SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JUSTICE SHIRLEY WERNER KORNREICH PART 54
Justice

Index Number : 650709/2012
METCAP SECURITIES LLC
vs.
TROUTMAN SANDERS, LLP
SEQUENCE NUMBER : 002
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 13-15, 29-30
Answering Affidavits — Exhibits _____ No(s). 31
Replying Affidavits _____ No(s). ~~32~~ 36-38

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION AND ORDER.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 2/28/13

SHIRLEY WERNER KORNREICH, J.S.C.
J.S.C.

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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METCAP SECURITIES, LLC, NORTH AMERICAN SENIOR CARE, INC., NASC ACQUISITION CORP., SBEV PROPERTY HOLDINGS LLC, LEONARD GRUNSTEIN and MURRAY FORMAN

Plaintiffs,

Index No. 650709/2012
DECISION & ORDER

-against-

TROUTMAN SANDERS LLP, W. BRINKLEY DICKERSON, JR., LAWRENCE M. LEVINSON and AURORA CASSIRER

Defendants.

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KORNREICH, SHIRLEY WERNER, J.:

This litigation arises out of the 2006 acquisition of non-party Beverly Enterprises Inc. (Beverly), a nursing home operator with a portfolio of around 350 facilities. Plaintiffs MetCap Securities, LLC (MetCap), North American Senior Care, Inc. (North American), NASC Acquisition Corp. (NASC Acquisition), SBEV Property Holdings LLC (SBEV, together with North American and NASC Acquisition, NASC), Leonard Grunstein and Murray Forman allege that defendant Troutman Sanders LLP (Troutman) and the individual attorney defendants mishandled the transaction on their behalf by wrongfully amending the merger agreement and failing to document a partnership interest. Defendants move to dismiss pursuant to CPLR 3211(a). Plaintiffs oppose. For the reasons that follow, the motion is granted and the action dismissed with prejudice.

I. Background

Since this is a motion to dismiss, the following account is based on the allegations in the

amended complaint unless otherwise noted. At the time of the events in question, plaintiff Grunstein was an attorney, first at the now-defunct firm of Jenkens & Gilchrist Parker Chapin, then at Troutman Sanders. In early 2005, Grunstein learned that Beverly was for sale and resolved to attempt to purchase it. He created plaintiff NASC to serve as a shell acquisition vehicle for the intended merger. It possessed no assets. NASC engaged Troutman Sanders to serve as its counsel for the merger, and through a written agreement (the MetCap Agreement) it engaged plaintiff MetCap to serve as its financial advisor for a $20 million fee (the MetCap fee). Plaintiff Forman was the managing director of MetCap. Both he and Grunstein were also indirect owners of MetCap, but Grunstein had no management role in that company.

On August 16, 2005, NASC and Beverly entered into a merger agreement (the NASC–Beverly Merger Agreement). In Section 5.10 of that agreement, NASC represented to Beverly that

> No broker, finder, financial advisor, investment banker or other Person (*other than Wachovia Securities and MetCap Securities LLC, the fees and expenses of which will be paid by Parent*) is entitled to any brokerage, finder's, financial advisor's or other similar fee or commission in connection with the Merger (Adler affirmation, April 26, 2012, exhibit 10, § 5.10 [emphasis supplied]).

In the NASC–Beverly Merger Agreement, "Parent" referred to plaintiff North American (NASC–Beverly Merger Agreement recitals).

At the time of the NASC–Beverly Merger Agreement, NASC did not yet have the funds needed to effect the merger. In an effort to find equity investors for the deal, Grunstein approached Ron Silva, the principal of Fillmore Capital Partners (Fillmore). Silva represented that he would be able to bring in public pension funds as investors to fund the deal. The two

agreed to form a partnership that would share in the profits and losses from the Beverly deal, and Grunstein charged Troutman with making sure a partnership agreement was reduced to writing.

In November 2005, Silva procured a $350 million equity commitment from an institutional investor, but he informed Grunstein that the investor required that Silva be put in control of the deal. Grunstein, nonetheless, instructed Troutman to try to obtain some decision-making authority for him in the written partnership agreement, which had still not been executed. In any case, it was decided that certain affiliates of Silva's company, Fillmore, known as Pearl Senior Care, Inc., PSC Sub Inc. and Geary Property Holdings, LLC (collectively Pearl) would replace NASC as purchaser under the NASC–Beverly Merger Agreement. Although this substitution allegedly was made to distinguish the purchasers from entities with similar names which had suffered adverse publicity, Pearl was not represented by Troutman, but rather by Silva's counsel at Dechert.

To effect the substitution, an amendment to the NASC–Beverly Merger Agreement was prepared (the Amendment), to be executed by NASC, Pearl and Beverly. The Amendment assigned NASC's interests under the NASC–Beverly Merger Agreement to the Pearl entities, thereby creating an amended merger agreement (the Pearl–Beverly Merger Agreement). The principals of NASC (Grunstein and Mark Goldsmith, another Troutman partner) executed signature pages for the Amendment and left them with Troutman to be held in escrow, not to be released until so authorized by the signatories. On November 20, NASC and Beverly approved a draft of the Amendment, and NASC authorized the release of its principals' signatures for that draft.

Then, in the early hours of November 21, defendant Dickerson, a Troutman partner, circulated an email containing a new draft of the Amendment. As noted above, in Section 5.10 of

the NASC–Beverly Merger Agreement, NASC represented that no broker or advisor was entitled to any fee arising out the Beverly acquisition, with a parenthetical noting Wachovia Securities and MetCap as exceptions. In his new draft Dickerson proposed language that would remove the parenthetical exception in the new Pearl–Beverly Merger Agreement, so that Pearl, now the "Parent" under the merger agreement, would simply represent that no broker was entitled to any fee arising out of the deal, without exception. Dickerson made this change after Joseph Heil, the Dechert attorney representing Pearl, asked that it be removed, stating that "we don't want to screw anybody, but we want to be able to negotiate fair deals with them."

Grunstein was included on this email, sent at 12:59 AM. Grunstein alleges that it was known throughout Troutman that he did not personally check and read his emails, and he did not read this one. Without Grunstein having approved of or having knowledge of the parenthetical's removal, the NASC signatures were appended to this new draft of the Amendment, thereby creating the Pearl–Beverly Merger Agreement and removing NASC as a party to the merger. It is not alleged that there was any proposal, suggestion or request to assign the MetCap Agreement to Pearl or to substitute Pearl for NASC as a party to the MetCap Agreement, and no document effecting such a substitution was drafted or executed.

In February 2006, Grunstein learned that Pearl was disclaiming responsibility to pay an advisory fee to Wachovia Securities, the other entity besides MetCap entitled to such under the original Section 5.10. Pearl's position was based on the Amendment.

Grunstein asked Dickerson why he had allowed the deletion. Dickerson did not relay Heil's statement that the deletion would allow "fair deals" to be negotiated. Rather, he stated that Heil had requested the deletion as the parenthetical was superfluous and Pearl's obligation to pay

the MetCap fee was included in other documents. Dickerson told Grunstein that he agreed that Pearl's assumption of the MetCap fee obligation was "covered elsewhere." Defendants Levinson and Cassirer, also Troutman partners, told Grunstein that they agreed with this opinion. In fact, no document expressing this obligation existed.

Meantime, Grunstein's partnership agreement with Silva had not yet been reduced to writing. On March 6, 2006, MetCap wrote a letter to Pearl demanding that its fee be paid. Pearl refused to pay. In a separate letter to Silva on the same date, Grunstein complained that "you have thus far avoided fully documenting the [partnership] deal" and demanded that such a document be executed immediately. It is not alleged that Silva then agreed to do so. However, it is claimed that "thereafter" Grunstein discussed the matter of the partnership agreement with Dickerson and Cassirer. They advised him that "he was a fifty percent partner" in the Beverly deal, that his interest would be "taken care of" and would be documented, and that Dickerson would attempt to obtain some decision-making authority for Grunstein. They further recommended that he not try to stop the closing of the Beverly deal by seeking an injunction. The Beverly transaction closed on March 14, 2006, without Grunstein's partnership interest in the deal having been reduced to writing.

MetCap and NASC sued Pearl in Delaware to recover the MetCap fee. Troutman did not represent MetCap and NASC in that litigation, although it cooperated with the disclosure process. Grunstein and others also commenced suit in Delaware against Silva on the issue of his partnership interest. Troutman did not represent the plaintiffs in that case, although, again, it cooperated with disclosure requests. In 2009, the Delaware Chancery Court granted summary judgment against MetCap and NASC, dismissing their claims against Pearl (*MetCap Secs. LLC v*

Pearl Senior Care, Inc., 2009 WL 513756 [Del Ch 2009] [hereinafter *MetCap II*] *aff'd* 2009 WL 2470336 [Del 2009]). Grunstein's suit against Silva is still pending.

On March 8, 2012, nearly six years after the Beverly closing, plaintiffs commenced this action against Troutman and the individual defendants by filing a summons with notice. A complaint was entered on April 6, and then amended on May 14, 2012. The amended complaint charges Troutman with breach of contract, fraud, constructive fraud and legal malpractice based on its approval of the deletion of the parenthetical and its failure to document Grunstein's partnership with Silva prior to closing. Regarding the deletion, plaintiffs claim that the release of NASC's signature pages to a version of the Amendment that had not been approved by the principals was a breach of the escrow agreement allegedly governing the treatment of the signature pages. Plaintiffs claim that by failing to inform them of Pearl's motives in requesting the parenthetical's deletion and by advising Grunstein that Pearl was obligated to pay the MetCap fee, defendants induced plaintiffs to refrain from taking steps to protect its interests, such as suing Pearl or Beverly or negotiating a settlement with them prior to closing.

Regarding the partnership interest, Grunstein alleges that the failure to document his interest constituted breach of contract, that the representations that efforts were being made to that end constituted fraud and constructive fraud, and that the advice that he had an enforceable claim to a partnership interest and should not seek to enjoin the Beverly closing constituted legal malpractice. Grunstein claims that defendants' misconduct has caused him unspecified damages, and that had Troutman not advised him to refrain from seeking an injunction, he would have been able to "conclusively establish" his partnership interest in the Beverly deal prior to closing.

II. Standard

On a motion to dismiss the court must accept as true the facts alleged in the complaint as well as all reasonable inferences that may be gleaned from those facts (*Amaro v Gani Realty* Corp., 60 NY3d 491 [2009]; *Skillgames, L.L.C. v Brody*, 1 AD3d 247, 250 [1st Dept 2003] [citing *McGill v Parker*, 179 AD2d 98, 105 (1992)]; *Mazzai v Kyriacou*, 98 AD3d 1088, 1090 (2d Dept 2012); *see also Cron v Harago Fabrics*, 91 NY2d 362, 366 [1998]). The court is not permitted to assess the merits of the complaint or any of its factual allegations, but may only determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action (*Skillgames*, *id.* [citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977)]). "However, factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration." (*Skillgames*, 1 AD3d at 250 [citing *Caniglia v Chicago Tribune-New York News Syndicate*, 204 AD2d 233 (1st Dept 1994)].

III. Discussion

A. Statutes of Limitation

Defendants' main argument is that the complaint is time-barred. A legal malpractice claim must be brought within three years of the date of accrual, while claims for breach of contract, fraud or constructive fraud must be brought within six years of such date (CPLR 213 [2] & [8]; *id.* at 214 [6]). The deletion of the parenthetical from the merger agreement and the release of the signature page from escrow thereafter, is alleged as a breach of the escrow agreement, separate from legal malpractice. The cause of action accrued on November 21, 2005, when the signature page allegedly was wrongfully appended to the unapproved draft of the Amendment. Since the summons here was filed on March 8, 2012, this cause of action is time-barred. To the extent that

plaintiffs have claims arising out of defendants' failure to inform Grunstein of the deletion in accordance with the rather particular protocol allegedly in place for communicating with Grunstein via email, those claims also accrued on November 21, 2005, when that protocol was not followed. As Grunstein discovered the Amendment in February 2006, claims for fraud arising out of this alleged concealment are also time-barred, under either prong of CPLR 213 (8).

However, it is unclear from the complaint when defendants are alleged to have made their various misrepresentations concerning the Amendment and plaintiffs' rights to the MetCap fee and partnership interest. It is possible to read the complaint as saying that some or all of those statements were first made on or after March 8, 2006, in which case an action for fraud could be timely. However, fraud must be pled with particularity -- a requirement that, at the very least, would require the date of these alleged statements. Moreover, any legal malpractice claim arising out of such conversations would be long barred (*McCoy v Feinman*, 99 NY2d 295, 301 [2002]).

Plaintiffs argue that defendants' cooperation with their counsel of record in the Delaware action tolled the limitations period under the continuous representation doctrine. This argument cannot stand (*see Hirsch v Fink*, 89 AD3d 430, 431 [1st Dept 2011] [retention of new counsel indicative of end of prior counsel's representation on matter]; *Rupolo v Fish*, 87 AD3d 684, 685 [2d Dept 2011] *citing Tal-Spons Corp. v Nurnberg*, 213 AD2d 395, 396 [2d Dept 1995] [prior counsel's provision of information to new counsel does not continue representation]; *see Estate of Merk v Rubenstein*, 18 AD3d 332 [1st Dept 2005] [requiring "clear indicia of an ongoing, continuous, developing and dependent relationship between the client and the attorney"]). Indeed, were it otherwise, counsel would be incentivized not to cooperate with subsequent counsel, undermining discovery and the attorney–client relationship.

It follows that all claims for fraud or breach of contract relating to the defendants' failure to produce a written partnership agreement are also time-barred, as they are merely duplicative of the legal malpractice claim. According to the complaint, Grunstein retained Troutman to draft a partnership agreement. Troutman did not do so and allegedly told Grunstein that it was working on the matter.

"In applying a Statute of Limitations, we look for the reality, and essence of the action and not its mere name" (*Iandoli v Asiatic Petroleum Corp.*, 57 AD2d 815 [1st Dept 1977] [citations omitted]). Plaintiffs cannot avoid the three-year statute of limitations for legal malpractice by styling Troutman's failure to draft the document as a breach of contract, as its duty to draft the document arose out of its duties as an attorney. *See Conklin v Owen*, 72 AD3d 1006, 1007 (2d Dept 2010) (where breach of contract arises from same facts as legal malpractice, breach of contract action dismissed as duplicative). The breach of contract is a legal malpractice action and is time-barred. Similarly, plaintiffs' allegedly false statements that it was pursuing the matter was merely concealment of the underlying malpractice and does not give rise to a separate action for fraud (*Mitschele v Schultz*, 36 AD3d 249, 254 [1st Dept 2006] *discussing LaBrake v Enzien*, 167 AD2d 709, 711 [3d Dept 1990]).

B. Deletion of the Parenthetical

At best, then, the only claims that are not time-barred are claims based on the allegation that defendants told plaintiffs that Pearl's obligation to pay the MetCap fee was "covered elsewhere." However, even setting aside the limitations issues, none of plaintiffs' allegations, whether related to the MetCap fee or the partnership interest, give rise to a cause of action.

It must first be noted, more as a matter of housekeeping than anything else, that the only

persons with standing to assert a claim arising from the loss of the MetCap fee are the parties to the MetCap Agreement, NASC and MetCap. Grunstein and Forman lack standing to sue absent a claim that they directly sustained an injury independent of the one allegedly inflicted upon the Delaware entities in which they held interests (*Kramer v W. Pac. Indus., Inc.*, 546 A2d 348 [Del. 1988]). As it is not otherwise alleged that either one had any personal interest in the MetCap fee, their inclusion as plaintiffs in this regard is improper, confusing, and close to frivolous.

MetCap has not directly claimed that Troutman's wrongful deletion of the parenthetical caused it to lose its fee. This is understandable as such a claim would be untenable. For one thing, MetCap was not represented by Troutman Sanders. In addition, Chancery Court has already held that the parenthetical in the original Section 5.10 of the NASC–Beverly Merger Agreement conferred no right upon MetCap and could be deleted without its consent (*MetCap Secs. LLC v Pearl Senior Care, Inc.*, 2007 WL 1498989 at *7–*8 [Del Ch 2007] [hereinafter *MetCap I*]). Hence, MetCap is precluded as a matter of collateral estoppel from arguing that it was harmed by the parenthetical's deletion. Instead, it is NASC, the party obligated to pay MetCap under the MetCap Agreement, which claims that it was harmed by the parenthetical's deletion. NASC maintains that Troutman, its lawyer, harmed it by deleting the parenthetical, thereby preventing the assignment of its liability to Pearl.

At best, this only states a claim for nominal damages. NASC is an entity without assets and is judgment-proof. Plaintiffs have not alleged that NASC has suffered or will suffer any actual damages through its continuing liability to MetCap. As of this date, MetCap has not sued NASC for the fee, and the limitations period for such a suit, assuming it accrued on the date of the

Beverly closing, has run (CPLR 213 [2]). In any case, wrongfully causing a judgment-proof party to incur liability cannot result in damages in the amount of the liability (*Galambos v Hershkowitz*, 155 NYS 346 [App. Term. 1st Dept 1915]).

More fundamentally, while Chancery Court never reached the question of how the removal of the parenthetical affected NASC's rights,[1] its reasoning under Delaware law, the operative law of the Merger Agreement, leads to the conclusion that even if the Amendment had *not* deleted the parenthetical, NASC's obligations to MetCap would not have been assigned to Pearl. For such a claim to succeed, the court would have to find that while Section 5.10 of the *NASC*–Beverly Merger Agreement did not make *MetCap* a third-party beneficiary, preserving the parenthetical in Section 5.10 of the *Pearl*–Beverly Merger Agreement would have made *NASC* a third-party beneficiary, giving it an enforceable claim that Pearl had assumed NASC's obligations under (the entirely separate) MetCap Agreement. However, as the Chancery Court explained, for a person to have enforceable rights under a contract to which it was not a party, it must demonstrate that both parties to the contract intended such benefit (*MetCap I* at *7). Chancery Court found MetCap could not do so, as the original parenthetical merely reported to Beverly that NASC was liable under a pre-existing obligation. In that case, even though that representation was true (per the MetCap Agreement), it did not vest MetCap with any rights. It follows that had Pearl assumed the

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[1]Plaintiffs, in their complaint and brief and at oral argument, consistently misrepresent the holding of the Chancery Court. Chancery Court never explicitly considered the question of whether NASC was harmed by the deletion of the parenthetical. It ultimately dismissed MetCap's claim for unjust enrichment not because MetCap had an adequate remedy at law against NASC (*MetCap II* at *6), but because whatever benefits which accrued to Pearl through MetCap's efforts were conferred officiously (*id.* at *10).

merger agreement with the parenthetical intact, it, too, would merely have been reporting to Beverly that it had a pre-existing obligation to MetCap. But even in such a scenario, the MetCap Agreement would have remained "the sole agreement defining . . . the party responsible for paying [MetCap] for [its] services" (*id.*). In the absence of an actual assignment of that agreement, the representation in Section 5.10 would not have been transformed into an assumption of liability upon which a non-party to the Pearl–Beverly Merger Agreement could legally rely. Rather, it would simply become false.

C. Troutman's Alleged Misconduct Following the Amendment

As described before, plaintiffs posit additional theories of liability based on defendants' actions subsequent to the execution of the Amendment, essentially alleging that Troutman misrepresented their legal situation, thereby depriving them of the opportunity to take "steps" that could have safeguarded their interests, such as negotiating a settlement (amended complaint ¶ 74), bringing "legal action" (*id.* at ¶ 145) or seeking an injunction (*id.* at ¶ 194).

These claims also fail. For a client to prevail on a legal malpractice claim, the client must show that "'but for' the attorney's conduct the client would have prevailed in the underlying matter or would not have sustained any ascertainable damages" (*Weil, Gotshal & Manges LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267 [1st Dept 2004]). It is worth stressing that *after* the Amendment, plaintiffs' consent was not formally needed for the Beverly merger to proceed, and there were no unilateral steps plaintiffs could have taken to block the transaction or secure their interests. At that point, plaintiffs, having exited the deal, possessed nothing with

which to bargain. If the MetCap fee was to be paid or a partnership agreement was to be reached, it would be solely because Pearl and Silva wanted those things to happen.[2] To assume payment or agreement is speculative.

It is evident from the complaint that neither Pearl nor Silva had any interest in cooperating and that plaintiffs were fully aware of this fact (amended complaint ¶¶ 64, 72, 91). Therefore, any false promises or representations that Troutman might have made are completely besides the point, for even if Troutman had been fully dedicated to getting the MetCap fee paid and the partnership agreement signed, or forthright about its progress or lack thereof, neither goal could have been reached without the participation of Pearl and Silva, which they resolutely refused to provide. As a result, plaintiffs cannot claim that but for defendants' alleged misconduct they would have received the fee and the agreement.

The harm that plaintiffs *do* allege is too speculative to sustain their complaint (*Brooks v Lewin*, 21 AD3d 731, 734–35 [1st Dept 2005]; *Sherwood Group, Inc. v Dornbush, Mensch, Mandelstam & Silverman*, 191 AD2d 292 [1st Dept 1993]). Plaintiffs assert that had they known that Pearl was not obligated to pay the MetCap fee, they would have negotiated a settlement with

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[2] The following excerpt from oral argument is illuminating:

> THE COURT: Shouldn't your client . . . have worried more about changing the [MetCap] agreement and assigning the [MetCap] agreement than putting in this paragraph in the – in this agreement?
>
> MR. SKULNIK: He would have – somebody would have had to ask the Pearl parties to sign an assignment of the MetCap letter agreement (transcript 24:4–11).

Pearl prior to closing. They do not explain how they know that Pearl would have been amenable to such a settlement, or for that matter, if such a settlement was viable, why it could not have been reached *after* the Beverly closing (or, for that matter, today). To the extent that MetCap and NASC blame Troutman for their choice to litigate these claims in Delaware for nearly three years rather than settle, the Court again notes that they were represented and advised by counsel other than Troutman over the course of that litigation.[3] Any assertion that plaintiffs were harmed by having lost the opportunity to seek an injunction is pure speculation (*Brooks*, 21 AD3d at 734–35). Moreover, insofar as the claim for foregone legal action relates to the MetCap fee, it is belied by the fact that the Chancery Court has found against MetCap and NASC on their claims for the fee, making the idea that they could have successfully sought injunctive relief highly suspect. Similarly, plaintiffs' admission that should Grunstein prevail in the pending Delaware litigation his malpractice claim would become moot (plaintiffs' brief 29 n. 19) undercuts the idea that a court hearing a motion for an injunction would have been justified in finding that the closing posed an imminent threat of irreparable harm. It would appear, then, that plaintiffs are actually seeking compensation for having lost the opportunity to wring concessions from Pearl and Silva through nuisance litigation. This is not an actionable harm.

E. Conclusion

In the interests of brevity, having found that dismissal of most of the claims is warranted

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[3] Having seen how plaintiffs have developed the Chancery Court's remarks about NASC's potential "chose in action" against Troutman (*MetCap II* at *6) into the current lawsuit, the Court hastens to add that it is not encouraging plaintiffs to sue Heller, Horowitz & Feit, P.C. or its individual members.

twice over, the Court does not here address the numerous other issues raised by defendants, such as whether the requisite pleading standard for fraudulent intent has been met, whether the complaint shows the existence of the necessary relationship between plaintiffs and defendants, or whether Grunstein, a sophisticated transactional lawyer, could plausibly assert that he justifiably relied on Troutman's representations. As far as the Court can discern, plaintiffs' story is that in late 2005, they handed over a business opportunity to a party who then refused to share any of the benefits of that opportunity with them. Plaintiffs do not claim that it was defendants' task to ensure that their interests were protected prior to this transfer, and in any case, any cause of action arising out of such transfer is time-barred. Claims arising out of defendants' acts or omissions *after* such transfer also fail since plaintiffs had no rights in the transaction that would have allowed them to protect their interests. These defects cannot be remedied by further amendment. Accordingly it is

ORDERED that the motion to dismiss by defendants Troutman Sanders LLP, W. Brinkley Dickerson, Jr., Lawrence M. Levinson and Aurora Cassirer against plaintiffs MetCap Securities, LLC, North American Senior Care, Inc., NASC Acquisition Corp., SBEV Property Holdings LLC, Leonard Grunstein and Murray Forman is granted, the complaint is dismissed in its entirety against said defendants with prejudice, and the Clerk is directed to enter judgment accordingly.

Dated: February 28, 2013

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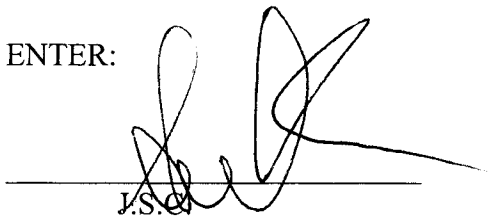

J.S.C.