

Coyle v Catterson

2025 NY Slip Op 34372(U)

November 17, 2025

Supreme Court, New York County

Docket Number: Index No. 157161/2025

Judge: James d'Auguste

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. James E. d'Auguste PART 55

Justice

-----X

KEVIN COYLE, TRACY CAREY,

Petitioners,

- v -

JAMES CATTERSON, PILLSBURY WINTHROP SHAW
PITTMAN LLC,

Respondents.

-----X

INDEX NO. 157161/2025

MOTION DATE

MOTION SEQ. NO. 001/002

DECISION + ORDER ON
MOTION
*Corrected

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17

were read on this petition for/motion to PRE-ACTION DISCOVERY/DISMISS

For the reasons outlined below, petitioners Kevin Coyle and Tracy Carey's request for pre-action discovery is denied, and respondents Pillsbury Winthrop Shaw Pittman LLP and James Catterson's ("Pillsbury") motion to dismiss this proceeding is granted.1 Pillsbury's motion for a change of the venue of this proceeding from New York County to Suffolk County is denied as moot.

Petitioners commenced this litigation, in their individual capacities, seeking litigation-related documents concerning respondents' former representation of petitioners as trustees of the Kevin B. Coyle Revocable Trust and Tracy E. Carey Revocable Trust (the "Trusts") in Pintillie v. Maidstone Gun Club and Town of East Hampton, Suffolk County Index Number 206837/2022 ("Maidstone Gun Club Action"). NYSCEF Doc. No. 1.2 The Maidstone Gun Club Action

1 The Court expresses its appreciation to court attorney Brian Krist, Esq. for his assistance in this matter.

2 In the Maidstone Gun Club Action, neither Kevin B. Coyle nor Tracy E. Carey is a plaintiff in their individual capacity. As stated in that action's complaint: "Plaintiffs Kevin B. Coyle serves as trustee of the Kevin B. Coyle Revocable Trust and Tracy E. Carey as Trustee of the Tracy E. Carey Revocable Trust (hereinafter collectively referred to as the 'Revocable Trusts')." Maidstone Gun Club Action, NYSCEF Doc. No. 2 at ¶ 7.

involves allegations that bullets from firearm activity at a gun range are striking nearby homes. Pillsbury was remarkably successful in prosecuting the *Maidstone Gun Club* Action on behalf of the plaintiffs in the underlying action. Nonetheless, Pillsbury eventually withdrew as counsel to the Trusts but continued to represent other plaintiffs in the *Maidstone Gun Club* Action. Thereafter, the Trusts terminated being represented by Greenberg Traurig (“Greenberg”), their co-counsel in this underlying litigation. *Maidstone Gun Club* Action, NYSCEF Doc. No. 348. At that juncture, Greenberg provided the Trusts with almost the entirety of the firm’s litigation file. Unsurprisingly, given this co-counsel status, Greenberg’s litigation file is apparently identical to Pillsbury’s litigation file.

The only document not produced to the Trusts was an “attorneys’ eyes only” confidential term sheet. Although all plaintiffs were provided with information regarding the proposed resolution, the Trusts have doggedly sought to compel the production of the actual underlying document. The Court (Modelewski, J.) denied the Trusts’ application. As the Trusts, in submissions, have asserted judicial bias directed toward Justice Modelewski, the undersigned took additional time in reviewing transcripts and filings surrounding this issue. There does not appear to be any legitimate basis for petitioners’ accusation of bias, and the transcript references cited in support of this contention are woefully inadequate to support such an inference. For instance, during a court conference conducted on March 26, 2025, Justice Modelewski stated to the Trusts’ new counsel, Jonathan Wallace:

Mr. Wallace, I did read your letter. So I understand that you have a number of concerns. If, in fact, the matter is settled, that doesn't foreclose your clients from continuing the litigation.

However, I would offer you this caution. You had mentioned in the body of your letter that you were contemplating an Order to Show Cause with a request for a temporary restraining order as respects the Town and the anticipated execution by the supervisor of a lease agreement.

You should know that it has been the law in this state for many, many years -- and I will harken back to a case that I like to cite simply because I kind of like Judge Sol Wachtler when he was trial term in Nassau County in 1970, he presided over a matter. I don't have the case citation, but it was captioned Goldin, with an I, versus Hempstead.

In the body of that decision, the Judge, who you all know went on to become the Chief Judge of the Court of Appeals in this state, he articulated accurately that you cannot enjoin a municipal official from the commission of an official act.

I'm just cautioning you that you ought not make that application in this part. Whatever it is that is additional to that that you believe is lawful and ethical and necessary in order to prosecute whatever rights you wish to prosecute on behalf of your clients, you can and should do. But I'm telling you right now, don't do that.

Maidstone Gun Club Action, NYSCEF Doc. No. 371 at Tr. 5:17-7:2.

After Wallace raised the specter of ultra vires conduct by the municipality, the Court pressed Wallace as to whether he was asserting the existence of either fraud or a patently illegal act. *Id.* at Tr. 7:3-14. Despite perseverating on this issue, Wallace did not identify any facts that could support such an explosive allegation and instead complained about lacking access to the term sheet (*id.* at 7:15-8:13). In any event, none of the Trusts' six causes of action (*Maidstone Gun Club* Action, NYSCEF Doc. No. 2) would have supported a good faith application for seeking to enjoin municipal approval of a contractually entitled lease renewal.

Nonetheless, in Motion Sequence Number 20, the Trusts sought the recusal of Justice Modelewski. *Maidstone Gun Club* Action, NYSCEF Doc. No. 372. In one email submitted as an exhibit in opposition to that motion, Wallace asserted that there was a "strategy, **now endorsed by the Judge**, of excluding my clients from settlement discussions (probably with the intention, as one of you admitted to me in the hallway the other day, to dismiss their claims later), is illegal and highly unethical, and also a mistake." *Maidstone Gun Club* Action, NYSCEF Doc. No. 391 (emphasis added). Wallace's bombastic assertion regarding Justice Modelewski is objectively

irreconcilable with the judge's specific statements to counsel: "I would encourage all of you, by the way, to speak to Mr. Wallace, as I did previously." *Maidstone Gun Club* Action, NYSCEF Doc. No. 371 at Tr. 17:19-23. In a decision and order dated June 16, 2025, the Court denied the Trusts' recusal motion. *Maidstone Gun Club* Action, NYSCEF Doc. No. 410. Although a notice of appeal was filed by the Trusts (*Maidstone Gun Club* Action, NYSCEF Doc. No. 414), the Trusts have never perfected an appeal of that ruling.

On June 4, 2025, during the pendency of the recusal motion, petitioners filed the instant proceeding. An application (Motion Sequence Number 021) seeking to change the venue of this action from New York County to Suffolk County was denied by Justice Modelewski. *Maidstone Gun Club* Action, NYSCEF Doc. No. 424. Additionally, on October 3, 2025, the Trusts filed a motion (Motion Sequence Number 024) seeking to compel Pillsbury and Greenberg to produce their files (NYSCEF Doc. No. 476), which is the same relief (as it relates to Pillsbury) sought in this proceeding. On September 10, 2025, the non-Trust plaintiffs, represented by Pillsbury and Greenberg, settled their litigation pursuant to a stipulation of settlement that significantly limited the use of the outdoor range, which was the focus of the litigation. *Maidstone Gun Club* Action, NYSCEF Doc. No. 441. On November 3, 2025, the action against the Town of East Hampton—in many ways a nominal defendant—was dismissed. NYSCEF Doc. No. 525. However, the Trusts' claims asserted against the *Maidstone Gun Club Inc.* ("Maidstone") are active and remain to be adjudicated.

Pre-action discovery is available only where a petitioner has demonstrated (1) a meritorious cause of action and (2) the information being sought is material and necessary to the cause of action. *Liberty Imports, Inc. v. Bourguet*, 146 A.D.2d 536 (1st Dep't 1989). Petitioners have not met their burden of demonstrating a potentially meritorious cause of action for legal

malpractice or that the information sought in this proceeding is material and necessary for such a claim.

As an initial matter, it does not appear that the petitioners, as individuals, were Pillsbury's clients. Even if the Trusts had been petitioners, there can be no merit to the petition's stated purpose of seeking to determine if defendants in the *Maidstone Gun Club* Action aided and abetted legal malpractice. While a petition may be brought to identify potential defendants, it cannot be used to determine whether a cause of action exists. *Holzman v. Manhattan and Bronx Surface Transit Operating Authority*, 271 A.D.2d 346 (1st Dep't 2000); see also *Western Investment LLC v. Georgeson Shareholder Securities Corporation*, 43 A.D.3d 333 (1st Dep't 2007).

Moreover, a plaintiff is required to allege facts in a legal malpractice case showing that an attorney failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession, and that this failure proximately caused the attorney's client actual and ascertainable damages. *GIT Inc. v. Quinn Emanuel Urquhart & Sullivan, LLP*, 232 A.D.2d 416, 417 (1st Dep't 2024). As noted above, Pillsbury was remarkably successful in representing its clients in the *Maidstone Gun Club* Action, which included obtaining injunctive relief and two appellate victories. Upon Pillsbury's withdrawal from its representation of the Trusts, they eventually settled the litigation on terms that fulfilled the purpose of the lawsuit: preventing errant bullets from leaving Maidstone's property. Contrary to petitioners' assertion in this proceeding, Pillsbury had no ethical obligation to settle their continuing clients' claims on terms agreeable to the Trusts. As for the term sheet, any entitlement to the production of that

document rested entirely within the sound discretion of the judge presiding over the *Maidstone Gun Club Action*.

Petitioners' reliance on *Sage Realty Corporation v. Proskauer Rose Goetz & Mendelsohn LLP*, 91 N.Y.2d 30 (1997) for a continuing ethical obligation not to settle a litigation on behalf of continuing clients is misplaced. *Sage Realty* stands for a general proposition that a client has the right to access an attorney's file, but it also notes that an attorney "should not be required to disclose documents which might violate a duty of nondisclosure owed to a third party, or otherwise imposed by law." 91 N.Y.2d at 37. As such, it should not have been a remarkable development that Pillsbury and Greenberg repeatedly informed the Trusts' new counsel that his clients were informed of the framework of the proposed settlement terms, but that they needed to get a copy of the underlying document from the *Maidstone Gun Club Action* defendants: "The most current terms of any potential settlement to which our clients have access are set forth in a November 14, 2024 email from me to all plaintiffs. Your clients received this email on November 14, 2024, and a copy of it was reproduced and given to them on January 17, 2025. Please ask them for a copy." *Maidstone Gun Club Action*, NYSCEF Doc. No. 387 at 5.

This basis for withholding the term sheet itself was further explained in another email sent to the trusts' new counsel by a Greenberg attorney:

Responding first to your email to me of 12:50 p.m. today, our firm produced to your clients at least 1,225 individual electronic files, comprising of approximately 40 gigabytes of data, concerning this case. As explained in the attached affirmation and as I said to you verbally yesterday, the sole document that was withheld from our firm's production is an email from the Gun Club's counsel to me attaching an October 29, 2024 confidential term sheet for a potential lease renewal between the Gun Club and the Town. That document was withheld from our production because the Gun Club's and the Town's respective counsel designated it confidential. The document and claim of confidentiality belong to the Gun Club and the Town, not to our firm. Please coordinate with counsel to the Gun Club and Town relating to this document.

Maidstone Gun Club Action, NYSCEF Doc. No. 387. As noted above, the Trusts made an application seeking the production of this document, which is likely inadmissible pursuant to CPLR 4547 and therefore itself is of little substantive relevance, that was presented to Justice Modelewski. He declined to order its production. Any challenge to this determination should have been made to the Second Department, not by the instant (seemingly judge-shopping) application to a judge of coordinate jurisdiction sitting in another county and department.

Accordingly, the petition seeking pre-action discovery is denied, and the motion seeking the petition's dismissal is granted.

This constitutes the decision and order of the Court.

11/17/2025
DATE

James d'Auguste, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	OTHER
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