to be a credible witness and stated, "it strikes me as incredible that [the birth mother] would agree to a temporary arrangement without any discussion as to how long the arrangement would last" (Defendants' Exhibit M, at 25).

Even though the court denied the birth mother's application for custody on the basis of her abandonment of the child, the court held that the consent form used by plaintiffs was not valid. The decision states that the "threshold issue is the validity of the signed consent" (*Id.* at 23). Judge Bednar continues, "[d]espite my rejection of [the birth mother's] testimony regarding the [plaintiffs'] attempt to defraud her, the consent form fails to convey essential information concerning the consequences of signing the document, and must be invalidated" (*Id.* at 27). The court held that the consent form "omitted some basic information required by the statute, thereby frustrating its notice purposes [internal quotation marks and citation omitted]" (*Id.* at 28). The consent form did not have the required at least 18-point font, and did not inform the

birth mother of her right to counseling and an attorney, nor did the form have the notice that, even if the birth mother did contest the adoption within 45 days, a hearing would be held to determine the best interests of the child.

Nonetheless, Judge Bednar denied the birth mother's application for custody on the basis of abandonment. Since the birth mother had abandoned the child for at least six consecutive months, and in this case for 30 months, the birth mother's consent for adoption was not necessary.

The court noted at a footnote in the decision the following:

> The Adoptive Parents were initially represented by Adam Paskoff. They hired Ms. Goldheim after realizing that Mr. Paskoff had drawn up a faulty consent form, and had failed to inform them of the need to be certified as qualified adoptive parents (DRL § 115-d). They filed a complaint with the Appellate Division First Department against Mr. Paskoff, but the Appellate Division took no action (*Id.* at 11).

The court also noted that Parks-Taylor was a credible witness and did not find that plaintiffs offered help with the birth mother's immigration status as consideration for the adoption.

The adoption was finalized on August 2, 2007. The birth mother appealed this decision, and, on May 1, 2008, the Appellate Division, First Department, unanimously affirmed the Supreme Court decision. Although the Court discussed the consent agreement, the Court issued its decision upholding the Supreme Court based on the birth mother's abandonment of the child. The Court concluded, "[i]n sum, the 30 month hiatus in seeking a revocation, the failure to provide support and the best interests of the child, compel the conclusion that respondent is estopped from challenging the surrender agreement" (Defendants' Exhibit N, at 5).

Plaintiffs commenced this action for legal malpractice against defendants on December 27, 2006.

In their first cause of action, plaintiffs allege that defendants did not prepare documents

that complied with Domestic Relations Law, "resulting in a failure to effectively obtain a binding and irrevocable extrajudicial consent from the birth, an extrajudicial consent form which would allow the birth mother 45 days to contest the adoption from the date of signing" (Amended Complaint, ¶ 23). As a result of the defective forms, the 45-day period after which the birth mother's consent would have become irrevocable, never started to accrue.

Plaintiffs claim that by failing to comply with the requirement of DRL § 115-b, the birth mother was able to revoke her consent and the plaintiffs were forced into a "heart-wrenching, costly, and drawn out legal proceeding" (*Id.*, ¶ 28). Plaintiffs also maintain that defendants were required to know the applicable rules for the adoption matter and that the defendants "were negligent in the legal services they undertook to provide the adoptive parents" (*Id.*, ¶¶ 33, 34). Plaintiffs also allege that defendants "departed from good and accepted legal practice in the field of private placement extrajudicial adoptions" when they did not have the documents translated into the birth mother's native language (*Id.*, ¶ 25).

On top of litigation costs for the Supreme Court and Appellate Division proceedings, the plaintiffs also summarize their alleged damages in the following way:

> As a result of the defendants' negligence in failing to timely prepare the necessary consent forms in compliance with Domestic Relations Law 115-b, the adoptive parents have been forced to spend thousands and thousands of dollars in otherwise unnecessary legal fees to complete the adoption, incur thousands upon thousands of dollars in expenses for moves, relocations and security precautions to protect their adopted child from kidnaping by the birth mother and her cohorts; and have endured emotional torture from the uncertainty, interminable legal proceedings and fear of kidnaping or harm to their beloved child (*Id.* at ¶ 37).

In their second cause of action, plaintiffs allege that Tamber and Paskoff engaged in common-law deceit and violated Judiciary Law § 487. Plaintiffs maintain that, on December 10, 2003, defendants informed plaintiffs that defendants would need to speak to the birth mother's attorney. However, by this point, plaintiffs allege, "defendants knew that there was not going to be any additional information coming from the birth mother" (*Id.*, ¶ 54). According to plaintiffs, defendants were attempting to deceive plaintiffs into continuing with the defendants' retention.

In May 2007, defendants answered the amended complaint.

In a decision dated August 29, 2007, Honorable Michael D. Stallman dismissed defendants' fourth, seventh, ninth, tenth, eleventh, thirteenth, fourteenth and fifteenth affirmative defenses (Labbate Affirmation, Exhibit C).

In July 2010, defendants served a third-party complaint on Goldheim for common-law indemnification and contribution. Defendants allege that Goldheim should have known that the Adoption Agreement as prepared by defendants was not intended to be the extrajudicial consent in compliance with DRL § 115-b. Defendants also allege that Goldheim should not have presented this form to the court as an extrajudicial consent and that she failed to obtain an extrajudicial consent form from the birth mother.

The complaint sets forth that plaintiffs are seeking compensatory, punitive and treble damages.

DISCUSSION

I. Dismissal:

In motion sequence 008, defendants move, pursuant to CPLR 3211 (a) (1), (5) and (7), for an order dismissing the complaint. On a motion to dismiss pursuant to CPLR 3211, the facts as alleged in the complaint are accepted as true, the plaintiff is given the benefit of every possible favorable inference, and the court must determine simply whether the facts alleged fit within any cognizable legal theory (*P.T. Bank Central Asia v ABN AMRO Bank N.V.*, 301 AD2d 373, 375 [1st Dept 2003]; *see also Mendelovitz v Cohen*, 37 AD3d 670, 671 [2d Dept 2007]). Under CPLR 3211 (a) (1), a dismissal is appropriate only "if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Leon v Martinez*, 84 NY2d 83, 88 [1994]). "In assessing a motion under CPLR 3211 (a) (7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one [internal quotation marks and citations omitted]" (*Id).*

CPLR 3211 (a) (1):

Defendants move to dismiss the amended complaint on the ground that a defense is founded on documentary evidence. On December 5, 2007, Justice Michael D. Stallman issued an order in which he held that several of defendants' affirmative defenses were dismissed. Specifically, defendants' fourth affirmative defense, which is "that defendants have documentary evidence that constitutes a defense to this action" was held to not "state any defense" and was dismissed (Plaintiffs' Exhibit 4, at 3). Justice Stallman has already dismissed this defense on the merits, and, since it was never reargued, it remains the law of the case. "[The] law of the case is a judicially crafted policy that expresses the practice of courts generally to refuse to reopen what has been decided, [and is] not a limit to their power [internal quotation marks and citations omitted]" (*People v Evans*, 94 NY2d 499, 503 [2000]). The law of the case is also a "concept regulating pre-judgment rulings made by courts of coordinate jurisdiction in a single litigation" (*Id.*).

Accordingly, defendants' motion to dismiss the amended complaint on the ground that a defense is founded upon documentary evidence, is denied.

CPLR 3211 (a) (5):

Defendants move to dismiss the complaint on the ground that the statute of limitations has expired. In the same decision referenced above, the court, when addressing the defendants' affirmative defense, stated the following with respect to the statute of limitations: "whether the continuous representation doctrine defeats the statute of limitations defense raises factual issues that cannot be determined on a motion to dismiss" (Plaintiffs' Exhibit 4, at 4).

Defendants, while acknowledging Justice Stallman's decision, now claim that, as a result of additional discovery, "this is not a factual issue that would preclude a dismissal" (Defendants' Memorandum of Law, at 26). As such, defendants believe they should be granted dismissal of the action pursuant to CPLR 3211 (a) (5).

However, the defendants neither renewed nor reargued Justice Stallman's decision, and

it remains the law of the case. "[T]he law of the case contemplates that the parties had a full and fair opportunity to litigate the initial determination [internal quotation marks and citations omitted]" *(People v Evans*, 94 NY2d at 502). Defendants have withdrawn their summary judgment motion at this time.[5] Therefore the issue of the running of the statute of limitations remains a factual issue to be addressed on a potential motion for summary judgment by either party, and will not be addressed on the motion to dismiss.

CPLR 3211 (a) (7):

Defendants maintain that plaintiffs' cause of action for legal malpractice should be dismissed because the defendants did not commit malpractice and because the plaintiffs cannot prove damages.

Defendants claim that they did not commit malpractice, among other things, because the agreement prepared by them, which was entitled "Agreement for Temporary Custody and Adoption of Infant Under Fourteen," was never supposed to be used as an extrajudicial consent. Defendants claim that they drafted a "temporary custody agreement," at plaintiffs' request, "to allow the infant to reside with plaintiffs until guardianship could be established by the Court" (Paskoff Affidavit, ¶ 16). They continue that they were prevented from obtaining an extrajudicial consent due to lack of cooperation from the birth mother. Defendants claim that the document was never meant to be used as an extrajudicial consent because, among other things, the December 10, 2003 letter informed plaintiffs that they would still need to sign other final documents, and, the cover letter to Goldheim listed the document as a "Temporary Custody Agreement."

Plaintiffs allege that defendants knew that they were planning on adopting the baby permanently and that they expected documents which would allow this adoption to take place. Plaintiffs claim that they were supposed to be given an extrajudicial consent, which would allow

[5]Regardless, the plaintiffs argue that the statute of limitations encompasses up until at least December 29, 2003 and the defendants argue that it ended, at the latest, on December 24, 2003. Even after additional discovery, factual questions remain at this time.

the birth mother 45 days to change her mind. After this 45-day time period, if the consent is not revoked, according to DRL § 115-b (4) (a) (ii), "no proceeding may be maintained by the parent for the return of the custody of the child." The birth mother testified that she knew that she had 45 days to change her mind from the date of the signing on November 18, 2003.

In order to establish a cause of action to recover damages for legal malpractice, a plaintiff must prove three elements: "(1) the negligence of the attorney; (2) that the negligence was the proximate cause of the loss sustained; and (3) proof of actual damages [internal quotation marks and citation omitted]" (*Ulico Casualty Company v Wilson, Elser, Moskowitz, Edelman & Dicker,* 56 AD3d 1, 10 [1st Dept 2008]). Proximate cause is shown if the plaintiff can establish "that 'but for' the attorney's negligence, the plaintiff would have prevailed in the matter in question" (*Tydings v Greenfield, Stein & Senior, LLP*, 43 AD3d 680, 682 [1st Dept 2007], *affd* 11 NY3d 195 [2008]).

Negligence:

Given the testimony and actions of the parties, the court is unpersuaded by defendants' arguments. Any reasonable person reading the agreement would understand that the document was intended as an adoption agreement between the parties, not a temporary arrangement. Letters written after the fact do not negate that the birth mother and the plaintiffs believed that they were signing final documentation for the adoption, with a notary, on November 18, 2003. Moreover, there appears to be no such thing as a "temporary custody agreement" in the DRL, so any mention of this to the successive counsel would be misleading. Additionally, a search of the DRL from 2003 indicates that what Goldheim prepared for plaintiffs complied with the extrajudicial consent forms (*see* DRL § 115-b, Form 2G, 2003).

Defendants were retained specifically to provide legal services with respect to the plaintiffs' potential adoption.

> "[A]n attorney is obligated to know the law relating to the matter for which he/she is representing a client and it is the attorney's duty, if he has not knowledge of the statutes, to inform himself, for, like any artisan, by undertaking the work, he

> represents that he is capable of performing it in a skillful manner [internal quotation marks and citations omitted]"

(Fielding v Kupferman, 65 AD3d 437, 440 [1st Dept 2009]).

Taking plaintiffs' allegations as true, as explained below, plaintiffs have set forth that defendants may have been negligent in that, among other things, they did not prepare the correct documents for plaintiffs' adoption, and that they also gave the plaintiffs incorrect information regarding the adoption.

The consent prepared by defendants, as confirmed by Judge Bednar during the Family Court proceeding, was an invalid form. Among other things, the form did not state in a conspicuous print of an at least 18-point font the correct 45-day consent revocation language including that, even if the birth mother revoked her consent, this would not automatically guarantee that the child would return to her, and the fact that the birth mother had the right to retain legal representation and counseling. Although defendants claim that the Adoption Agreement was not supposed to be used as an extrajudicial consent form, this is belied by the fact that the form used by plaintiffs had some of the 45-day irrevocable consent language and also indicated that this form was to be used as an adoption form, by which the adoptive parents would treat the child as their own and that an adoption proceeding was to be commenced. The form was also not translated into the birth mother's native language, nor were counsel present during the signing.

DRL § 115 (b) also sets forth that the adoptive parents may not take custody of the child until they become certified. Defendants told plaintiffs that they could take the baby home from the hospital without being certified as adoptive parents. Defendants acknowledged this mistake in their December 10, 2003 letter to plaintiffs when they said, "technically, you should be certified prior to taking custody" (Defendants' Exhibit 4, at 1). Moreover, DRL § 115-c states that where an extrajudicial consent has been prepared, the adoptive parents shall either file a petition for adoption or file an application for temporary guardianship within 10 days of taking

physical custody of the child. Almost two months after the plaintiffs had taken the baby home, defendants still had not filed a petition for guardianship or a petition for temporary guardianship.

Proximate Cause:

Plaintiffs have also set forth that, "but for" the defendants' actions, the birth mother would not have been able to challenge the adoption based on signing an invalid consent. As a result of the invalid consent form, in May 2005, plaintiffs were informed by the court that they needed to serve the birth mother with the notice of the adoption. And, nearly three years after the November 18, 2003 signing, the birth mother was able to challenge the adoption. The birth mother challenged the adoption based on both the consent form being invalid pursuant to DRL § 115-b, and fraud and duress.

Damages:

Defendants argue that the plaintiffs cannot proceed with a claim for legal malpractice because they cannot prove that any additional litigation costs were the result of the defendants' actions. Besides alleging that defendants were never retained to prepare an extrajudicial consent, defendants claim that, even if they had prepared an effective extrajudicial consent, the birth mother could always have brought a cause of action for fraud. As such, defendants appear to argue that the birth mother could have always created additional litigation. Defendants also argue that, at any point, the Family Court always reserves the right to determine the best interests of the child, and this could have potentially led to increased litigation through no fault of defendants.

In the context of a legal malpractice action, the Court of Appeals has held that "[a] plaintiff's damages may include litigation expenses incurred in an attempt to avoid, minimize, or reduce the damage caused by the attorney's wrongful conduct [internal quotation marks and citations omitted]" (*Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 443 [2007]). However, at this stage of the pleadings, a plaintiff is not obligated to show that it actually sustained damages (*InKine Pharmaceutical Company v Coleman*, 305 AD2d 151, 152

[1st Dept 2003]). "[It need only plead] allegations from which damages attributable to [defendants' conduct] might be reasonably inferred [internal quotation marks and citations omitted]" (*Id.* at 152).

The court finds defendants' arguments unpersuasive. Regardless of whether the birth mother could have brought an action for fraud or the Family Court could have continued the litigation, the birth mother proceeded with litigation in Supreme Court on the basis of an invalid extrajudicial consent. This litigation continued at the appellate level.

Accordingly, plaintiffs' amended complaint adequately established that they may be able to establish damages in the form of litigation costs as a result of defendants' actions. As such, defendants' motion to dismiss plaintiffs' first cause of action is denied.

Additional Expenses and Emotional Damages:

Plaintiffs contend that they were forced to spend thousands of dollars in expenses for "moves, relocations and safety precautions to protect their adopted child from kidnaping by the birth mother and her cohorts" as a result of defendants' negligence in preparing the necessary consent forms (Amended Complaint, ¶ 37).

Although, at this stage of the pleadings, the plaintiffs do not have to show that they actually sustained damages, the costs listed above cannot be attributable to any of defendants' legal representation. To establish proximate cause, "a plaintiff must show that the defendant's negligence was a substantial cause of the events which produced the injury [internal quotation marks and citations omitted]" (*Maheshwari v City of New York*, 2 NY3d 288, 295 [2004]). An independent, unforeseeable or extraordinary act by an intervening third person is too far removed from the defendants' conduct (*Id.*)

All parties agree that, at the beginning, the relationship between the birth mother and the plaintiffs was amiable. The birth mother could have started to threaten plaintiffs with or without a properly executed extrajudicial consent. As such, the independent acts of the birth mother were not linked to and were too far removed from defendants' conduct. Therefore, the

costs for moving and safety precautions are unsubstantiated, and plaintiffs cannot be awarded damages for these costs.

Emotional Damages:

Plaintiffs have also alleged that they can prove that, as a result of defendants' legal malpractice, they have "endured emotional torture from the uncertainty, interminable legal proceedings and fear of kidnaping or harm to their beloved child" (Defendants' Exhibit B, ¶ 37). Plaintiffs contend that other states have permitted recovery for emotional damages in the context of a legal malpractice action, and so too, should New York.

Justice Stallman has already addressed plaintiffs' contentions, and his denial of plaintiffs' request for emotional damages is the law of the case. Citing to *Kaiser v Van Houten* (12 AD3d 1012 [3d Dept 2004]) in the December 5, 2007 decision, Justice Stallman held, "the law does not permit plaintiffs to recover for emotional distress and pain and suffering allegedly resulting from legal malpractice" (Plaintiffs' Exhibit 4, at 4). Apparently plaintiffs subsequently brought a motion for renewal and reargument. Justice Stallman again denied plaintiffs' requests for emotional damages resulting from the alleged malpractice of defendants. Justice Stallman found plaintiffs' out-of-state cases to be unpersuasive. The court held, "**[p]laintiffs have not met their burden of convincing the Court to depart from well-settled principles of New York law** [emphasis in original]" (*see Taylor v Paskoff & Tamber, LLP,* 29 Misc 3d 1125, 1128, 2010 NY Slip Op 20405, *3 [Sup Ct, NY County 2010]).

Accordingly, any emotional trauma and damages sustained by plaintiffs will not be awarded to plaintiffs due to defendants' alleged legal malpractice.

Punitive and Treble Damages:

In the amended complaint, plaintiffs seek punitive damages against the individual defendants in the amount of one million dollars. Even in the case of gross negligence, punitive damages are only awarded in "singularly rare cases [internal quotation marks and citations omitted]" (*Bothmer v Schooler, Weinstein, Minsky & Lester, P.C.*, 266 AD2d 154, 154 [1st Dept

1999]). To recover punitive damages, a plaintiff must demonstrate by "clear, unequivocal and convincing evidence, egregious and willful conduct that is morally culpable, or is actuated by evil and reprehensible motives [internal quotation marks and citations omitted]" (*Munoz v Puretz*, 301 AD2d 382, 384 [1st Dept 2003]). Since plaintiffs cannot prove that defendants' alleged conduct meets these criteria, punitive damages will not be awarded.

Plaintiffs are seeking treble damages against defendants in their second cause of action. Since this cause of action has been dismissed as a result of this decision, treble damages will not be awarded.

Additional Arguments Made by Defendants

Defendants claim that Goldheim, as successive counsel, had sufficient time to prepare an extrajudicial consent. As such, plaintiffs cannot claim malpractice since Goldheim could have adequately protected their rights. Defendants cite to *Wilk v Lewis & Lewis, P.C.* (75 AD3d 1063 [4th Dept 2010]). The court is unpersuaded by this argument since, as the record indicates, the birth mother was ready to sign the documents on November 18, 2003. When the plaintiffs met with the birth mother in February 2004, well after 45 days from November 18, 2003, the birth mother became hostile. At this point, any signing of additional documents was impossible.

As noted by plaintiffs, the fact that "[p]laintiffs successfully adopted the child," does not preclude plaintiffs from asserting a potentially viable legal malpractice claim (Defendants' Memorandum of Law, at 8). As stated in *Lattimore v Bergman* (224 AD2d 497, 497 [2d Dept 1996]), "[a] settlement and release in an underlying action ... do not preclude a subsequent action for legal malpractice where the settlement was compelled because of the mistakes of former counsel."

Defendants have also alleged that Goldheim was responsible for plaintiffs' damages. However, as mentioned by plaintiffs, for the purposes of the motion to dismiss, the issue of potential third-party culpability is irrelevant. Defendants have addressed this issue in their third-

party action against Goldheim for indemnification and contribution.

The court has considered defendants' other contentions, including defendants' claim that plaintiffs allege no more than an error in judgment, and finds them without merit.

Judiciary Law § 487:

Plaintiffs claim that defendants violated Judiciary Law § 487, and committed common-law deceit, by writing a letter to plaintiffs which allegedly attempted to conceal defendants' negligence and prevent their discharge. Plaintiffs allege that at the time the letter was written, on December 10, 2003, defendants already knew that they would not be able to contact the birth mother's purported attorney. As such, plaintiffs contend that by knowing the letter contained false information, defendants attempted to deceive plaintiffs.

Judiciary Law § 487 (1) states the following, in pertinent part, "an attorney who is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party ... forfeits to the party injured treble damages, to be recovered in a civil action" (*Schindler v Issler and Schrage, P.C.*, 262 AD2d 226, 228 [1st Dept 1999]). The Appellate Division, First Department, has also denied claims for violation of Judiciary Law § 487 when the "alleged deceit did not occur during a pending judicial proceeding in which plaintiff was a party" (*Bankers Trust Company v Cerrato, Sweeney, Cohn, Stahl & Vaccaro,* 187 AD2d 384, 386 [1st Dept 1992]; *see also Singer v Whitman & Ransom*, 83 AD2d 862, 863 [2d Dept 1981] ["section 487 of the Judiciary Law provides for a cause of action against an attorney where the alleged deceit or collusion with the intent to deceive any party, occurred in a pending judicial proceeding"]).

In the present case, the alleged deceit did not occur during a pending judicial proceeding. As such, plaintiffs cannot sustain a cause of action for violation of Judiciary Law § 487, and that part of the second cause of action is dismissed.

Common-Law Deceit:

In their memorandum of law, plaintiffs' counsel claims that defendants attempted to

deceive plaintiffs with the December 10, 2003 letter, and also attempted to deceive plaintiffs by having Paskoff, rather than Tamber, assigned in connection to their adoption. Plaintiffs contend that their first visit was with Tamber, an experienced attorney. However, their subsequent visit was with Paskoff, who, according to plaintiffs, knew "almost nothing about private placement adoptions" (Plaintiffs' Memorandum of Law, at 24).

Regardless, plaintiffs cannot sustain a viable claim for deceit, and defendants' motion to dismiss with respect to the second cause of action is granted. "[T]he mere failure to disclose malpractice does not give rise to a cause of action alleging fraud or deceit separate from the underlying malpractice cause of action [internal quotation marks and citation omitted]." (*Reichenbaum v Cilmi*, 64 AD3d 693, 695 [2d Dept 2009]). Moreover, there is no independent cause of action for "concealment" of malpractice, as plaintiffs allege occurred in their situation (*Zarin v Reid & Priest*, 184 AD2d 385, 387 [1st Dept 1992]). The *Zarin v Reid & Priest* Court continued, in a legal malpractice action, "[t]his cause of action [deceit] merely rehashes the allegations of the malpractice claim and does not allege any independent intentional tort" (*Id.* at 387).

Accordingly, defendants' motion to dismiss the amended complaint is granted with respect to the second cause of action.

Motion Sequence 009 - Plaintiffs' Motion to Sever the Third-Party Action:

In motion sequence 009, plaintiffs move, pursuant to CPLR 1010, for an order severing the third-party action which was commenced against third-party defendant Goldheim.

Plaintiffs contend, among other things, that they will be severely prejudiced by not allowing the severance of the third-party action. According to plaintiffs, all pre-trial discovery has been completed for the main action which was commenced against defendants on December 27, 2006. However, discovery has not yet begun on the third-party action, which

was commenced on July 8, 2010.

CPLR 1010 provides that the court may exercise its discretion in choosing to sever or dismiss a third-party action (*see* CPLR 1010). Since "[d]enial of severance would likely [cause] an inordinate delay of trial of the main action," plaintiffs' motion to sever the third-party action is granted (*Attie v City of New York*, 221 AD2d 274, 274 [1st Dept 1995]).

Motion Sequence 010 - Defendants' Motion to Vacate the Note of Issue:

In motion sequence 010, defendants move, pursuant to 22 NYCRR 202.21 (e), to vacate the note of issue dated August 6, 2010. Defendants allege that outstanding discovery requests remain, including, among other things, depositions of plaintiffs. As such, according to defendants, the note of issue incorrectly informed the court that the case was ready for trial. Defendants maintain that, pursuant to a court order, they reserved their right to depose plaintiffs after the determination of the pending motion to dismiss.

Plaintiffs maintain that, on June 23, 2010, defendants advised the court that plaintiffs had fully complied with all of defendants' outstanding discovery requests. Plaintiffs also state that defendants allegedly defaulted on 75 court-ordered opportunities to depose plaintiffs. Plaintiffs provide each of these dates for the court. Plaintiffs contend that, as a way to intentionally delay the trial, defendants have not undertaken any effort to depose plaintiffs. Moreover, plaintiffs allege that defendants already have the deposition testimony of one of the plaintiffs from the adoption proceeding hearing.

An order dated June 23, 2010 confirms that the defendants reserved the right to take depositions of plaintiffs after the decision on the pending motion to dismiss. As such, as alleged by defendants, "plaintiffs' certificate of readiness incorrectly stated that all pretrial discovery had been completed" (*Spilky v TRW, Inc.*, 225 AD2d 539, 540 [2d Dept 1996], citing to 22 NYCRR 202.21 (e).

Defendants will now be given an opportunity to depose plaintiffs, if they so choose, within a defined time period to be scheduled by conference. Accordingly, defendants' motion to vacate the note of issue dated August 6, 2010 is granted.

Motion Sequence 012 - Goldheim's Motion to Dismiss the Third-Party Complaint:

In motion sequence 012, third-party defendant Goldheim moves for an order, pursuant to CPLR 3211 (a) (1) and (7), dismissing the third-party complaint. Alternatively, Goldheim seeks to sever the third-party action from the main action.

In the third-party action, defendants seek common-law indemnification and contribution against Goldheim for failing to obtain a DRL-compliant extrajudicial consent form from the plaintiffs and the birth mother. Alternatively, defendants allege that Goldheim, although she knew that defendants had not given her an extrajudicial consent form, chose to submit an "Agreement for Temporary Custody and Adoption of Infant Under Fourteen" to the Family Court in support of the adoption. As stated by defendants, "[a]ny alleged damages claimed by Plaintiffs were proximately caused by [Goldheim] deciding on her own to use a document entitled 'Agreement for Temporary Custody and Adoption of Infant Under Fourteen' as an extrajudicial consent pursuant to DRL § 115-b" (Paskoff Affidavit in Opposition, ¶ 6). Defendants also allege that Goldheim's affidavit is "devoid of any 'diligent efforts' to obtain a DRL-compliant extrajudicial consent (*Id.*, ¶ 10).[6] Plaintiffs have not brought any separate claims against Goldheim. Goldheim states that plaintiffs informed her "that they are completely satisfied with my representation, which culminated in the adoption of their beloved child" (Goldheim Affidavit, ¶ 34).

[6]Defendants are not entitled to common-law indemnification or contribution from any alleged deceit or violations of Judiciary Law § 487. Regardless, these claims as against defendants have been dismissed.

Common-Law Indemnification:

The Appellate Division, First Department has explained that "[c]ommon-law indemnification is available to one who has committed no wrong but is held liable to the injured party because of some relationship with the tortfeasor or obligation imposed by law [internal quotation marks and citations omitted]" (*Edge Management Consulting, Inc. v Blank*, 25 AD3d 364, 366 [1st Dept 2006]). Defendants are seeking indemnity against Goldheim for the plaintiffs' legal malpractice claim, which is based on the alleged negligence of defendants. As previously noted, "[a]n action for legal malpractice requires proof of the attorney's negligence, a showing that the negligence was the proximate cause of the injury, and evidence of actual damages [internal quotation marks and citations omitted]" (*Fielding v Kupferman*, 65 AD3d at 439). Since common-law indemnification is premised on "vicarious liability without actual fault," the "party who has itself actually participated to some degree in the wrongdoing cannot receive the benefit of the doctrine [internal quotation marks and citations omitted]" (*Edge Management Consulting, Inc. v Blank*, 25 AD3d at 367).

Accordingly, if defendants are found to have been negligent in their legal representation, they cannot maintain a claim for common-law indemnification against Goldheim. Conversely, as also noted by Goldheim, if the court does not find that defendants committed legal malpractice, the plaintiffs would not have any viable claims for damages from defendants. As such, defendants could not seek any indemnification from Goldheim. Therefore, defendants' claim for common-law indemnification is insufficient as a matter of law and must be dismissed.

Contribution:

"Contribution is generally available as a remedy when two or more tort-feasors share in responsibility for an injury, in violation of duties they respectively owe[] to the injured person [internal quotation marks and citations omitted]" (*Trump Village Section 3, Inc. v New York State*

Housing Finance Authority, 307 AD2d 891, 896 [1st Dept 2003]). However, a claim for contribution may be viable even if the contributor did not owe a duty to the plaintiff, but owed a duty to the defendant (*Id.*) "[T]he breach of duty by the contributing party must have had a part in causing or augmenting the injury for which contribution is sought [internal quotation marks and citations omitted]" (*Id.*)

The record does not support a finding that Goldheim breached a duty to either plaintiffs or to defendants. Goldheim stated that her initial concern after meeting with the plaintiffs was that almost two months had passed in which the plaintiffs had custody of the child, yet had not been certified as qualified adoptive parents. Goldheim then chose to "simultaneously" submit the certification petition, as well as the petition for temporary guardianship, to the Family Court. Goldheim states that she explained to the Family Court about the deficiencies in the "Agreement for Temporary Custody and Adoption of Infant Under Fourteen" and then attempted to use the document provided to her by defendants as an extrajudicial consent. Goldheim states that, "[i]t appeared to me, and discussions with my clients confirmed, that the intent of the document was to serve as an extrajudicial consent in accordance with the requirements of DRL § 115-b" (Goldheim Affidavit, ¶ 7).

In the interim, as a way to cure the potential defects of the document submitted to the court, Goldheim prepared an extrajudicial consent that complied with the requirements of DRL § 115-b, in both English and Russian. However, due to the birth mother's hostility at the subsequent meeting with the plaintiffs, this extrajudicial consent was never signed. As a result, Goldheim states that she was ready to argue, in the petition for adoption, that the document submitted was intended as an extrajudicial consent, or that the birth mother abandoned the child. When the birth mother responded to the petition, the birth mother also alleged, unbeknownst to plaintiffs, that she was legally married at the time. Goldheim then filed an

addendum to the amended petition for adoption to allege that the birth father had also abandoned the child.

As previously mentioned, the Family Court found that the document was not binding on the birth mother and she was able to revoke her consent. However, the court found that her consent was irrelevant since she had effectively abandoned the child.

Although defendants argue that Goldheim should not have submitted the "Agreement for Temporary Custody and Adoption of Infant Under Fourteen" in lieu of an extrajudicial consent, this decision by Goldheim, as well as her further disposition of the adoption proceeding, was based on Goldheim's strategic legal decisions (*see Mars v Dobrish*, 66 AD3d 403, 403 [1st Dept 2009] [holding that defendants were entitled to summary judgment "where plaintiff was unable to establish that the actions complained of were negligent, rather than strategic or the result of an error in judgment"]).

Defendants had the opportunity to have the birth mother sign a statutorily-compliant extrajudicial consent where, after 45 days, the birth mother could not revoke her consent. After learning that the document she signed was invalid, the birth mother chose to revoke her consent, almost three years later. Defendants allege that the birth mother always had the opportunity to try and revoke her consent on the ground of fraud and duress. However, as counsel for Goldheim maintains, this is pure speculation. Moreover, the court found that there was no fraud involved on the part of the plaintiffs and that the birth mother's agenda was misguided and that she tried to gain leverage over the plaintiffs.

The main action does not assert a claim against Goldheim. Moreover, as explained above, no facts have been alleged which support a claim that Goldheim breached a duty to either plaintiffs or to defendants. Although, on a motion to dismiss, the facts as alleged in the complaint are accepted as true, defendants' claim for contribution is legally insufficient as a

matter of law and must be dismissed.

Accordingly, Goldheim's motion to dismiss the third-party complaint is granted.

Motion Sequence 013 - Goldheim's Motion to Vacate the Note of Issue:

In motion sequence 013, Goldheim moves, pursuant to 22 NYCRR 202.21 (e), for an order vacating the plaintiffs' note of issue, or, in the alternative, extending Goldheim's time to move for summary judgment. Goldheim seeks to vacate the note of issue since no discovery has yet been conducted in the third-party action.

The third-party complaint has also been severed and dismissed as a result of this decision. Accordingly, Goldheim's motion to vacate the plaintiffs' note of issue is denied as moot.

CONCLUSION, ORDER AND JUDGMENT

Accordingly, it is,

ORDERED that the motion of Paskoff and Tamber, LLP, Stephen Ira Tamber and Adam Paskoff to dismiss the amended complaint herein is granted with respect to the second cause of action and is denied with respect to the first cause of action; and it is further,

ORDERED that the motion of Mark S. Taylor and Nina Z. Parks-Taylor to sever the third-party action is granted; and it is further,

ORDERED that defendants' motion to vacate the note of issue dated August 6, 2010 is granted and the court shall set a final date for all outstanding discovery requests at a conference; and it is further,

ORDERED that the motion of Laurie B. Goldheim to dismiss the third-party complaint herein is granted and the third-party complaint is hereby severed and dismissed in its entirety, with costs and disbursements to said Laurie B. Goldheim as taxed by the Clerk of the Court upon presentation of an appropriate bill of costs; and it is further,

[* 28]

ORDERED that the motion of Laurie B. Goldheim to vacate the plaintiffs' note of issue dated August 6, 2010 is denied; and it is further,

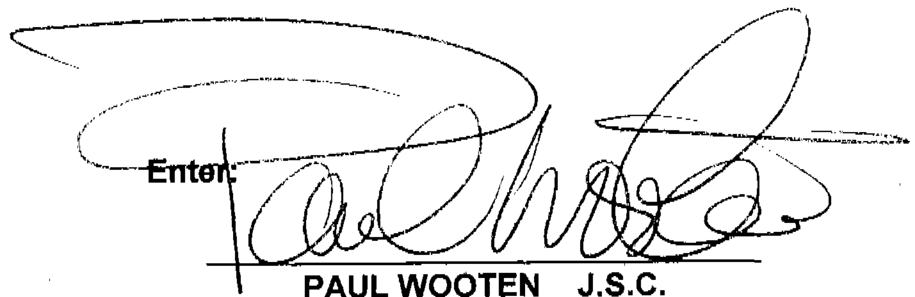
ORDERED that the Clerk is directed to enter judgement accordingly; and it is further,

ORDERED that the remainder of the action shall continue; and it is further,

ORDERED that a conference will be held on May 4, 2011, at Part 7, New York Supreme Court, 60 Centre Street, in Room 341 at 11:00 A.M., New York, New York 10013

This constitutes the Decision and Order of the Court.

Dated: 3-30-11



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PAUL WOOTEN J.S.C.

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