

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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ARMUR REALTY, LLC, 3 WALLS	:	
REALTY, LLC, CARLOS FONSECA &	:	Civil Action No. 09-2792 (SRC)
MARIA VICTORIA FONSECA,	:	
	:	
	:	<b>OPINION &amp; ORDER</b>
Plaintiffs,	:	
	:	
v.	:	
	:	
BANCO DO BRASIL, S.A.,	:	
	:	
Defendant.	:	

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**CHESLER**, District Judge

Defendant Banco do Brasil, S.A. (“Banco”) has filed a motion to dismiss [docket entry no. 41] the Complaint filed by Armur Realty, LLC, 3 Walls Realty, LLC, Carlos Fonseca and his wife Maria Victoria Fonseca (collectively “Plaintiffs”). Defendant seeks dismissal of this action for failure to prosecute and to comply with a court order requiring Plaintiffs to “retain new counsel.” [docket entry no. 40]. The Court has considered the papers filed by the parties and rules on the written submissions and without oral argument, pursuant to Federal Rule of Civil Procedure 78. For the reasons that follow, the Court will deny the motion to dismiss.

While Plaintiffs failed to retain new counsel by the date indicated in Magistrate Judge Shipp’s order [docket entry no. 40] it is clear that they were making efforts to obtain counsel, and have ultimately done so. *Poullis v. State Farm Fire and Cas. Co.*, 747 F.2d 863 (3d Cir. 1984) does not require that this Court grant the motion to dismiss, and, moreover, this Circuit favors decisions on the merits. *See e.g., Ciemniecki v. Parker McCay P.A.*, Civil No. 09-6450

(RBK/KMW), 2010 WL 4746214, at \*3 n.1 (D.N.J. Nov. 15, 2010). Because Defendant has indicated that it has been waiting six months to file a motion for summary judgment (Reply at 13), the Court will await filing of those papers to reach any decision.

For these reasons,

**IT IS** on this 22nd day of December, 2010,

**ORDERED** that Defendant's motion to dismiss (docket entry no. 41) is **DENIED**; and it is further

**ORDERED** that Defendant file its motion for summary judgment within three weeks of entry of this order.

s/ Stanley R. Chesler  
Stanley R. Chesler, U.S.D.J