

Cassini v Putney Twombly Hall & Hirson, LLP

2013 NY Slip Op 34108(U)

June 17, 2013

Supreme Court, Nassau County

Docket Number: 601731-12

Judge: Jerome C. Murphy

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**SUPREME COURT : STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT:

**HON. JEROME C. MURPHY,
Justice.**

**MARIANNE NESTOR CASSINI, individually
and as Executor of the Estate of OLEG CASSINI,**

Plaintiff,

- against -

**PUTNEY TWOMBLY HALL & HIRSON, LLP,
WILLIAM M. POLLAK, PHILIP H. KALBAN,
NACHSHIN & WESTON, LLP, ROBERT
NACHSHIN and GOLDIE SCHON,**

Defendants.

TRIAL/IAS PART 24

Index No.: 601731-12

Motion Date: 4/22/13

Sequence No.: 001

MG

DECISION AND ORDER

The following papers were read on this motion:

Notice of Motion, Affirmation, Memorandum of Law and Exhibits....	1
Memorandum of Law in Opposition.....	2
Reply Affirmation, Reply Memorandum of Law and Exhibits.....	3

PRELIMINARY STATEMENT

Defendants, Putney Twombly Hall & Hirson, LLP, William M. Pollak and Philip H. Kalban (collectively the "Putney defendants") bring this application for an order, pursuant to CPLR §3211(a)(1)&(7), dismissing plaintiff's complaint as against the moving defendants. Plaintiff opposes this application.

BACKGROUND

This is a legal malpractice action brought by the widow of Oleg Cassini, emanating from the handling of the Estate of Oleg Cassini in Nassau County Surrogate's Court. Mr. Cassini died on March 17, 2006, a domiciliary of Nassau County.

Putney Twombly Hall & Hirson, LLP, William M. Pollak, and Philip H. Kalban ("The Putney Defendants") submitted Mr. Cassini's will for probate (Exh. "E"). Mr. Cassini had two daughters by his former wife, actress Gene E. Tierney, and one of them, Christina, a resident of France, filed a claim against the estate (Exh. "G"). The claim was that the will failed to comply

with the 1953 California Judgment of Divorce and a Property Settlement Agreement claimed to have been incorporated in the Judgment through an Interlocutory Judgment of Divorce. Christina asserted that those documents required decedent to leave 50% of his net estate to her and her sibling, Daria, and that therefore, she was entitled to 25% of the net estate.

Plaintiff moved to dismiss Christina's claim. The Surrogate converted that motion to one for summary judgment, at which time Christina cross-moved for summary judgment on liability. The Surrogate issued a Decision and Order in favor of Christina on the issue of liability only, holding that the Property Settlement Agreement was merged in the California Judgment, and was enforceable in New York. By prior decision, the Surrogate rejected papers submitted by the Putney defendants in opposition to the cross-motion as being untimely, but the Court stated that the information contained in those papers had no bearing on Christina's claim.

The rejected papers argued that lifetime gifts by decedent made to Christina, and a series of letters between them, constituted "payment" and/or satisfaction of any obligation he had to the California Judgment and Property Settlement Agreement. The Putney defendants moved to reargue both the Decision and Order, and the prior decision of the Surrogate, and also filed a Notice of Appeal from both decisions. As a result of a dispute with their client, the Surrogate granted the Putney defendants' motion to be relieved as counsel.

Plaintiff thereafter retained the law firm of Sedgwick, Detert, Moran & Arnold, LLP ("Sedgwick"). They served a separate motion for leave to renew plaintiff's motion for summary judgment and the rejection of the opposition to Christina's cross motion for summary judgment. Sedgwick argued in their motion and reply that Christina's claim was barred by a 10 year statute of limitations under California law. The Surrogate granted the motion to reargue but upon reargument, adhered to his original ruling in favor of Christina.

Sedgwick appealed the Decision and Order, as well as the original Order which it reargued, arguing that, in addition to the 10 year limitation under California law, Christina's claim was also barred by a 1 year limitation under California law, in that she failed to serve a claim against the estate within one year of Oleg's death. The Second Department, by decision dated May 30, 2012, affirmed the Surrogate's ruling in favor of Christina, holding that the Property Settlement Agreement merged with the Judgment of Divorce, and was enforceable in New York. It further commented that Sedgwick's further contentions, including the statute of limitations defenses, were either "not properly before the court" or were "without merit."

The Complaint

Plaintiff asserts four Counts, or Causes of Action as follows:

Count I:

“Legal Malpractice” against William M. Pollak and Philip H. Kalban, both of the law firm of Putney, Twombly, Hall & Hirson LLP, based on their alleged failure to timely raise and preserve the statute of limitations defenses under California law and failure to preserve the defense of “payment” in the underlying Surrogate Court litigation;

Count II:

“Joint and Several Liability for Legal Malpractice” against the law firm of Putney, Twombly, Hall & Hirson LLP based on the alleged negligence of their attorneys;

Count III:

“Legal Malpractice” against California attorneys Robert Nachshin and Goldie Schon for failure to advise that the statute of limitations defenses could and/or should have been raised in the underlying Surrogate Court litigation; and

Count IV:

“Joint and Several Liability for Legal Malpractice” against the California law firm of Nachshin & Weston LLP on the basis of the alleged negligent acts of their attorneys.

Putney Defendants’ Contentions and Basis for Requested Relief

These moving defendants contend that they are entitled to dismissal of the complaint for failure to state a cause of action under CPLR § 3211 (a)(1) and (7) for a multiple of reasons:

- I. To the extent plaintiff’s causes of action set forth in Counts I and II are based upon the alleged failure of the Putney defendants to timely raise and preserve the statutes of limitations under California law in the underlying litigation, they must be dismissed because plaintiff is unable to meet her burden to set forth specific factual allegations that she would have achieved a more favorable result in the underlying Surrogate’s Court proceeding “but for” the alleged acts of negligence by the Putney defendants.
 1. The statute of limitations under California law is not applicable. The statute of limitations under New York or French law are applicable, and the underlying litigation was timely commenced within the time allotted in those statutes;
 2. Even if the California statute of limitations is applicable, the underlying action was commenced under the rules of New York as Christina’s claim is based on a judgment rendered by a court of

competent jurisdiction, such that the claim did not have to be presented in a written form; and/or because

3. Even if the California statute of limitations is applicable and its one year statute does bar the underlying litigation, the Putney defendants are not responsible for the acts of plaintiff's successor counsel, who could have, but did not, timely raise and/or preserve the defense by omitting it in the motion papers to the Surrogate prior to appeal.

II. To the extent plaintiff's cause of action, Count I and Count II, are based on the alleged failure of the Putney defendants to preserve the defense of "payment," they must be dismissed because plaintiff is unable to meet her burden of setting forth specific factual allegations showing that she would have achieved a more favorable result in the underlying Surrogate Court litigation "but for" these alleged acts of negligence on the part of the Putney defendants because:

- 1. The terms of the Property Settlement Agreement are clear and unambiguous, and it does not provide an offset for lifetime gifts;
- 2. There is no express written relinquishment of rights under the Agreement in consideration of these gifts; and/or because
- 3. The "evidence" submitted to support the "payment" defense was not authenticated and, in any event, was disregarded by the Surrogate's Court as having no bearing on the claim.

III. Plaintiff's cause of action, Count I and Count II, are fatally deficient and must be dismissed. Plaintiff cannot meet her additional burden of showing that she sustained any "actual damages" as she submitted documents in the underlying litigation to support her position that the majority of the assets of Oleg's estate were in corporate entities or stock holdings owned by Marianne, and she alleges that the additional assets of the estate may also be owned by her, such that Marianne cannot show that any monies will be paid out to the estate to satisfy Christina's claim.

Plaintiff's Response

Plaintiff has responded to the Putney defendants' motion in the form of a Memorandum of Law, in which they assert the following:

Point I

This Court should defer consideration of Putney defendants' motion pending a determination by the Court of Appeals which either fully adjudicates the issue or denies the motion for leave to appeal.

Point II

The scope of review in a Rule 3211 motion is narrowly circumscribed. The sole criterion is whether a cause of action can be discerned within the four corners of the pleading.

CPLR § 3211(a)(1)

The propounded documentary evidence must conclusively establish a defense to the asserted claims as a matter of law. Plaintiff claims that none of the documentary evidence submitted by the Putney defendants is of such a nature as to constitute documentary evidence within the meaning of the statute.

CPLR § 3211(a)(7)

Under this statute, the Court must determine whether, after accepting as true the averments of the complaint, the proponent of the pleading can succeed upon any reasonable view of the facts alleged in the complaint. Plaintiff asserts that she has asserted cognizable claims for legal malpractice against the Putney defendants, and that this is particularly true under the liberal pleading standards for ascertaining a cognizable legal theory.

Point III

Plaintiff's complaint sets forth a cognizable cause of action as to the failure of the Putney defendants to plead and preserve the defense that, under California law, the enforcement of the Judgment was time-barred.

California's Statute of Limitations Applies to Claim to Enforce a California Judgment

Plaintiff alleges that, under the Full Faith and Credit Clause, a foreign judgment is entitled only to the same validity and effect that the judgment would have in its state of rendition. Where a foreign judgment would be unenforceable under the law of California, it is not enforceable in New York.

Plaintiff's Complaint states a cognizable cause of action for negligence against the Putney defendants for legal malpractice as a result of their failure to raise the one-year statute of limitations of California Civil Procedure Code § 366.3

The California statute requires that any action "that arises from a promise or agreement with a decedent to distribution from an estate or trust" is to be "commenced within one year after the date of death, and the limitations period that would have been applicable does not apply" (Cal. Civ. Pro. Code § 366.3). The action would

therefore be barred under California law, and could not have been pursued in New York, except for the failure of the Putney defendants to raise the statute of limitations as an affirmative defense.

Plaintiff's complaint states a cognizable cause of action against the Putney defendants for their failure to raise the ten-year statute of limitations of California Civil Procedure Code § 337.5(3).

That statute provides that an action upon a judgment or decree of any court of the United States or of any state within the United States must be commenced within ten years of the judgment or decree. The 1953 California Judgment, which incorporated the Property Settlement Agreement under which Christina claims entitlement to 25% of the net proceeds of Oleg's estate, was not exempt from the time limitation because it was not a judgment entered under the Family Code of California. Consequently, Christina's verified claim against the estate was untimely, having been served on or about May 1, 2007.

Point IV

The failure to preserve the California Statute of Limitations defense was the Putney defendant's omission, and not that of successor counsel

Point V

Putney defendant's contention that there is no evidence to support a finding that had plaintiff's "payment" defense been properly preserved, it would have led to a more favorable outcome, is improper on a motion to dismiss. Plaintiff claims that they have pled a cognizable cause of action and are entitled to discovery on the issue of whether there was an agreement between Oleg and Christina to the effect that lifetime gifts constituted payment of his obligation under the Settlement Agreement.

Point VI

Plaintiff claims that she has adequately pled damages as a consequence of the negligence of the Putney defendants. At this juncture, plaintiff is not required to prove, but only plead damages. Whatever the numbers, plaintiff has alleged that but for defendants' negligence, Christina would have been entitled to the \$1,000,000 legacy in the will, as opposed to 25% of the estate. The fact that there may be inadequate cash in the estate to make the legacy payment to Christina, there are assets of the estate which may be made in kind. It is for the Surrogate's Court to determine the value of the estate, and the award of 25% of that value to Christina constitutes damages which plaintiff is entitled to recover.

Reply Affirmation on behalf of Putney Defendants

In their Reply Affirmation and Reply Memorandum of Law, the Putney defendants controvert the opposition of plaintiff. They assert that the claims alleging that the failure to preserve the California statute of limitation defenses must be dismissed. In this respect, they initially assert that it was successor counsel, Sedgwick, who had the last opportunity in the Surrogate's Court to raise the California 10-year statute of limitations, as they did, but did not raise the one year statute of limitations. The motions to renew and reargue were granted by the Surrogate's Court, at which time the court acknowledged that the statute of limitations had been raised, but then it adhered to his prior decision. Thus Sedgwick defendants first raised the issue of the one year statute of limitations in their appeal to the Appellate Division. That Court affirmed the determination of the Surrogate's Court but stated that "the Executor's remaining contentions are either not properly before this Court [citations omitted], or without merit."

Defendants assert that had Sedgwick raise the one year statute of limitations before the Surrogate's Court it would have been "properly" before the Appellate Court and preserved for consideration. They therefore claim that it was Sedgwick, not the Putney defendants, who had the last opportunity to preserve the one year statute of limitations defense. They further claim that they cannot be held responsible for the failure of the Sedgwick counsel.

They further claim that even if the issue of the statute of limitations had been preserved, the outcome would have been the same, since Christina's claim was timely, even under California law. As to the 10 year statute, the claim would have been held timely since it did not accrue until Oleg's death and her claim was served well within the 10 year period. In addition, even if California's one year statute were applicable, the result is the same since Christina's claim is based on a judgment of a court of competent jurisdiction and, pursuant to the applicable New York procedure, she was not required to file a claim under the Surrogate Court Procedure Act § 1803(3).

In addition, the Putney defendants claim that on March 19, 2007, an e-mail went to plaintiff to which was attached a copy of the California Judgment.¹ Oleg died on March 17, 2006 and the one year anniversary after excluding the first day, fell on Sunday and, for the purposes of service of a proof of claim, March 19, 2007 was the last day for such service even under the California statute. Therefore, they claim, Christina had an enforceable claim despite the failure to

¹ Exh. "EE" to Reply Affirmation in Further Support of Motion.

file a written notice thereof within one year of Oleg's death, and that this is particularly so since plaintiff had actual notice of the judgment within the time to commence an action in New York, even if the California one year statute applied. They therefore claim that the one-year's statute defense, even if it has been preserved, would have been ineffective to preclude the award to Christina.

With respect to the alleged failure to interpose a defense of "payment," specifically, that various gifts made by Oleg to Christina during his lifetime satisfied his obligations under the Property Settlement Agreement, or, at the least, served as an offset to his obligations under that agreement, defendants claim that such defense would be meritless. They assert that this is so because there were no express terms of the agreement which provided that the obligation could be satisfied by lifetime gifts or with an agreement that they would be extinguished.

Defendants claim that all of the claims must be dismissed because plaintiff is unable to establish the necessary element of actually incurred damages which were ascertainable as a result of their acts or omissions. They claim that this is so because plaintiff has asserted in the Surrogate Court proceedings that the assets of the estate are actually owned by corporate entities, stock holdings owned by plaintiff, or assets otherwise owned by her and not the estate, so that Christina is not owed any monies as the Estate has no assets. Consequently, they assert that since the estate has no assets with which to pay a \$1 million legacy, they have no liquid assets for distribution of 25% to Christina. They dispute the claim by plaintiff that there are "like kind" assets available for distribution by reliance upon the filings in the Surrogate's Court which reflected that an auction yielded only \$27,057.98. Plaintiff, therefore, is unable to establish that she sustained actual and ascertainable damages.

They also take issue with plaintiff's contention that the documentary evidence upon which they rely is not authenticated and therefore is inappropriate for consideration. To the contrary, they claim that these records are from the record on appeal and other court filings by plaintiff and her counsel in the underlying litigation. It is plaintiff who therefore relies on the accuracy of the majority of these documents in her then pending motion for leave to appeal to the Court of Appeals. Plaintiff should be estopped from arguing the legitimacy of these documents upon which she has already replied in filings with the Court of Appeals.

Contrary to plaintiff's assertion, defendants allege that a motion under § 3211(a)(7) is not to determine whether or not plaintiff has "stated" a cause of action, but whether she "has" a cause of action. Under this standard, defendants contend that the motion to dismiss is right for determination.

DISCUSSION

As a starting point, by Decision dated April 25, 2013, the Court of Appeals has denied the motion for leave to appeal on the ground that the order appealed from did not finally determine the proceeding.² There is, therefore, no reason to stay the motion as requested by plaintiff.

CPLR § 3211 (a)(1) provides as follows:

(a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

1. a defense is founded upon documentary evidence;

In order to succeed in a claim based upon documentary evidence, “. . . the defendant must establish that the documentary evidence which form the basis of the defense be such that it resolves all factual issues as a matter of law and conclusively disposes of the plaintiff’s claim.” (*Symbol Technologies, Inc. v. Deloitte & Touche, LLP*, 69 A.D.3d 191, 194 [2d Dept. 2009]); (*DiGiacomo v. Levine*, 2010 WL 3583424 (N.Y.A.D. 2d Dept.)).

On a motion to dismiss pursuant to CPLR § 3211 (a)(7), the Court must determine, “accepting as true the factual averments of the complaint and according the plaintiff every benefit of all favorable inferences, whether the plaintiff can succeed upon any reasonable view of the facts stated” (*Malik v. Beal*, 54 A.D.3d 910, 911 [2d Dept. 2008]); *See also Simmons v. Edelstein*, 32 A.D.3d 464, 465 [2d Dept.2006]); (*Manfro v. McGivney*, 11 A.D.3d 662, 663 [2d Dept.2004]).

The Court denies the motion to dismiss the complaint in accordance with CPLR § 3211 (a)(1) in that the documents are not of a type which, standing alone, resolve all factual issues as a matter of law.³ As is frequently the case, movant is seeking summary judgment based upon interpretations of the pleadings and other documents as they interpret them. In order to qualify as documents as intended by the statute, they must be “essentially undeniable” and unequivocal.

The Court does not dispute the authenticity of the documents, but rather, concludes that they do not resolve the factual issues in this case: whether the 10 year or 1 year statutes of limitations were applicable; whether the matter must be determined under California law; and whether plaintiff has sustained damages as a result of the claimed negligence of the Putney

² *Matter of Oleg Cassini, deceased*, 2013 NY Slip Op 71632.

³ *Fontanetta v. John Doe*, 73 A.D.3d 78 (2d Dept. 2010).

defendants in failing to raise and preserve them or assert the affirmative defense of “payment” based on lifetime gifts, despite there being no provision for satisfaction of the obligation in the Settlement Agreement in such manner.

CPLR § 3211(a)(7) provides the Court with wider latitude to determine whether or not, under a liberal interpretation of the complaint, plaintiff is able to succeed on her claim. Defendants are correct in their position that “the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one.”⁴

The first inquiry, therefore, is whether the statutes of limitations contained in California Civil Procedure Code §§ 337.5(3) and 366.3 are applicable, and but for the failure of defendants to plead and preserve them, whether they would have produced a different result in the Surrogate’s Court proceeding. For the following reasons, the Court concludes that they are not applicable and that pleading them would not have resulted in a determination that Christina was not entitled to a 25% share of the net proceeds of the assets of the Estate of Oleg Cassini.

§ 337.5(3) designates actions which must be brought within 10 years. It provides in pertinent part in subparagraph 3 as follows: “3. An action upon a judgment or decree of any court of the United States or of any state within the United States.”⁵

§ 366.3 states in pertinent part as follows

§ 366.3. Claims arising from promise or agreement relating to distribution from estate or trust or under other instrument; limitation period

a) If a person has a claim that arises from a promise or agreement with a decedent to distribution from an estate or trust or under another instrument, whether the promise or agreement was made orally or in writing, an action to enforce the claim to distribution may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

The language of § 366.3 requires that an action to enforce the claim may be commenced within one year of the death of the promisor and obviates consideration of any other limitations that would have applied. Even under California law, therefore, the 10 year limitation would be inapplicable. The reasoning behind this is quite obvious. A literal reading of §337.5(3) would

⁴ *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994), quoting *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1977).

⁵ Cal. C.C.P § 366.3

have required Christina to challenge her father's will before he wrote it and before he died. Such a result is incomprehensible.

One may well argue that, even if California law applies, Christina complied with the requirement that action be commenced within one year of the date of death. Oleg died on March 17, 2006 and Christina filed a Verified Claim on February 18, 2007. The Will was admitted to probate on June 1, 2007 and the Petition to Determine Validity of the Claim was dated November 9, 2007.

As determined by Surrogate Riordan, the Property Settlement Agreement merged with the final Judgment of Divorce, and is entitled to full faith and credit.⁶ Under New York's "center of gravity", or "grouping of contacts" approach to choice of law questions in contract cases, the court is required "to apply the law of the state with the most significant relationship to the transaction of the parties. There is no provision in the Property Settlement Agreement to the effect that it is to be interpreted under the laws of any particular state.

The agreement to leave a specified percentage of Oleg's net estate was executed in California between him and Gene Tierney, his then wife. She is deceased and Oleg's domicile at the time of his death was New York. The will was executed in New York, under the supervision of a New York attorney. The property interests of the Estate are in New York. As between California and New York, it seems clear that New York has a greater interest in the distribution of the estate of its resident than does California, where the agreement was drafted some sixty years ago. Moreover, statutes of limitations are procedural as opposed to substantive. Procedural matters are determined by the law of the forum, and are not governed by the law of the situs of the agreement.

Christina's cause of action accrued on March 17, 2006. To the extent that one may argue that the locus of her damage was in France, where she resides, New York law would bar recovery if the action was commenced after the time within which the action must be commenced under either the law of New York or the law of the place where the cause of action accrued.⁷ As pointed out by counsel for the Putnam defendants, under the current French Civil Code, the period of limitations for personal and personal property claims is five years.⁸ Christina's action

⁶ 25 Misc.3d 1239(A), 2009 WL 4756398 (Nass. Sur.).

⁷ CPLR § 202.

⁸ Memorandum of Law in Support of Motion to Dismiss, at p. 9.

was brought within the five-year limitation provided under the law of her domicile. Plaintiff's claim that it has not been proven that Christina was domiciled in France as of the date of Oleg's death is purely speculative. She has resided in France for decades, as reflected by Oleg's correspondence to and from her as early as 1980.⁹

For the foregoing reasons, the Court concludes that the one year from date of death limitation under California law is inapplicable, and even if it were, Christina complied by filing a Verified Claim within one year of the date of death. Moreover, plaintiff received a copy of the Judgment and Agreement on March 19, 1970. In accordance with the calculation of periods of time within which performance is required, the one year began on March 18, 2006, the day after Oleg's death, and terminated on March 18, 2007. Because that day was a Sunday, the one-year period actually terminated on March 19, 2007. Plaintiff was therefore apprised of Christina's claim within one year of the date of death.¹⁰

Under New York contract law, an action to enforce an agreement must be commenced within six years of a breach.¹¹ The 1953 Agreement was not breached until the death of Oleg on March 17, 2006, by which time he had not complied with ¶ 17 of the Property Settlement Agreement, which stated that "(h)usband agrees that he will by testamentary disposition leave not less than one-half of his net estate after payment of debts and taxes, to Daria and Christina in equal proportions." Christina filed her Verified Claim on February 18, 2007 and commenced an action in the form of a Petition to Determine Validity of Claim on November 9, 2007, both well within the six-year limitation to seek enforcement of a contract.

Plaintiff's contention that had counsel raised either the one or ten year statutes of limitation contained in California law, the result in the underlying Surrogate's Court proceeding would have been different, is without merit. So too is the claim that their failure to plead "payment" as an affirmative defense caused the unfavorable ruling.

The language of the Agreement is clear and unambiguous. There is no provision that the obligation may be satisfied by anything other than by a testamentary disposition for the benefit of Daria and Christiana. As an affirmative defense, the proponent of the claim has the burden of

⁹ See Exh. "N" to Motion.

¹⁰ Reply Affirmation on behalf of Putney Defendants, Exh. "EE".

¹¹ CPLR § 213 (2).

proof.¹² In the context of a motion for summary judgment, the non-moving party is obligated to bare their proof in order to create a material issue of fact, that is, one which is “genuine, bona fide and substantial to require a trial.”¹³

In an effort to raise a question of “payment,” counsel sought to submit an affirmation with exhibits.¹⁴ The affirmation and exhibits make no reference to the Settlement Agreement or Judgment of Divorce, much less do they constitute an agreement between Oleg and Christina for her to waive her claim in return for payment. What the documents reveal is that Oleg was frustrated by Christina’s entreaties to him for financial support, including specific demands for, inter alia, a vehicle for her use. The correspondence reveals a gift to her of \$3,000.00, an offer of a job for \$15,000 per year, and a threat that another letter of the sort received would result in her being entirely cut off from further gifts.

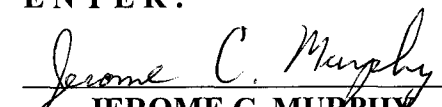
There is absolutely no evidence propounded that there was an agreement between the parties that payment of lifetime gifts would substitute for the requirement set forth in the 1952 Property Settlement Agreement. Plaintiff’s claim that if the Putney defendants had timely raised and preserved the claim of “payment” as an affirmative defense, it would have resulted in an outcome in her favor, and denial of Christina’s motion for summary judgment.

The motion on behalf of Putney, Twombly, Hall & Hirson LLP, William M. Pollak, and Philip H. Kalban is granted, and the Complaint dated August 29, 2012 against them is dismissed.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
June 17, 2013

ENTER:


JEROME C. MURPHY
ENTERED

JUL 02 2013

NASSAU COUNTY
COUNTY CLERK'S OFFICE

¹² *Dowling v. Hastings*, 211 N.Y. 199 (1914).

¹³ *Leumi Financial Corp. v. Richter*, 24 A.D.2d 855 (1st Dept.1965).

¹⁴ Exh. “N” to Motion.