

Knox v Aronson, Mayefsky & Sloan, LLP

2017 NY Slip Op 32951(U)

October 16, 2017

Supreme Court, New York County

Docket Number: 158738/2016

Judge: Carmen Victoria St. George

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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. CARMEN VICTORIA ST. GEORGE

PART 34

Justice

JODI KNOX a/k/a JODI MCGINNIS,

INDEX NO. 158738/2016

Plaintiff,

MOTION DATE 08/10/2017

- v -

MOTION SEQ. NO. 004

ARONSON, MAYEFSKY & SLOAN, LLP, KAREN ROBARGE,
FREDMAN BAKEN & KOSAN, LLP,

Defendants.

The following papers were read on this

Notice of Motion/Order to Show Cause – Affidavits – Exhibits
Answering Affidavits – Exhibits
Replying Affidavits

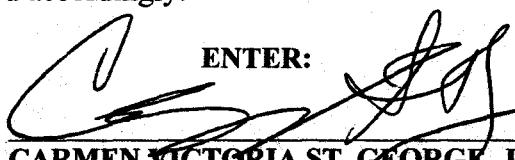
PAPERS NUMBERED

78-91
101-117
118-120

In this legal malpractice action, defendant Fredman Baken & Kosan, LLP (FBK) moves for dismissal under CPLR §§ 3211 (a) (1), (4), (5), and (7). The papers in support show that plaintiff alleged essentially the same facts as she had in her counterclaim in *Fredman, Baken & Kosan, LLP v McGinnis* (Sup Ct, Westchester County, Giacomo, J., index No. 66280/2015). Moreover, contrary to plaintiff’s contention, the Westchester Court’s January 11, 2017 decision in that case denied plaintiff’s cross-motion to amend her answer to include negligence/legal malpractice and breach of fiduciary duty on substantive grounds, as it found “even accepting every allegation of the proposed amended answer as true, defendant cannot establish a negligence or breach of fiduciary duty claim against plaintiff” (*Id.*, January 11, 2017, at *3). Plaintiff cannot bring an action against FBK here on the same grounds that the Westchester Court expressly rejected (*See Paramount Pictures Corp. v Allianz Risk Transfer AG*, 141 AD3d 464 [1st Dept 2016] [adjudication on the merits bars relitigating issue in other actions]); *Harley v Kawkins*, 281 AD2d 593, 594 [2nd Dept 2001] [plaintiff’s second action for legal malpractice dismissed even with respect to additional claims, as they could have been raised in first action]). Plaintiff’s arguments to the contrary lack merit. The Court does not address plaintiff’s letter or FBK’s response, as Justice Billings already rejected plaintiff’s contentions regarding counsel’s fraud when she heard oral argument. Accordingly, it is

ORDERED and ADJUDGED that motion sequence 004 is granted, the action is severed and dismissed as to FBK, and the caption is amended accordingly.

DATED: 10/16/2017

ENTER: 
CARMEN VICTORIA ST. GEORGE, J.S.C.
HON. CARMEN VICTORIA ST. GEORGE
J.S.C.

- 1. CHECK ONE:
- 2. CHECK AS APPROPRIATE:.....MOTION IS
- 3. CHECK IF APPROPRIATE:

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER DO NOT POST
- FIDUCIARY APPOINTMENT REFERENCE