

**Parket v Althiler**

2025 NY Slip Op 32813(U)

July 16, 2025

Supreme Court, New York County

Docket Number: Index No. 158930/2024

Judge: Paul A. Goetz

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

**PRESENT: HON. PAUL A. GOETZ PART 47**

*Justice*

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ROBYN SHAWN KAUFMAN PARKET,  
  
Plaintiff,

- v -

ROBERT ALTCHILER, ALTCHILER, LLC, WOLF  
HALDENSTEIN ADLER FREEMAN & HERZ LLP  
  
Defendants.

**INDEX NO.** 158930/2024  
**MOTION DATE** 11/27/2024,  
02/11/2025  
**MOTION SEQ. NO.** 001 002

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 48, 50, 51

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 52

were read on this motion to/for DISMISS.

In this legal malpractice action, defendant Wolf Haldenstein Adler Freeman & Herz LLP (Wolf Haldenstein) moves to dismiss plaintiff’s complaint—with causes of action for (i) legal malpractice and (ii) breach of fiduciary duty—pursuant to CPLR §§ 3211(a)(1) and (a)(7), and CPLR § 3016(b) (MS #1); and defendants Robert Altchiler Esq. and Altchiler LLC (collectively, the Altchiler defendants) move to dismiss plaintiff’s complaint pursuant to CPLR §§ 3211(a)(1) and (a)(7) (MS #2).

**BACKGROUND<sup>1</sup>**

Plaintiff Robyn Shawn Kaufman Parket (Robyn, or plaintiff) was married to Jeffrey Soberman Parket (Jeffrey) for thirty-two years before he turned himself in on federal white collar criminal fraud charges in late November of 2021 (NYSCEF Doc No 1 ¶ 6). Jeffrey’s criminal

<sup>1</sup> The facts are stated as alleged in plaintiff’s complaint.

conduct entailed soliciting loans from friends, family, and colleagues by misrepresenting the value of his assets through falsified documents (*id.* ¶ 8). Some of these documents were signed by Robyn because Jeffrey misrepresented their contents when asking for her signature, while others contained Robyn’s forged signature; in any case, Robyn alleges she was unaware of her then-husband’s fraudulent scheme (*id.*).

On December 4, 2021, Robyn retained the Altchiler defendants to represent her in “potential investigations [and] advise [] as to any collateral legal issues . . . arising from [Jeffrey’s] conduct” (*id.* ¶ 10; NYSCEF Doc No 10 [the retention agreement]). Notably, the retention agreement was on Altchiler LLC letterhead, was entered into by “Robert Y. Altchiler [o]n behalf of Altchiler LLC,” instructed plaintiff to make payments to Altchiler LLC, and provided an email address for Altchiler at robert@altchilerllc.com; however, defendant Wolf Haldenstein was listed as “of counsel” and a secondary email address was provided for Altchiler at altchiler@whafh.com (*id.* ¶¶ 14-16; NYSCEF Doc No 10). Robyn alleges that across several other mediums—including press releases and interviews, social media, firm websites, and Altchiler’s bios for separate institutions—Altchiler is held out as of counsel to (or an employee of) Wolf Haldenstein, and Wolf Haldenstein is likewise held out as of counsel to Altchiler LLC (*id.* ¶¶ 18-28). The two firms also share a physical address of 270 Madison Ave, New York, NY 10016 (*id.* ¶ 15).

As a result of Robyn’s signature (or forged signature) appearing on falsified documents used to fraudulently obtain loans, Robyn was sued numerous times in state court for breach of contract, including lawsuits initiated by Isidore Mayrock (Index No 650150/2022), New World Equities Inc. (Index No 650154/2022), Silac Insurance Company (Index Nos 656508/2021, 650174/2022), and Prescient Capital Partners LLC (Index Nos 680182/2022, 651085/2022,

651086/2022, 651087/2022) (collectively, the state court cases) (*id.* ¶¶ 53, 62, 56, 108, 110). She was also named in a lawsuit by Whitebox Holdings LLC (Whitebox) in the United States District Court for the District of Minnesota (Case No. 0:21-cv-02776-WMW-DTS [the *Whitebox* action]) for fraud, negligent representation, and breach of contract (*id.* ¶ 65).

In the months after the Altchiler defendants were retained, Robyn alleges that she contacted Altchiler many times seeking counsel regarding loan documents, frozen bank accounts, threatening messages she received from lenders, subpoenas from additional entities, restraining notices, attempts to serve her with legal documents, and other collateral consequences of the lawsuits against her and Jeffrey (see generally, *id.* ¶¶ 37-96). She alleges that Altchiler was not adequately responsive to her concerns, but in particular, he “advised Robyn that she should neither respond to nor defend the[] cases [] against her, because she had no assets upon which the[] Judgement Creditors could collect or levy” (*id.* ¶ 104). On Altchiler’s advice, Robyn did not appear in any of the cases initiated against her; consequently, default judgments were entered against Robyn and Jeffry, including “multiple multi-million dollar” judgments in the state court cases (*id.* ¶ 164) and \$4,560,585.61 in the *Whitebox* action (*id.* ¶ 123).

## DISCUSSION

### Standard on the Motions

When reviewing a “motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), [courts] must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every reasonable inference, and determine only whether the facts, as alleged fit within any cognizable legal theory” (*Bangladesh Bank v Rizal Commercial Banking Corp.*, 226 AD3d 60, 85-86 [1<sup>st</sup> Dept 2024] [internal quotations omitted]). “In making this determination, [courts] are not authorized to assess the merits of the complaint or any of its

factual allegations” (*id.* at 86 [internal quotations omitted]). Further, “[i]n assessing a motion under CPLR 3211(a)(7), ... the criterion is whether the proponent of the pleading has a cause of action, not whether [they have] stated one” (*Eccles v Shamrock Capital Advisors, LLC*, 42 NY3d 321 [2024] [internal quotations omitted]).

“A motion pursuant to CPLR 3211(a)(1) to dismiss the complaint on the ground that the action is barred by documentary evidence may be granted only where the documentary evidence utterly refutes the plaintiff’s factual allegations, thereby conclusively establishing a defense as a matter of law” (*Phillips v Taco Bell Corp.*, 152 AD3d 806, 806 [2<sup>nd</sup> Dept 2017]). “To constitute documentary evidence, the evidence must be unambiguous, authentic, and undeniable, such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable (*id.* at 807 [internal citations and quotation marks omitted]). “[E]mails can qualify as documentary evidence if they meet the essentially undeniable test” (*Amsterdam Hosp. Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431, 433 [1<sup>st</sup> Dept 2014]).

#### Wolf Haldenstein (MS #1)

Wolf Haldenstein argues that plaintiff’s legal malpractice cause of action must be dismissed as against it because her own documentary evidence, i.e., the retainer agreement, definitively contradicts her claims that Wolf Haldenstein was her lawyer (NYSCEF Doc No 11). Specifically, Wolf Haldenstein notes that the retainer agreement states that it is an agreement for plaintiff’s “retention of [] Robert Altchiler, Esq.[] and Altchiler LLC,” whereas Wolf Haldenstein is not listed as a party to the agreement (NYSCEF Doc No 10). Plaintiff argues that an attorney-client relationship was nevertheless created between her and Wolf Haldenstein because defendants “each held out the other as an attorney for plaintiff” by naming each other as

“of counsel” and otherwise publicly associating with one another (NYSCEF Doc No 36). She alleges that Altchiler was an agent of Wolf Haldenstein, and therefore Wolf Haldenstein, as principal, may be bound by Altchiler’s conduct (*id.*).

“The existence of an attorney-client relationship is an essential element of a cause of action to recover damages for legal malpractice” (*Zi Kuo Zhang v Lau*, 210 AD3d 829, 830 [2<sup>nd</sup> Dept 2022]). “An attorney-client relationship may exist in the absence of a retainer or fee” (*Willoughby Rehabilitation & Health Care Ctr., LLC v Webster*, 190 AD3d 887, 889 [2<sup>nd</sup> Dept 2021]). “In determining the existence of an attorney-client relationship, a court must look to the actions of the parties to ascertain the existence of such a relationship” (*Wei Cheng Chang v Pi*, 288 AD2d 378, 380 [2<sup>nd</sup> Dept 2001]). Importantly, “a party’s unilateral belief does not confer upon him or her the status of client. Rather, to establish an attorney-client relationship, there must be an explicit undertaking to perform a specific task” (*Willoughby*, 190 AD3d at 889).

Here, no attorney-client relationship was formed between plaintiff and Wolf Haldenstein. The retainer agreement indicates that plaintiff was “in privity only with” the Altchiler defendants, whom she retained as counsel, whereas “[a]t best, [Wolf Haldenstein] had an ‘of counsel’ relationship with plaintiff[]” and “[h]istorically, such a relationship has been held not to provide a basis for recovery” (*Hirsch v Weisman*, 189 AD2d 643, 644 [1<sup>st</sup> Dept 1993]). While the retainer agreement is not dispositive, plaintiff fails to allege that an attorney-client relationship was formed through some other means. Plaintiff emphasizes defendants’ many public representations demonstrating that they are closely associated, however, she failed to allege that Wolf Haldenstein made “an explicit undertaking to perform a specific task” for her (*Willoughby*, 190 AD3d at 889), or that she even interacted with anyone from the firm. Plaintiff instead attempts to hold Wolf Haldenstein liable under the theory of an agency-principal

relationship (NYSCEF Doc No 36), but this is the incorrect standard, and she provides no basis to apply that standard on the issue of whether an attorney-client relationship was formed.

Wolf Haldenstein argues that plaintiff's breach of fiduciary duty cause of action must be dismissed as against it as duplicative of her legal malpractice cause of action (NYSCEF Doc No 11). In opposition, plaintiff states, without explanation, that "although the causes of action both originate in the [legal] representation [of plaintiff], they are not duplicative or redundant" (NYSCEF Doc No 36).

Wolf Haldenstein is correct that "[t]he breach of fiduciary duty cause of action is duplicative of the deficient legal malpractice cause of action as both are premised on the same core facts" (*Ozimek v DiJoseph*, 204 AD3d 448, 449 [1<sup>st</sup> Dept 2022]). Additionally, though "plaintiff [] contend[s] that the relief sought in the fiduciary duty claim [is] not identical to that sought in the malpractice cause of action," it is sufficient to "dismiss[] a fiduciary duty claim as duplicative of a malpractice claim where it allege[s] *similar* damages" (*Alphas v Smith*, 147 AD3d 557, 559 [1<sup>st</sup> Dept 2017] [emphasis in original, internal quotation marks and citations omitted]).<sup>2</sup> Moreover, "[e]ven if the complaint were read to seek distinct damages on the breach of fiduciary cause of action, [it] would nevertheless fail" (*Ozimek*, 204 AD3d at 449) because plaintiff similarly failed to allege that Wolf Haldenstein was "under a duty to act for or give advice for the benefit of [plaintiff] upon matters within the scope of [their] relation" such that a

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<sup>2</sup> Plaintiff seeks damages "in the Whitebox Fraud Judgment Amount, plus the collective amounts of the State Court Judgments" on her legal malpractice claim and damages "based solely on the legal fees billed and paid by Plaintiff" on her breach of fiduciary duty claim (NYSCEF Doc No 1 ¶¶ 188, 202). However, "[i]n the attorney liability context, [these claims are] governed by the same standard" (*Knox v Aronson, Mayefsky & Sloan, LLP*, 168 AD3d [1<sup>st</sup> Dept 2018]) and plaintiff could have sought all damages on her legal malpractice cause of action (*Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 443 [2007] ["Damages in a legal malpractice case are designed to make the injured client whole [and] may include litigation expenses"] [internal citation and quotation marks omitted]). It appears that plaintiff did not do so merely to avoid the causes of action being deemed duplicative (NYSCEF Doc No 1 ¶ 203 ["because the nature of the damages [are] different [the claims] are not duplicative"]).

fiduciary relationship was formed (*EBC I, Inc. v Goldman Sachs & Co.*, 5 NY3d 11, 19 [2005], quoting Restatement [Second] of Torts § 874, Comment a)).

Accordingly, Wolf Haldenstein’s motion to dismiss plaintiff’s complaint as against it (MS #1) will be granted.

The Altchiler Defendants (MS #2)

The Altchiler defendants argue that plaintiff failed to allege that any negligence on their part was the proximate cause of plaintiff’s damages because “the foundation of Plaintiff’s Complaint—that the Whitebox Judgment is not dischargeable in bankruptcy—is a conclusion that can only be reached through a chain of events, none of which have yet occurred” (NYSCEF Doc No 25). Specifically, they argue that plaintiff’s entitlement to damages requires that: (i) Plaintiff decides to file for bankruptcy; (ii) Whitebox brings an adversary proceeding to declare her debt non-dischargeable; and (iii) the Bankruptcy Court declines to discharge her debt” (*id.*). The Altchiler defendants also note that plaintiff retained new counsel “at least as of November 15, 2022, over a month before the Whitebox Judgment was entered,” and thus “Plaintiff’s subsequent counsel could have taken steps either to avoid the entry of the judgment if Plaintiff so desired, or to have it vacated [] once it was entered” (*id.*).

Plaintiff argues that the Altchiler defendants were negligent in advising her not to appear and assert defenses in the *Whitebox* action, and that but for this negligence, the *Whitebox* judgment would not have been entered against her (NYSCEF Doc No 47). She asserts that the Altchiler defendants were operating under the “mistaken belief that she could avoid the negative consequences of all money judgments being entered against her through discharge in bankruptcy” but that “[f]iling of a Chapter 7 case would be a futile act [since] the \$4+ Million [] judgment is non-dischargeable under Section 523 of the Bankruptcy Code” (*id.* [arguing that the

“Whitebox Lawsuit federal judge made specific findings as to fraud” and therefore plaintiff is collaterally estopped from challenging the *Whitebox* judgment]). Plaintiff also alleges that she never retained another attorney to handle the *Whitebox* case (*id.*).

“To establish a cause of action for legal malpractice, plaintiff must show that: (1) the attorney was negligent; (2) the attorney’s negligence was a proximate cause of plaintiff’s losses; and (3) plaintiff suffered actual damages” (*Springs v L&D Law P.C.*, 234 AD3d 422, 423 [1<sup>st</sup> Dept 2025] [quotation omitted]). As to negligence, “a plaintiff must demonstrate that the attorney failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession” (*Aur v Manhattan Greenpoint Ltd.*, 132 AD3d 595, 595 [1<sup>st</sup> Dept 2015] [quotation omitted]). “An attorney’s conduct or inaction is the proximate cause of a plaintiff’s damages if but for the attorney’s negligence the plaintiff would have succeeded on the merits of the underlying action or would not have sustained actual and ascertainable damages” (*83 Willow, LLC v Apollo*, 187 AD3d 563, 563 [1<sup>st</sup> Dept 2020] [quotation omitted]). “Conclusory allegations of damages or injuries predicated on speculation cannot suffice for a malpractice action” (*Philip S. Schwartzman, Inc. v Pliskin, Rubano, Baum & Vitulli*, 215 AD3d 699, 703-04, [2<sup>nd</sup> Dept 2023] [quotation omitted]).

While both parties focus primarily on whether the *Whitebox* judgment is dischargeable in bankruptcy, the preliminary issue is whether a judgment would have been entered against plaintiff in the first instance (at least with respect to the fraud count) if the Altchiler defendants had not advised her against appearing in the action. Plaintiff alleges that had she appeared, she “could have expected to prevail on an ‘innocent spouse’ defense to the Fraud Count,” as she “did not engage in any fraud concerning *Whitebox*” or any other of Jeffrey’s creditors (NYSCEF Doc No 1 ¶¶ 117, 161).

The court in the *Whitebox* action applied the following standard in considering the fraud count against Jeffrey and Robyn:

“[t]o establish common-law fraud under Minnesota law, a plaintiff must prove: (1) a false representation of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made without knowing whether it was true or false; (3) with the intention to induce action in reliance thereon; (4) that the representation caused action in reliance thereon; and (5) pecuniary damages as a result of the reliance”

(NYSCEF Doc No 44, quoting *U.S. Bank N.A. v Cold Spring Granite Co.*, 802 NW2d 363, 373 [Minn. 2011]).

While plaintiff does not clearly articulate her “innocent spouse” defense, she has pled sufficient factual allegations suggesting that she could have avoided the fraud judgment entered against her in the *Whitebox*. Specifically, plaintiff asserts that she did not “participate in any [of Jeffrey’s] fraudulent conduct” (NYSCEF Doc No 1 ¶ 166) and filed an affidavit to that effect (NYSCEF Doc No 46 [stating she “had no knowledge of, or any participation in, any of [Jeffrey’s] criminal conduct”]).<sup>3</sup> “In assessing a motion under CPLR 3211 (a) (7), [] 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 [s]he has stated one” (*Leon v Martinez*, 84 NY2d 83, 88 [1994] [internal citations and quotation marks omitted]). Taking plaintiff’s allegations as true, as the court must on a motion to dismiss, it is plausible that, had the Altchiler defendants advised plaintiff to appear, she could have demonstrated that she “did not know or have reason to know of” Jeffrey’s criminal conduct (*Matter of Revere v Comm’r of Taxation & Fin.*, 75 AD3d 860, 863 [3<sup>rd</sup> Dept 2010]; *Moyal v*

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<sup>3</sup> Plaintiff also submitted Jeffrey’s affidavit, in which he states that “Robyn is an innocent spouse [who] had nothing to do with [his] crimes” (NYSCEF Doc No 2).

*Moyal*, 85 AD3d 614 [1<sup>st</sup> Dept 2011] [“an innocent spouse [is one] not on notice of any wrongdoing”]) and thereby prevailed on her innocent spouse defense.

While the Altchiler defendants contend that they “can not be held liable for Plaintiff’s own decision to throw in the proverbial towel and not attempt to discharge her debt in bankruptcy” the salient issue as noted above is not whether plaintiff could have discharged the *Whitebox* judgment in bankruptcy but whether the judgment would have been entered against her in the first instance since she had a viable “innocent spouse” defense. In any event, “[t]he Bankruptcy Code excepts from discharge debts that are ‘obtained by false pretenses, a false representation, or actual fraud’” (*Eurocrafters, LTD. v Vicedomine*, 183 Fed Appx 70 [2<sup>nd</sup> Cir 2006], *quoting* 11 USC § 523[a][2][A]). Consequently, plaintiff has sufficiently plead that the Altchiler defendants were negligent, that their negligence was the proximate cause of plaintiff’s losses and that she suffered actual damages as result of the negligence.

Accordingly, plaintiff’s legal malpractice cause of action will not be dismissed as against the Altchiler defendants.

The Altchiler defendants also move to dismiss plaintiff’s breach of fiduciary duty cause of action. Accordingly, for the reasons explained *supra*, plaintiff’s breach of fiduciary cause of action as against the Altchiler defendants will be dismissed as duplicative of her legal malpractice cause of action.

### CONCLUSION

Based on the foregoing, it is

ORDERED that Wolf Haldenstein’s motion (MS #1) is granted in its entirety and the complaint is dismissed as against it, with costs and disbursements to Wolf Haldenstein as taxed

by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the remainder of the action is severed and continued as against the Altchiler defendants; and it is therefore

ORDERED that the caption in this matter is hereby amended as follows:

ROBYN SHAWN KAUFMAN PARKET,

Plaintiff,

v.

ROBERT ALTCHILER, ALTCHILER, LLC

Defendants.

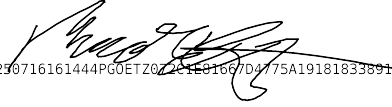
And it is further

ORDERED that all papers, pleadings, and proceedings in the above-entitled action be amended in accordance with this change, without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that Wolf Haldenstein shall, within 30 days of entry of this order, serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the Altchiler defendants' motion to dismiss (MS #2) is granted to the extent that plaintiff's breach of fiduciary cause of action is dismissed as against the Altchiler defendants and the motion is otherwise denied;

  
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<u>7/16/2025</u>				<hr/>		<b>PAUL A. GOETZ, J.S.C.</b>	
<b>DATE</b>							
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
							REFERENCE

ORDERED that