

Buongiovanni v Hasin
2015 NY Slip Op 32883(U)
June 1, 2015
Supreme Court, Rockland County
Docket Number: 033080/2014
Judge: William A. Kelly
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

PRESENT:
HON. WILLIAM A. KELLY
SUPREME COURT JUSTICE

-----x
CYNTHIA BUONGIOVANNI,

Plaintiff,

Index No. 033080/2014

-against-

DECISION & ORDER

DAVID V. HASIN, ESQ. and THE LAW OFFICE
OF DAVID V. HASIN,

Defendants.

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The following papers were read on the motion of defendants for an Order, granting renewal of the motion to dismiss the complaint and on the cross motion of the defendant for an Order imposing sanctions on the defendant for bringing a frivolous motion:

Notice of Motion - Affirmation - Memorandum of Law	1-3
Notice of Cross Motion - Affirmation	4-5
Reply Affirmation - Memorandum of Law	6-7

Upon the foregoing papers it is hereby ORDERED that the defendant's motion is granted to the extent set forth herein and the cross motion is denied.

The instant action is based upon the defendant's representation of plaintiff in a divorce action. The defendant undertook representation of the plaintiff in April of 2010. After obtaining *pendente lite* relief for the plaintiff, the defendant's motion to be relieved as counsel was granted on October 19, 2011.

An action alleging professional negligence must "demonstrate that the attorney 'failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession' and that the attorney's breach of this duty proximately caused plaintiff to sustain actual and ascertainable damages." Rudolf v. Shayne, Dachs, Stanisci, Corker & Sauer, 8 N.Y.3d 438, 442 (2007)(quoting McCoy v. Feinman, 99 N.Y.2d 295 (2002)). See also Tooma v. Grossbarth, 121 A.D.3d 1093 (2nd Dep't 2014); Katz v. Hertzfeld & Rubin, 48 A.D.3d 640 (2nd Dep't 2008).

In denying the motion to dismiss the first count, this Court distinguished the instant case from cases where "control of the outcome of the litigation was wholly in the hands of successor counsel," viewing the allegations in the light most favorable to the plaintiff, the complaint adequately alleged that the plaintiff was permanently damaged by the actions of the defendants and the ultimate outcome of the litigation was adversely affected. Tooma v. Grossbarth, 121 A.D.3d 1093 (2nd Dep't 2014). The Court further held that, unlike the situations presented in Katz v. Hertzfeld & Rubin, 48 A.D.3d 640 (2nd Dep't 2008) and Ramcharan v. Pariser, 20 A.D.3d 556 (2nd Dep't 2005), at this point in the litigation, the Court cannot conclude as a matter of law that successor counsel had an adequate opportunity to correct the alleged inadequacies in the defendant's representation.

However, since the Court's decision, a significant change in the facts of the

instant case necessitates that the Court change its ruling. In the motion to renew, the defendant has brought to the Court's attention, the decision of the Appellate Division vacated the judgment of divorce and remitted the matter to the Supreme Court. Buongiovanni v. Buongiovanni, 122 A.D.3d 786 (2nd Dep't 2014). The Appellate Division held that plaintiff and substitute counsel in the underlying divorce were not given adequate time to prepare. Id.

Now that the matter has been remitted, the plaintiff and her counsel will have sufficient time to prepare and litigate the divorce action. Now "control of the outcome of the litigation [is] wholly in the hands of successor counsel." Tooma v. Grossbarth, 121 A.D.3d 1093 (2nd Dep't 2014). Plaintiff's counsel in the divorce now has a "sufficient opportunity to protect the plaintiffs' rights by pursuing any remedies it deemed appropriate on their behalf." Katz v. Hertzfeld & Rubin, 48 A.D.3d 640 (2nd Dep't 2008). Accordingly, any deficiencies in the defendant's performance as plaintiff's counsel cannot be the proximate cause of any injury to plaintiff.

Accordingly, upon renewal, the motion to dismiss the first cause of action is granted.

As the defendant's motion is granted, the plaintiff's cross motion for an Order imposing sanctions on the defendant for bringing a frivolous motion is denied.

This Decision shall constitute the Order of the Court.

E N T E R

Dated: New City, New York
June 1, 2015



HON. WILLIAM A. KELLY
J.S.C.