

Ali v Ali

2013 NY Slip Op 33234(U)

February 19, 2013

Sup Ct, Bronx County

Docket Number: 381035/11

Judge: Brigantti-Hughes Mary Ann

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NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 15

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

Ali, et al

Index No. 381035/11

-against-

Hon. MARY ANN BRIGANTTI-HUGHES

Ali, et al

Justice.

The following papers numbered 1 to _____ Read on this motion.

Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of November 19, 2012

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Motion is decided in accordance with this Court's Decision and Order dated February 19, 2013.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 2/19/13

Hon. [Signature]

J.S.C.

MARY ANN BRIGANTTI-HUGHES

FILED Mar 20 2013 Bronx County Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM - PART 15

Present: Hon. Mary Ann Brigantti-Hughes

X

HAMAD ALI, 2591 REALTY, INC., 800 REALTY
CORP., and RKAN REALTY, LLC.,

DECISION/ORDER

Plaintiffs,

-against-

Index No.: 381035/11

FARES ALI, SELIM ZHERKA, SILAS METRO HOLDINGS
CORP., JAMES G. DIBBINI AND ASSOCIATES, P.C.,
JAMES G. DIBBINI, ESQ., SIGNATURE BANK, CUSTOM
TITLE SERVICES, INC.,

Defendants.

X

The following papers numbered 1 to 28 read on the below motions noticed on May 10, May 15, May 24, October 11, and November 12, 2012 and duly submitted on the Part IA15 Motion calendar of **November 14, 2012** and **December 3, 2012**:

<u>Papers Submitted</u>	<u>Numbered</u>
Signature's motion to dismiss, memo of law, exhibits	1,2,3
Silas Metro's motion to dismiss, exhibits	4,5
Dibbini's motion to dismiss, exhibits	6,7
Pls.' cross-motion, opposition, exhibits	8,9,10
Custom's motion to dismiss, exhibits	11,12
Pls.' opposition, exhibits	13, 14
Pls.' motion to amend pleadings, exhibits	15, 16
Signature's cross-motion for sanctions, exhibits	17,18
Silas Metro's Aff. In Opposition, exhibits	19,20
Dibbini's Aff. In Opposition, exhibits	21, 22
Zherka's Aff. In Opp., Exhibits	23, 24
Custom Title's Aff. In Opp., Exhibits	25, 26
Pls' Aff. In Reply, exhibits	27,28

Upon the foregoing papers, the following motions are before the Court:

Defendants Signature Bank ("Signature"), James G. Dibbini and Associates, P.C. and James G. Dibbini, Esq. (collectively "Dibbini"), and Silas Metro Holdings Corp. ("Silas Metro")

move for an order (a) pursuant to CPLR 3211(a)(7), 3016(b), and 3025(b), and 3013, dismissing Plaintiff's "Amended Complaint as to Signature" with prejudice. Plaintiffs Hamad Ali, 2591 Realty LLC, 800 Realty Corp., and Rkan Realty LLC ("Plaintiffs") oppose and cross-move to stay or deny the motions pending discovery pursuant to CPLR 3211(d) and 3212(f). The moving defendants oppose the cross-motion.

Defendant Custom Title Services, Inc. ("Custom Title") has also filed a motion to renew its previously filed motion to dismiss, pursuant to CPLR 2221(e), and upon renewal, for dismissal and/or summary judgment in its favor, dismissing Plaintiffs' complaint. Plaintiff opposes the motion.

Plaintiffs have filed a motion to amend the pleadings pursuant to CPLR 3025(b). Defendants Signature, Dibbini, and Silas Metro oppose the motion, and Signature cross-moves for sanctions pursuant to 22 NYCRR 130-1.1.

In the interest of judicial economy, the above motions are consolidated and disposed of in the following Decision and Order.

I. Background and Relevant Procedural History

This matter involves several parcels of real property in Manhattan and the Bronx: (1) 2691 Eighth Avenue, a/k/a 2591 Frederick Douglass Boulevard, a/k/a 301 West 138th Street, New York, New York, shown as Block 2041, Lot 47 on the tax map of New York County ("2591 Eighth Avenue"); (2) 1480 Westchester Avenue, Bronx, New York, shown as Block 3738, Lot 38 on the tax map of Bronx County ("1480 Westchester Avenue"); and (3) 1531 and 1535 Westchester Avenue, Bronx, New York, shown as Block 3773, Lots 5 and 3, respectively, on the tax map of Bronx County ("1531/1535 Westchester Avenue"), the aforementioned properties collectively referred to as the "Properties").

In a summons and complaint dated August 30, 2011, plaintiff Hamad Fares Ali ("Ali") asserted that he was the rightful owner or co-owner of the Properties. Hamad asserted that (1) he is a managing member of co-plaintiff 2591 Realty LLC, which is the owner of 2591 Eighth Avenue; (2) he is managing member of co-plaintiff RKAN Realty LLC, which is the owner of 1480 Westchester Avenue, and (3) he is either a majority shareholder or one of two equal

shareholders of co-plaintiff 800 Realty Corp., which owns 1531/1535 Westchester Avenue.

The August 2011 complaint alleged that Hamad's son, defendant Fares Ali ("Fares") and defendant Selim Zherka ("Zherka") fraudulently conveyed ownership of the Properties from its alleged rightful owners to Zherka, based upon fraudulent misrepresentations and/or circumstances that Fares allegedly made to and/or engaged in with Zherka. The original complaint further alleged that the Properties were thereafter fraudulently conveyed to defendant Silas Metro, which then refinanced the debt on the Properties with defendant Signature "by means of a spreader mortgage encumbering all the properties with a mortgage of Four Million Nine Hundred Thousand (\$4,900,000) dollars."

The complaint alleged that defendants James G. Dibbini and Associates, P.C., and James G. Dibbini (collectively "Dibbini"), purportedly the attorneys for Fares or the entity Plaintiffs, "facilitated and participated in the fraudulent scheme" either through direct participation or negligence. The original complaint also alleges that Custom Title Services, Inc. ("Custom"), the title agent that allegedly "insured title to Silas and Signature" had "participated and furthered" the fraudulent scheme.

The complaint's Seventh, Eighth, and Ninth causes of action sought a determination as to each parties' claims to the Properties pursuant to Article 15 of the RPAPL. Specifically, Plaintiffs asserted that they are the rightful owners of the Properties and that Silas and Zherka's adverse claims to ownership of, and Signature's adverse claim to a mortgage lien on the Properties are wrongful as they are the product of the aforementioned fraudulent scheme and, thus, should be voided. Thus, the Article 15 Claims in the original complaint seek a determination that Plaintiffs' claims to ownership of the Properties are valid, and Signature, Silas Metro, and Zherka's adverse claims are invalid.

On or about November 23, 2011, Signature moved to dismiss the original complaint pursuant to CPLR 3211(a)(7), 3016(b), and/or 3013, for failing to plead the underlying fraudulent scheme with sufficient particularity. This Court issued a Decision and Order which agreed that the pleading of Article 15 claims was insufficient to allow Signature to be able to defend the allegations that its lien interest in the Properties is based upon fraud. This Court directed Plaintiff to "amend its complaint within 60 days of entry of the Order, so that the statements

therein were sufficiently particular to give the Court and parties notice of the occurrences intended to be proved and the material elements of each cause of action.”

On or about April 18, 2012, Plaintiffs served a pleading entitled “Amended Complaint as to Signature Bank.” The amended pleading now identifies Plaintiffs as “Hamad Ali, individually and owner of RHAM Realty, 800 Realty, and 2591 Realty, LLC.” The Amended Complaint purports to include “New paragraphs starting from Complaint #146” and thus only contains paragraphs numbered 147 through 159. The Amended Complaint does not contain any of the allegations previously contained in the original complaint, including an identification of the various parties, a description of the purported ownership of the Properties, any allegations describing the purported fraudulent scheme, and any causes of action, including the material elements thereto. The Amended Complaint does not include an *ad damnum* clause identifying the relief sought against any of the defendants, including Signature.

In response to service of this “Amended Complaint,” Signature, Silas Metro, and Dibbini each moved to dismiss. Defendant Custom Title has also moved for dismissal and/or summary judgment, renewing and its earlier motion that had been denied without prejudice for failure to include a complete set of the pleadings.

Signature, Silas Metro, and Dibbini argue that, at the outset, the “Amended Complaint” supercedes that original complaint, rendering the initial complaint a legal nullity. Consequently, since the “Amended Complaint” does not assert any causes of action with sufficient particularity against any party, it must be dismissed. If the amended pleading is considered a “supplemental complaint,” it likewise must be dismissed because Plaintiff did not obtain leave of court to serve (3025[b]), and the amendment is not based on facts that were in existence but not learned until after the original complaint was filed. Moreover, the movants argue that the Court cannot seek to retroactively cure the defect by granted leave to serve the supplemental complaint *nunc pro tunc*.

Signature and Siles Metro argue that, no matter how the Amended Complaint is classified, it is subject to dismissal because it does not contain specific causes of action against any of the Defendants or an *ad damnum* cause stating any relief sought by Plaintiffs, contrary to this Court’s directive in its April 3, 2012 Order. Specifically, Signature note that the amended pleading does not sufficiently plead any RPAPL Article 15 claims. Even if this Court were to

determine that the proposed pleading was actually a "supplemental" complaint, it is not proper because the allegations related to the subject mortgage loan given by Signature in July 2011, two months *before* the original complaint was filed in August 2011. Since the loan was referenced in the earlier pleading, Plaintiffs cannot argue that they did not previously know of the facts alleged in the new pleading.

In its prior motion, Signature demonstrated, and this Court agreed, that Plaintiff's RPAPL Article 15 claims failed to sufficiently plead the unjust nature of Signature's, Zherka's, and Silas Metro's adverse claims to the subject property. Plaintiff's "Amended Complaint" likewise fails to provide further particularization of the alleged fraudulent scheme between Zherka and Silas Metro. Finally, the Amended Complaint improperly amended the caption without leave of court.

Dibbini, in its motion, notes that the Amended Complaint does not contain any allegations concerning Dibbini and seeks no relief against him.

Defendant Custom Title Services, Inc. ("Custom") has also moved to dismiss and/or for summary judgment, renewing its previous motion which had been denied without prejudice to renew upon service of a full copy of the pleadings.

Plaintiffs had filed a motion for summary judgment against defendant Zherka, and Zherka had cross-moved to dismiss. Those motions were subsequently withdrawn without prejudice via stipulation on or about November 20, 2012.

Plaintiffs have opposed the above motions. In response to Signature, Silas Metro, and Dibbini, Plaintiffs have cross-moved "to deny or stay these motions pending further discovery which was previously served and not responded to as per CPLR rule 3211(d) and 3212(f)." Plaintiffs argue that the motions should be denied because the "Amended Complaint" did not supercede the original complaint. Rather, it was designed to fulfill this court's April 3, 2012 Order and "not create any burden on the existing parties" by having to re-serve and requiring amended answers. Plaintiffs' counsel states "[s]hould the Court feel otherwise I would be happy to incorporate both into a single document and reserve it to all parties." Plaintiffs argue that the Amended Complaint adequately pleads a claim against Signature for "aiding and abetting a breach of fiduciary duty" and have not improperly amended the caption. Plaintiffs also assert that these motions must be stayed to allow the exchange of discovery to obtain facts that are

“currently unavailable” (CPLR 3211[d]).

In Reply, Signature notes that Plaintiff was never given leave to amend and include an additional cause of action. Rather, the Plaintiffs were only permitted to give particularized statements about “the occurrences intended to be proved and the material elements of each cause of action.” The original complaint did not assert a cause of action for aiding and abetting breach of fiduciary duty against Signature or any other defendant. In any event, the new cause of action is insufficiently pled. (*Forrest v. Jewish Guild for the Blind*, 309 A.D.2d 546, 559 [1st Dept. 2003]). Moreover, Plaintiff improperly amended the caption. Signature argues that the cross-motion pursuant to CPLR 3211(d) must be denied, since the discovery they seek has no bearing on whether Plaintiffs have properly pleaded their claims.

While the above dismissal motions were pending, Plaintiff filed a motion for leave to serve an amended complaint, specifically “melding” the original complaint and “Amended Complaint as to Signature Bank” into a single complaint “word for word.” That motion has been opposed by Dibbini, Signature, and Silas Metro. Signature has also cross-moved for sanctions against Plaintiffs pursuant to 22 N.Y.C.R.R. §130-1.1. Plaintiffs oppose the cross-motion.

II. Applicable Law and Analysis

(1) Dismissal Motions

This Court agrees that Plaintiffs’ service of an “Amended Complaint as to Signature Bank” superseded the original pleading, rendering it a nullity. “It is well settled that an amended complaint supersedes the original complaint, thus rendering without legal effect the defective earlier pleading.” *Nimkoff Rosenfeld & Schechter, LLP v. O’Flaherty*, 71 A.D.3d 533 (1st Dept. 2010), citing *Chalasani v. Neuman*, 64 N.Y.2d 879 (1985); *Elegante Leasing, Ltd. v. Cross Trans Svc., Inc.*, 11 A.D.3d 650 (2nd Dept. 2004). Stated another way, once an amended complaint is served, it becomes “the only complaint in the action.” [*Plaza PH2001 LLC v. Plaza Residential Owner LP*, 98 A.D.3d 89 [1st Dept. 2012], citing *Hummingbird Assoc. v. Dix Auto Serv.*, 273 A.D.2d 58 [2000]]. The action is then “required to proceed as though the original pleading had never been served.” [*Id.*, citing *Halmar Distrib. v. Approved Mfg. Corp.*, 49 A.D.2d 841 [1st Dept. 1975]].

This Court finds that procedural deficiencies would have to be outright ignored in order to find the “Amended Complaint as to Signature Bank” a supplemental, rather than amended pleading. An amendment is something that makes any change at all in a pleading, including the addition of facts and claims that were even in existence at the time of the pleading. A supplement, on the other hand, seeks to add to a pleading a claim or matter that only came into being, into the pleader’s knowledge, after the original pleading was served. (*See NYJUR Pleading*, §203). In this matter, first, Plaintiff did not seek, and was not granted leave to serve a supplemental pleading (3026[b]). Rather, Plaintiff was given leave to *amend* its pleading for the limited purpose of make their statements “sufficiently particular to give the Court and the parties notice of the occurrences intended to be proved and the material elements of each cause of action.” Second, a supplemental pleading generally is used to set forth transactions or occurrences that take place subsequent to the filing of the initial pleading, or to set forth an additional cause of action based upon facts which were unknown to a party at the time the original pleading was served. (*See Horowitz v. Goodman*, 112 A.D. 13 [1st Dept. 1906]; *Berstein v. Kazemi & Co.*, 221 A.D.2d 244 [1st Dept. 1995]). Here, the “Amended Complaint as to Signature Bank” outlines events and occurrences taking place before the filing of the initial complaint on August 30, 2011.

The “Amended Complaint as to Signature Bank” is deficient, in that it fails to plead the elements of any causes of action against Signature, or any of the named defendants. In this Court’s Decision and Order dated April 3, 2012, it was determined that Plaintiffs’ Article 15 claims were not sufficiently particularized pursuant to CPLR 3016(b) and 3013. Plaintiff argues that the allegations in its “Amended Complaint as to Signature Bank” set out their cause of action for “aiding and abetting a breach of fiduciary duty.” This cause of action was not included in Plaintiffs’ original complaint, as against any defendant, and Plaintiffs were not granted leave to include additional causes of action. Nevertheless, the cause of action found in the purported amended pleading is deficient as against Signature.

In determining a motion to dismiss, the Court’s role is ordinarily limited to determining whether the complaint states a cause of action. (*Frank v. DaimlerChrysler Corp.*, 292 A.D.2d 118 [1st Dept. 2002]). In other words, the determination is not whether the party has artfully

drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained. (*See Stendig, Inc. v. Thom Rock Realty Co.*, 163 A.D.2d 46 [1st Dept. 1990]; *Leviton Manufacturing Co., Inc. v. Blumberg*, 242 A.D.2d 205 [1st Dept. 1997])[on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]). When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (*see, CPLR 3026*). The court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit into any cognizable legal theory”. (*Leon v. Martinez*, 84 N.Y.2d 83, 87-88 [1994]). The motion should be denied if, from the pleading’s four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law. (*McGill v. Parker*, 179 A.D.2d 98 [1st Dept. 1992]).

A claim for aiding and abetting a breach of fiduciary duty requires (1) a breach of fiduciary obligation to another; (2) that the defendant knowingly induced or participated in the breach; (3) and that plaintiff suffered damages as a result of the breach. (*Bullmore v. Ernst & Young*, 45 A.D.3d 461 [1st Dept. 2007]). Here, the Amended Complaint as to Signature Bank fails to plead that any defendant owed a fiduciary duty to Plaintiffs, or that any of the defendants breached that duty. Accordingly, Plaintiffs failed to plead an underlying breach of fiduciary obligation, the first element of their newly asserted cause of action against Signature. Moreover, Plaintiffs do not allege that Signature Bank “knowingly induced or participated in the breach.” A person knowingly participates in a breach of fiduciary only when he or she provides ‘substantial assistance’ to the primary violator.” (*Id.*, citing *Kaufmann v. Cohen*, 307 A.D.2d 113, 126 [1st Dept. 2003]). “Substantial assistance” only occurs where a defendant affirmatively assists, helps conceal or fails to act when required to do so. (*Kaufmann* at 126.) Mere inaction constitutes substantial assistance only where the defendant owes a fiduciary duty directly to the plaintiff. (*Id.* [internal citations omitted]). Here, the Amended Complaint as to Signature Bank only asserts that Signature “failed to follow appropriate standards” in vetting the subject loan and failure to obtain certain documentation perpetuated an alleged fraudulent scheme. The Amended Complaint as to Signature Bank does not assert that Signature owed Plaintiff an independent

fiduciary duty. These claims contained in the amended complaint sounding in fraud or based on RPAPL Article 15 therefore fail as a matter of law.

With respect the other moving defendants, Silas Metro and Dibbini, the amended pleading fails to assert a cognizant cause of action. The body of the amended pleading only states in conclusory fashion that “the failure of Defendant SIGNATURE to follow industry standards rendered substantial assistance to defendants ZHERKA and SILAS” and appears to assert claims based on alleged fraudulent conduct of the parties. A complaint sounding in fraud must be plead with particularity, so as the circumstances surrounding the wrong are stated with sufficient detail. For example, the complaint must specify who made the misrepresentation to whom, the date of the misrepresentation, and its content. (*El Entertainment U.S. L.P. v. Real Talk Entertainment, Inc.*, 85 A.D.3d 561 [1st Dept. 2011], CPLR 3016[b]). Here, the amended pleading does not identify who the parties are, or their specific involvement with this matter. Rather, the amended complaint makes assertions that the defendants ignored standard commercial loan industry practices. The amended complaint states, for example, that “every party who participated in this closing should have questioned how Fares Ali, a 24-year-old man, was swearing that he was the owner or had power to transfer four buildings for \$11,000,000 worth of assets belonging to three separate Corporations. (Par. 155).” There are no specific allegations as to how the moving defendants concocted a fraudulent “scheme” or what particular acts of wrongdoing either party engaged in. Moreover, as stated above, Plaintiffs’ claims based on RPAPL Article 15 are not plead with sufficient particularity.

Upon review of the record, defendant Custom Title’s motion to renew its previous motion for dismissal and/or summary judgment should also be granted, and upon renewal, dismissal granted in its favor. The “Amended Complaint as to Signature Bank” does not mention Custom Title. Finally, there is absolutely no mention of the Dibbini defendants in the amended complaint.

In response to the dismissal motions filed by defendants Signature, Silas Metro, and Dibbini, Plaintiffs cross move to stay the motions for want of discovery pursuant to CPLR 3211(d). Primarily, the motions are addressed to deficiencies in Plaintiffs’ amended pleading itself, and not to the merits of their allegations. Second, Plaintiffs have not submitted the

requisite affidavit from someone with personal knowledge explaining why facts exist that would defeat the motion to dismiss. (*Peterson v. Spartan Indus.*, 33 N.Y.2d 463, 466 [1974]). Further, Plaintiff's failure to submit an affirmation of good faith, which is required by 22 NYCRR 202.7(a)(2) on any motion that relates to disclosure, mandates denial of the cross-motion. (See *Sixty-Six Crosby Assoc. v. Berger & Kramer, LLP*, 256 A.D.2d 26 [1st Dept. 1998], *Matos v. Mira Realty Mgt. Corp.*, 240 A.D.2d 214 [1st Dept. 1997]).

(2) *Motion for Leave to Amend the Pleadings*

While the above dismissal motions were pending before this Court, Plaintiffs filed a motion seeking leave to file an amended complaint, for the purpose of "melding" its Amended Complaint as to Signature Bank and its original complaint. In a letter filed with the court dated October 16, 2012, Plaintiffs' counsel requests that the motion be considered "together with" the pending dismissal motions, presumably in further opposition. This motion, filed several months after this Court's April 3, 2012 Order, and several months after the above dismissal motions were filed and briefed, must be denied.

While it is "fundamental that leave to amend a pleading should be freely granted, so long as there is no surprise or prejudice to the opposing party" (*Kocourek v. Booz Allen Hamilton Inc.*, 85 A.D.3d 502 [1st Dept 2011] citing CPLR 3025[b]), "to conserve judicial resources, an examination of underlying merits of the proposed causes of action is warranted" (*Megarix Furs, Inc. v. Gimble Bros., Inc.*, 172 A.D.2d 209 [1st Dept 1991]). "[A] motion for leave to amend a pleading must be supported by an affidavit of merits and evidentiary proof that could be considered upon a motion for summary judgement" (*Nab-Tern Constructors v. City of New York*, 123 A.D.2d 571 [1st Dept. 1986]; *247 East 32nd LLC v. Gasparich*, 95 A.D.3d 790 [1st Dept. 2012]). An amended pleading, verified only by counsel, is insufficient. (See *Marinelli v. Shifrin*, 260 A.D.2d 227 [1st Dept. 1999], citing *Cheung v. City of New York* 234 A.D.2d 91 [1st Dept. 1996]).

In this matter, Plaintiffs' motion seeks to combine their original complaint, filed August 30, 2011, with the Amended Complaint as to Signature Bank," filed in April 2012. As discussed earlier, the 2012 amended pleading superceded the original complaint,

and this court is required to proceed as if it was never served. (*Halmar Distrib. v. Approved Mfg. Corp, supra.*) In light of the procedural posture of this case, Plaintiffs' motion is, in essence, seeking leave to amend its 2012 amended pleading with all of the allegations contained in the original complaint. This Court must therefore examine the underlying merits of the proposed amendments.

Plaintiffs' motion must be denied. Plaintiffs failed to submit an affidavit of merit, or any other evidentiary proof in admissible form, in support of the proposed amendments. (*Nab-Tern Constr., supra., D'Amato v. Leffler*, 15 A.D.3d 607 [2nd Dept. 2005]). The proposed amended complaint is only signed by counsel, which does not constitute proper evidentiary support. (*Marinelli v. Shifrin, supra.*) Moreover, the proposed amended complaint, first submitted to the Court only in reply papers, does not clearly show changes or additions being made. (CPLR 3025[b]).

Signature has cross-moved for costs and sanctions against plaintiffs pursuant to 22 NYCRR §130-1.1, arguing that plaintiffs' motion to amend is frivolous. Under §130-1.1(c)(3), conduct is "frivolous" if it asserts material factual statements that are false. In determining whether the conduct undertaken was frivolous, the court shall consider, (1) the circumstances under which the conduct took place, including the time available for investigating the factual basis of the conduct, and (2) whether or not the conduct was continued when its lack of factual basis was apparent, or should have been apparent. (*See* 22 NYCRR 130-1.1[c]). The Court must look at the "broad pattern of conduct" by the offending attorney or parties. *Levy v. Carol Management Corp.*, 260 A.D.2d 27, 33 (1st Dept. 1999). Here, while it has been determined that Plaintiffs' motion papers are insufficient to warrant the relief requested, the circumstances do not warrant imposition of costs and/or sanctions.

III. Conclusion

Accordingly, it is hereby

ORDERED, that the motions to dismiss filed by defendants Signature, Dibbini, Silas Metro, and Custom Title are granted, and the Amended Complaint as to Signature Bank is dismissed as to those parties, and it is further,

ORDERED, that Plaintiffs' cross-motion to stay the proceedings pursuant to CPLR 3211(d) is denied, and it is further,

ORDERED, that Plaintiffs' motion to amend the pleadings pursuant to CPLR 3025(b) is denied, and it is further

ORDERED, that Signature's cross-motion for sanctions pursuant to 22 NYCRR 130-1.1 is denied.

This constitutes the Decision and Order of this Court.

Dated: February 19, 2013



Hon. Mary Ann Brigantti-Hughes, J.S.C.