

**Satterlee Stephens Burke & Burke LLP v Coney on
the Park, LLC**

2012 NY Slip Op 32674(U)

October 21, 2012

Supreme Court, NY County

Docket Number: 103294/11

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Joan A. Madden
Justice

PART 11

Index Number : 103294/2011
SATTERLEE STEPHENS BURKE
vs.
CONEY ON THE PARK LLC, ET AL.
SEQUENCE NUMBER : 002
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) _____
Answering Affidavits — Exhibits _____ | No(s) _____
Replying Affidavits _____ | No(s) _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the
attached Memorandum Decision & Order

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED
OCT 25 2012
NEW YORK
COUNTY CLERK'S OFFICE

Dated: October 21, 2012

[Signature], J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
SATTERLEE STEPHENS BURKE & BURKE LLP,

Plaintiff,

-against-

Index No 103294/11

CONEY ON THE PARK, LLC, BRIDGEFRONT, LLC,
CITY VIEW GARDENS, LLC, AFRICA ISRAEL
INVESTMENTS LTD. D/B/A A.I. USA, D/B/A AFRICA-
ISRAEL USA, d/b/a AFI USA, A.I. & Boymelgreen
Developers LLC, a/k/a A.I. Boymelgreen Developers LLC,
Boymelgreen Developers LLC, Boymelgreen Developers Inc.,
Leviev Boymelgreen Developers LLC, a/k/a Leviev Boymelgreen,
a/k/a Leviev & Boymelgreen Developers, LLC, d/b/a
Leviev Boymelgreen, Atlantic Court, LLC, City View Towers LLC,
Park Slope Gardens, LLC, Park Slope Terrace, LLC,
Shaya B. Pacific, LLC, 15 Broad Street LLC, 23 Wall Commercial
Owners LLC, Wall Street Commercial Owners LLC, 20 Pine
Street LLC, 85 Adams Street LLC, 60 Spring Street LLC,
W Squared, LLC, XYZ Corp., 1-10.

FILED
OCT 25 2012
NEW YORK
COUNTY CLERKS OFFICE

Defendants.

JOAN MADDEN, J.:

In this action for unpaid legal fees and expenses, plaintiff *pro se* Satterlee Stephens Burke & Burke LLP (Satterlee Stephens) moves, under motion sequence number 002, for an order, pursuant to CPLR 3211 (a) (7), dismissing defendant Atlantic Court, LLC's (Atlantic Court) counterclaim for legal malpractice based upon documentary evidence. Atlantic Court opposes the motion and cross-moves for an order, pursuant to CPLR 3211 (a) (7), dismissing the complaint as against it based upon plaintiff's failure to state a cause of action, and for an order dismissing the entire complaint based upon plaintiff's failure to properly plead pursuant to 22 NYCRR Part 137.6 (b). Under motion sequence number 004, Satterlee Stephens moves, by order to show cause, for an order directing that certain portions of the documents submitted in

support of its motion, under motion sequence 002, be redacted from the public record, filed under seal pursuant to 22 NYCRR 216.1, and reviewed by the court in camera, on the basis that the documents contain privileged and/or attorney work product materials. The motions, under motion sequence numbers 002 and 004, are consolidated for the purpose of disposition.

Satterlee Stephens is a New York law firm seeking to recover unpaid legal fees and expenses for services it rendered to the various defendants in both employment and real estate matters. According to Satterlee Stephens, while it received payments from defendants between the years 2004 and 2009, there remains a balance due of \$740,000, and despite due demand, payment has not been forthcoming. In its complaint, Satterlee Stephens charges defendants, including Atlantic Court, with breach of contract, account stated and unjust enrichment. Issue was joined by service of a joint answer by defendants City View Gardens LLC, City View Gardens Phase II, LLC, Park Slope Gardens LLC and Park Slope Terrace, LLC on or about May 2, 2011; by service of a joint answer together with a counterclaim against Satterlee Stephens for professional malpractice by defendants Africa Israel Investments LTD (AFI Investments), d/b/a A.I. USA, d/b/a Africa-Israel USA, d/b/a AFI USA, Boymelgreen Developers, LLC, 15 Broad Street LLC, 23 Wall Commercial Owners LLC, Wall Street Commercial Owners LLC, 20 Pine Street LLC, 85 Adams Street LLC, 60 Spring Street LLC, and W Squared, LLC on or about June 10, 2011; and by service of Atlantic Court's answer on or about June 13, 2011, together with a counterclaim against Satterlee Stephens for legal malpractice stemming from its alleged improper withdrawal as counsel for Atlantic Court in an action under Kings County index No. 18092/06 (Kings County Action).

By decision and order dated July 17, 2012 (Prior Order), this court granted Satterlee

* 4]

Stephens's motion, under motion sequence number 001, to the extent of dismissing the counterclaim for negligence/legal malpractice of defendants Africa Israel Investments LTD d/b/a A.I. USA, d/b/a Africa-Israel USA, d/b/a AFI USA, Boymelgreen Developers, LLC, 15 Broad Street LLC, 23 Wall Commercial Owners LLC, Wall Street Commercial Owners LLC, 20 Pine Street LLC, 85 Adams Street LLC, 60 Spring Street LLC, and W Squared, LLC. This court also denied the defendants' cross motion to dismiss the complaint, without prejudice to renew upon completion of jurisdictional discovery.¹ Familiarity with the Prior Order is presumed.

As relevant here, nonparty Eugene Zlatopolsky (Zlatopolsky), in his role as Manager of the Legal Department of Boymelgreen Developers, engaged Satterlee Stephens to represent Boymelgreen Developers and several of its affiliated entities in an unrelated action then pending in Kings County under index No. 13382/04 (*see* Retainer Agreement, dated October 28, 2004). As permitted under the terms of the Retainer Agreement, Satterlee Stephens represented Atlantic Court and several other entities as defendants and/or third-party plaintiffs, in the Kings County Action, commenced by (nonparty herein) Adam Realty Corp. (Adam Realty). Adam Realty commenced that action to recover damages stemming from the excavation of Atlantic Court's property which adjoined its property located at 305 Atlantic Avenue, Brooklyn, New York. Atlantic Court does not dispute that, until on or about February 24, 2009, Satterlee Stephens represented it, Shaya B. Pacific, LLC, Bridgefront, LLC, A.I. & Boymelgreen Developers, LLC, Boymelgreen Developers, LLC, John Doe d/b/a Leviev Boymelgreen, and Leviev & Boymelgreen Developers, LLC in the Kings County Action.

¹This court also found no merit to, and therefore dismissed, that aspect of the cross motion in which defendants sought a dismissal of the complaint premised on plaintiff's purported failure to plead pursuant to 22 NYCRR Part 137.6 (b).

By written discharge/withdrawal of the same date (February 24, 2009), which was executed by attorney Walter Saurack (Saurack) for outgoing counsel Satterlee Stephens, by Zlatopolsky for Atlantic Court, Shaya B. Pacific, LLC and Bridgefront, LLC, and by attorney Gabriel Coltea (Coltea) for co-defendants A.I. & Boymelgreen Developers, LLC, Boymelgreen Developers, LLC, John Doe d/b/a Leviev Boymelgreen, and Leviev & Boymelgreen Developers, LLC., Satterlee Stephens ceased its representation of these entities even though the parties were still in litigation with Adam Realty (the Attorney Withdrawal). The Attorney Withdrawal, which was filed with the Kings County court, states:

PLEASE TAKE NOTICE THAT Defendant/Third-Party Plaintiff Atlantic Court, LLC and Defendants A.I. & Boymelgreen Developers, LLC, Boymelgreen Developers, LLC, John Doe d/b/a Leviev Boymelgreen, Shaya B. Pacific, LLC, Bridgefront, LLC and Leviev & Boymelgreen Developers, LLC, hereby consent to and request the withdrawal of Satterlee Stephens Burke & Burke LLP, their attorneys in the above matter. Please serve all papers and pleadings on Defendant/Third-Party Plaintiff Atlantic Court, LLC, and Shaya B. Pacific, LLC Bridgefront, LLC at 752 Pacific Street, Brooklyn, New York 11238, attention: Eugene Zlatopolsky and on [] Defendants A.I. & Boymelgreen Developers, LLC, Boymelgreen Developers, LLC, John Doe d/b/a Leviev Boymelgreen at 752 Pacific Street, Brooklyn, New York 11238, Attention: Gabriel Coltea.

In June 2009, Adam Realty moved for summary judgment in the Kings County Action and Atlantic Court failed to oppose the motion. By order, dated August 5, 2009, summary judgment was granted, on default, to Adam Realty and against Atlantic Court as to liability. Atlantic Court did not appear at the inquest which was held on November 16, 2009, and on December 2, 2009, a judgment was entered against it in the office of the Kings County Clerk, in the amount of \$2,467,469, plus interest and costs, for a total sum of \$2,571,204,42 (the Default Judgment).

By decision and order, dated August 1, 2011, the Hon. Peter P. Sweeney denied the aspect of Atlantic Court's motion, by order to show cause, which sought an order vacating the Default Judgment. Justice Sweeney found that Atlantic Court "did not demonstrate a reasonable excuse for its multiple defaults which led to the entry of the default judgment." Justice Sweeney also found, among other things, that there was no merit to Atlantic Court's assertions that: Satterlee Stephens had not been relieved as counsel; it (Atlantic Court) did not know of the court proceedings and had no intention to default; and there was no basis for it to be held liable for Adam Realty's loss.

Despite these findings, in the instant action, Atlantic Court asserts a counterclaim against the firm for legal malpractice on the grounds that Satterlee Stephens improperly undertook Atlantic Court's representation in the Kings County Action and later, improperly withdrew as counsel without either a court order or replacement counsel. Satterlee Stephens responded by moving for a dismissal of the counterclaim on, essentially, two grounds. First, that it cannot be held liable to a former client for events which occur subsequent to its discharge from representation, and second, that Atlantic Court is collaterally estopped from re-litigating the issue of its discharge.

Although Atlantic Court now questions the propriety of Satterlee Stephens's representation without having first obtained a retainer letter signed by a member of the Atlantic Court LLC, it acknowledges that the firm did in fact, represent its interests in the Kings County Action up until February 24, 2009. The principal argument of Atlantic Court is that Zlatopolsky was not authorized to consent to Satterlee Stephens's withdrawal on its behalf. Atlantic Court

asserts that, because Satterlee Stephens knew that Zvi Boymelgreen was the only member of Atlantic Court's LLC with authority to consent to the firm's discharge, the Attorney Withdrawal as signed, was ineffective, Satterlee Stephens was never relieved as counsel, and the firm was obligated to continue to protect Atlantic Court's interests in the Kings County Action. Its failure to do so, ultimately, caused Atlantic Court to suffer the \$2,571,201.42 Default Judgment. Atlantic Court asserts that these factual allegations state a (counter) claim for legal malpractice sufficient to withstand the firm's motion to dismiss pursuant to CPLR 3211 (a) (1).

New York has long recognized that "[o]n a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. . . . Under CPLR 3211 (a) (1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Leon v Martinez*, 84 NY2d 83, 87 - 88 [1994][internal citations omitted]). Upon review of the parties' submissions, the counterclaim for legal malpractice must be dismissed, as the documentary evidence, which utterly refutes Atlantic Court's factual allegations, conclusively establishes a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Leon v Martinez*, 84 NY2d at 87 - 88).

The question of Satterlee Stephens's discharge/withdrawal as counsel was raised, addressed and resolved in the Kings County Action, precluding re-litigation of the issue in this action.

It is well settled that collateral estoppel, or issue preclusion, prevents a party in a subsequent action from re-litigating an issue decided against it where that party had a full and fair opportunity to litigate that issue and determination in the earlier action (*Schwartz v Public Adm'r*

of Bronx, 24 NY2d 65, 71 [1969]).

The firm establishes that the issue of its discharge was fully and fairly litigated by submitting certain documents from the Kings County Action record. These include copies of the affidavits/affirmations of Zvi Boymelgreen, who identifies himself as "a member of Boymelgreen Family LLC which is the managing member of Atlantic Court LLC," with "personal and actual knowledge as to all facts and matters attested to herein," and of Stuart I. Davis, the attorney retained by Atlantic Court to represent it in post judgment matters, and a copy of Justice Sweeney's order.

In addition to his detailed explanations as to why Atlantic Court was not responsible for damage sustained by Adam Realty and why Adam Realty was not entitled to the \$2 million plus judgment, Zvi Boymelgreen attests to the following:

26. The main reason for their withdrawal was because by that time it became obvious [among other things] . . . (ii) that [Satterlee Stephens was] owed substantial amount[s] for unpaid legal fees; (iii) that the brunt of the defense was being carried by the other named defendants . . . (v) that any trial of this case would not take place for another few year[s], if not settled; (vi) and that [Atlantic Court] would be given notice and have sufficient time to retain new substitute attorneys to prepare for the trial, if not settled prior thereto.

* * *

29. It was never the intent of [Atlantic Court] to cease its defense and to default during any phase of this continuing action. Albeit, we tried to ride on the coat tails of the remaining defendants who we always believed are responsible and liable to answer . . . for any damages to [Adams Realty].

* * *

33. In all reality, we saw no exposure or any liability on the part of Atlantic Court

34. We, thus, stood by after the withdrawal of our attorneys and awaited notification of "future" legal action in the case.

* * *

42. It appears that after the "Withdrawal" of our attorneys and before we were "ordered" or advised that we should retain substitute attorney, certain legal

procedures proceeded which resulted in an entry of a "default" against [Atlantic Court] and which ultimately resulted in monetary judgment against [Atlantic Court] in favor of [Adam Realty] in the amount of \$2,571,204.42.

* * *

45. Thus, on April 2009, [Atlantic Court] became explicitly aware (a) that all discovery had been completed; (b) that time to file dispositive motion had expired; (c) that this action be placed on the trial calendar to await for the trial on the merits, involving ALL the parties.

* * *

47. [Atlantic Court] did not receive copies of all the motion[s] that were made by various parties after the withdrawal of our attorney.

* * *

50. Since after our attorney's withdrawal, [Atlantic Court] did NOT file any motion; but just held out to await for the trial notice . . .

51. We also held up hope that as the time of trial approached the other defendants would step up to the plate and "settle" this case for all parties concerned.

* * *

57. On or about the end of June 2009 we received a copy of a two paragraph "Supplemental Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment" . . .

* * *

59. Being that we were NOT represented at that time and not being proficient with court Procedure, we did not give this affidavit the attention it deserved.

It is clear that, not only did Zvi Boymelgreen acknowledge that the firm had withdrawn as counsel for Atlantic Court, he also acknowledged that Atlantic Court had elected not to actively participate in the litigation because of a mistaken belief that it, ultimately, would not be held liable for Adam Realty's damages. Conspicuously absent from his affidavit/affirmation, and from that of Stuart I. Davis, Esq., is any reference to Zlatopolsky, or to a lack of authority on his part to execute a document on Atlantic Court's behalf.

In denying the vacatur motion, Justice Sweeney made a series of findings which are relevant to the court's evaluation of Atlantic Court's counterclaim. Justice Sweeney's decision and order states, in relevant part:

On February 24, 2009, without obtaining leave of Court, Satterlee Stephens [] withdrew as their attorneys by filing and serving an Attorney Withdrawal Form. The above defendants voiced the consent[] to the withdrawal by signing the Attorney Withdrawal form. . .

The Attorney Withdrawal form, which was thereafter served on the attorneys for the plaintiff, set forth the method as to how service of legal papers was to be effected after the withdrawal on the defendants that Satterlee Stephens [] were representing in the action.

After Satterlee Stephens [] withdrew as the attorneys for the above defendants, [Adam Realty] filed and served a Note of Issue and Certificate of Readiness placing the matter on the trial calendar. Thereafter, [Adam Realty] made a motion for partial summary judgement on the issue of liability which was granted on default. When the matter eventually appeared on the trial calendar, the matter was marked "inquest" due to defendants failure to answer the calendar call. An inquest was scheduled for and held on November 16, 2009, at which time there was no appearance by the defendants. Damages in the amount of \$2,467,469,000 [sic] were assessed against the moving defendants at the inquest. A judgment in the amount of \$2,571,204.42 was thereafter entered against [Atlantic Court].

* * *

The papers before the Court make clear that it was [Atlantic Court's] choice not to be represented in the action after Satterlee Stephens [] withdrew as its attorneys. There is no indication in the record that [Atlantic Court] ever sought new representation until [Adam Realty] sought to execute the judgment. While it may be true that it was improper for Satterlee Stephens [] to withdraw as defendants' attorneys without obtaining leave of Court, [Atlantic Court] consented to the withdrawal, and it was not [Adam Realty's] obligation to make sure that the defendants had representation in the action as defendants now suggest. For all of these reasons, [Atlantic Court's] multiple defaults can only be viewed as intentional.

Additionally, the letters and e-mails exchanged between Satterlee Stephens and Atlantic Court confirm that, after it was relieved as counsel, Satterlee Stephens routinely forwarded to Atlantic Court the legal papers (notices and motions) served upon it in the Kings County Action, together with cover letters recommending consultation with its new counsel regarding the enclosures, and that these documents were received by Atlantic Court (Notice of Motion, Exhibits P, Q). Also submitted are several e-mails exchanged between Zlatopolsky and Saurack

in February 2009, which confirm that Atlantic Court had instructed the firm to stop work and that Atlantic Court was in agreement with the impending discharge of Satterlee Stephens as its counsel in the Kings County Action² (*see* Notice of Motion to Dismiss, Exhibit M).

With respect to Atlantic Court's current argument regarding Zlatopolsky, as referenced above, it is notable that, neither in support of its vacatur motion, nor at any time prior to the commencement of the instant action for legal fees, did Atlantic Court claim that he did not have authority, apparent or otherwise, to bind Atlantic Court to the Attorney Withdrawal. Atlantic Court advances this position despite the fact that Zlatopolsky, who identifies himself as the Manager of the Legal Department of Boymelgreen Developers, executed the original Retainer Agreement on Boymelgreen Developer's behalf, creating an appearance of authority, and despite the fact that Zlatopolsky, as evident from the annexed letters and e-mails, communicated on a regular basis with Satterlee Stephens about the Kings County Action and the withdrawal/discharge, creating an appearance of authority (*see* Notice of Motion to Dismiss, Exhibits M - Q; *Hallock v State of New York*, 64 NY2d 224, 231 [1984]).

Satterlee Stephens was not Atlantic Court's counsel of record at the time it defaulted in the Kings County Action. Satterlee Stephens, therefore, cannot be held liable for events which occurred subsequent to its discharge, and there is no merit to Atlantic Court's assertion that the firm's failure to represent and defend its interests, subsequent to February 24, 2009, was the proximate cause of the Default Judgment (*see Hunt v Kolken*, 49 AD2d 747, 747 [2nd Dept 1975],

²Not only does New York permit parties to sever their relationship by written consent, but DR 2-110 (B) (4) makes the withdrawal of counsel mandatory when "[t]he lawyer is discharged by his or her client."

aff'd 40 NY2d 949 [1976]; *see also Katz v Herzfeld & Rubin, P.C.*, 48 AD3d 640, 641 [2nd Dept 2008]).

Inasmuch as the documentary evidence establishes that: Atlantic Court had a full and fair opportunity to litigate the issue of Satterlee Stephens's withdrawal/discharge in the Kings County Action; Satterlee Stephens had no obligation to represent Atlantic Court after the discharge; and the Default Judgment resulted from Atlantic Court's intentional actions and inactions, and not as a result of Satterlee Stephens's failure to defend it in the Kings County Action, the counterclaim must be dismissed (*Schwartz v Public Adm'r of Bronx*, 24 NY2d at 71; *Browning Ave. Realty Corp. v Rubin*, 207 AD2d 263, 266 [1st Dept 1994], *lv denied* 85 NY2d 804 [1995]; *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d at 326).

Turning to Satterlee Stephens's application for an order directing that certain portions of the documents submitted in support of its motion be redacted from the public record and filed under seal pursuant to 22 NYCRR 216.1, for in camera inspection, for the following reasons, that application is denied.

Generally, courts are reluctant to seal court records, regardless of whether one or both parties have requested the sealing (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006], *lv denied* 10 NY3d 705 [2008]; *see Liapakis v Sullivan*, 290 AD2d 393, 394 [1st Dept 2002]; *Matter of Brownstone*, 191 AD2d 167, 168 [1st Dept 1993]). There is a broad constitutional presumption that the public as well as the press are entitled to access to court proceedings (*Danco Labs. v Chemical Works of Gedeon Richter*, 274 AD2d 1, 6 [1st Dept 2000]). This right of access to both court records and proceedings is firmly based on common-law and New York statutory principles that civil proceedings should be open to the public to "ensure that

they are conducted efficiently, honestly and fairly” (*Matter of Brownstone*, 191 AD2d at 168).

There is a correlating common-law right to inspect and copy judicial records which is “beyond dispute” (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.*, 28 AD3d at 324, quoting *Danco Labs., Ltd v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d at 6). Thus, judicial proceedings are presumptively open to the public, unless compelling reasons for closure are presented (*Mosallem v Berenson*, 76 AD3d 345, 349 [1st Dept 2010]). “Confidentiality is clearly the exception, not the rule” (*Matter of Hofmann*, 284 AD2d 92, 93 - 94 [1st Dept 2001]).

22 NYCRR 216.1 provides:

(a) [e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.

(b) For purposes of this rule, “court records” shall include all documents and records of any nature filed with the clerk in connection with the action. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders as set forth in CPLR 3103(a).

In the matter before the court, the requisite good cause has not been shown. Not only does the privilege log lack fact-based explanations supporting the sealing of any of the itemized documents (as directed in this court’s order, dated November 18, 2011), an examination of the documents fails to reveal information which does not directly pertain to the dispute over legal fees and expenses, the firm’s withdrawal as a result, and the charge of legal malpractice. The documents consist primarily of copies of the Retainer Agreement, checks, bills, cover letters, the Kings County Action pleadings, decisions, orders and judgments, a proposed motion for withdrawal of counsel, the executed Attorney Withdrawal, partial deposition transcripts, and

multiple e-mail transmissions concerning either legal fees or Satterlee Stephens's withdrawal as counsel, or both. Having placed the nature of their relationship at issue, the work which Satterlee Stephens performed on Atlantic Court's behalf in the Kings County Action, including the subject matter of counsel's advice and communications relating to the firm's discharge or withdrawal, have implicitly been waived (*Schulte Roth & Zabel v Chammah*, 251 AD2d 132, 132 [1st Dept 1998]; see also *United States v Bilzerian*, 926 F2d 1285, 1292 [2d Cir 1991], cert denied 502 US 813 [1991]).

Finally, with respect to Atlantic Court's cross motion for an order dismissing the complaint as against it, for the reasons set forth in the Prior Order, that aspect of the motion premised upon plaintiff's failure to plead pursuant to 22 NYCRR Part 137.6 (b), and for failure to state a cause of action for breach of contract, account stated and unjust enrichment is denied. The parties dispute whether some or all of the defendants are entitled to a dismissal of the breach of contract (Retainer Agreement) cause of action due to a lack of privity of contract, and whether, and to what extent, each named defendant is obligated to Satterlee Stephens under theories of account stated and unjust enrichment. As stated in the Prior Order, having received substantial payments for legal services rendered to the various defendants, Satterlee Stephens contends that, in an unscrupulous attempt to avoid payment, defendants now deny the very relationships between the various entities which plaintiff, as counsel intimately involved in their transactions and causes of action, knows to exist. Atlantic Court's bald denials of plaintiff's detailed allegations are insufficient to grant a dismissal of the complaint. Discovery is needed to establish whether and to what extent a nexus exists between the defendant entities which might obligate Atlantic Court to pay some or all of the legal fees and expenses at issue in this action.

Accordingly, it is

ORDERED that the motion by plaintiff for an order, pursuant to CPLR 3211 (a) (7), dismissing Atlantic Court LLC's counterclaim for legal malpractice is granted and the counterclaim is dismissed; and it is further

ORDERED that that aspect of the cross motion which seeks a dismissal of the complaint based upon plaintiff's failure to plead pursuant to 22 NYCRR Part 137.6 (b), is denied; and it is further

ORDERED that that aspect of the cross motion which seeks a dismissal of the complaint as against Atlantic Court LLC for failure to state a cause of action is denied; and it is further

ORDERED that the motion of plaintiff for an order sealing portions of the record is denied.

Dated: *October 21, 2012*

FILED

OCT 25 2012

**NEW YORK
COUNTY CLERKS OFFICE**

J.S.C.