Short Form Order

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY

COPY

PRESENT:
HON. PAUL J. BAISLEY, JR., J.S.C.

AMENDED
DECISION AFTER TRIAL

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NELSON GERARD and BUCKSKILL FARM, LLC,

Plaintiffs,

-against-

CATHERINE CAHILL, as Executrix of the Estate of MARVIN HYMAN, JOHN DOE, MARY MOE and ROE COMPANY,

Defendants.

INDEX NO.: 26224/05
Action No. 1

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NELSON GERARD and BUCKSKILL FARM, LLC,

Plaintiffs,

CATHERINE CAHILL,

Defendant.

INDEX NO.: 37856/2007
Action No. 2

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PLAINTIFFS' ATTORNEY:
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DEFENDANT'S ATTORNEY:
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This litigation involves an attorney who, while in the final stages of terminal prostate cancer, allegedly misappropriated nearly $2 million from his client and deposited the money into a joint account he shared with his wife, who was also an attorney and a sitting justice in the East Hampton Town Court. Plaintiffs commenced the above-captioned actions to recover the moneys allegedly wrongfully transferred by the attorney shortly before he died and subsequently retained by his wife as surviving joint tenant of the joint account.

The first-captioned action ("Action No. 1") for a declaratory judgment and related relief was commenced against the attorney, Marvin Hyman, Esq., on November 1, 2005. On December 2, 2005, the parties participated in a preliminary injunction hearing conducted before the Hon. Thomas F. Whelan. Several weeks later, Marvin Hyman died, and his wife, Catherine Cahill, was appointed executrix of her husband's estate and substituted in the action as defendant. The second-captioned action ("Action No. 2") was commenced against Catherine Cahill individually on December 5, 2007 to recoup the moneys allegedly fraudulently conveyed to Cahill. Cahill thereafter successfully moved in Action No. 1 for an order granting summary judgment

dismissing the action (WHELAN, J., short-form order dated July 16, 2008) which was subsequently reversed by the Appellate Division, Second Department pursuant to a decision and order dated October 27, 2009.[1] The Appellate Division upheld the trial court's dismissal of the second cause of action for fraud, but reinstated the first cause of action for breach of an alleged oral agreement and the third through sixth causes of action for injunctive relief.

The above-captioned actions thereafter came on for joint trial before the undersigned commencing on June 25, 2012 and concluding on June 26, 2012. Pursuant to a trial stipulation dated June 15, 2012, the parties stipulated to the admissibility in evidence of all of the prior orders in Action No. 1 and Action No. 2, the transcript of the preliminary injunction hearing (cited hereinafter as "Hearing Tr") and any documents admitted in evidence thereat, together with two real estate appraisals of the subject property, certain additional documents, and the deposition transcripts of plaintiff Nelson Gerard and defendant Catherine Cahill. Accordingly, all of the foregoing, together with the live testimony of defendant Catherine Cahill and two additional defense witnesses, comprised the evidence that was presented at the trial before the undersigned. That evidence reflects the following:

In 2003 plaintiff Nelson Gerard and defendant Marvin Hyman, Esq. (now deceased) entered into an operating agreement (the "Agreement") dated June 1, 2003 to create a limited liability corporation ("LLC") called Buckskill Farm, LLC ("Buckskill Farm" or the "LLC"). The stated purpose of Buckskill Farm was "the subdivision of a certain 9.6 acre parcel of vacant land...in the Town of East Hampton, New York." The Agreement reflects that Hyman and Gerard were the only members and managers of the LLC (Exhibit "A" thereof). Pursuant to Exhibit "B" of the Agreement, Gerard made a capital contribution of $2,000,000 cash and Hyman was credited with a capital contribution of $350,000 of which some portion[2] comprised various expenditures incurred related to the project and the balance comprised services rendered and to be rendered. Hyman, who drafted the Agreement, also acted as the attorney for Buckskill Farm.

According to the Agreement, Hyman was required to "take all steps necessary or desirable at his sole cost and expense" to attempt to obtain approval from the East Hampton Planning Board of a subdivision of the parcel into as many as eight lots, together with a required agricultural reserve (Art VII, p 13). Hyman, an attorney experienced in land use and development issues, opined in the Agreement that "based upon his experience, it is not likely that less than Five (5) lots will be obtained on a final approved plan" (Art VII, p 15).

The Agreement set forth, at Exhibit "C," various distribution scenarios depending on the number of lots ultimately permitted by the Town of East Hampton (the "Town"). For a subdivision map yielding eight lots plus a reserve area, for example, five lots and a half-interest in the reserve area would be distributed to Gerard with the remaining lots and reserve area going to Hyman. For a subdivision map yielding five or four lots plus a reserve area, however, all lots would be distributed to Gerard and Hyman would receive only the reserve area. (The latter provision is crucial for understanding what transpired as the subdivision process proceeded.)

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[1] *Gerard v Cahill*, 66 AD3d 957, 888 NYS2d 104 (2d Dept 2009).

[2] $117,900 as set forth in Exhibit B of the Agreement, or approximately $280,000 as testified to by Hyman at the preliminary injunction hearing conducted before this Court (Whelan, J.) on December 2, 2005 (Hearing Tr p 138).

The Agreement details no less than nine formal steps in the process for obtaining subdivision approval, which was anticipated to take between 18 and 24 months. Significantly, Hyman warranted in the Agreement that "at each phase of the foregoing process [he] will advise and consult with Gerard and all decision [*sic*] to be made shall be made jointly" (Art VII, p 14).

On February 20, 2004, Hyman advised Gerard by letter that a proposed eight-lot subdivision map had been submitted for preliminary approval. The preliminary map reflected an agricultural reserved area of 214,274 square feet. The February 20th letter also warned of an impending expansion of the Town of East Hampton's building moratorium to lots under ten acres and a possible zoning upgrade to three-acre zoning, which would reduce the yield to three lots plus a reserve area. In addition, the letter noted the Town's parallel interest in purchasing four of the proposed eight lots together with the agricultural reserve area, leaving the LLC with only four lots in the southerly part of the property abutting the open space to be acquired by the Town. Hyman noted in the letter that:

> "If we continue to pursue the Town purchase, we should discuss the financial implications on the members that such purchase would have. As we did not consider this possibility in the original operating agreement, we should address same as soon as possible."

Over the next eight months, as negotiations between Hyman and the Town proceeded, there ensued a series of discussions and correspondences between and among Hyman, Gerard and Gerard D. Goldstein, Esq., Gerard's attorney, regarding the renegotiation of Exhibit C to the Agreement. Although several proposed agreements were exchanged, it is undisputed that no agreement was ever signed. Hyman's negotiations with the Town on behalf of the LLC ultimately resulted in a purchase offer of $1.9 million.[3] Gerard, Hyman and Goldstein thereafter discussed (and according to Gerard and Goldstein, agreed to) a proposal whereby the LLC would buy out Hyman's interest for $950,000, but the record reflects the parties' ambiguous understanding as to whether the proposed sale to the Town included the reserve area and as to whether the sale was of development rights only or an outright sale.

On August 12, 2004, Goldstein sent a letter to Hyman and Gerard to "confirm the arrangements made this morning concerning Buckskill Farm, LLC." The letter recited the parties' "understanding" that Hyman would negotiate and complete the sale of four lots to the Town at a price of $1.9 million, and that Buckskill Farm would redeem Hyman's interest in the LLC for $950,000. The letter further reflected that Hyman would perform all work necessary to complete the sale to the Town and perfect a four-lot subdivision which would also contain the reserve area, and that no additional consideration would be paid to Hyman for his efforts in that regard.

Gerard testified that he conditionally agreed to the sale to the Town for $1.9 million based upon the belief that the sale was of development rights only and that the LLC would retain title to the reserve area, and based on the parties' agreement that Hyman's interest would be bought out for $950,000 (Hearing Tr pp 31-34). Goldstein's testimony confirmed that an agreement to repurchase Hyman's interest for $950,000 was reached (Hearing Tr p 90). Although Goldstein sent a formal writing to Hyman on August 31, 2004 reflecting the putative agreement at $950,000, the document was never signed. Hyman testified that he didn't sign the agreement, because he

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[3] It appears from the record that the Town was originally interested in purchasing only the development rights to four lots, but the Town's interest eventually shifted to acquiring the lots in fee.

"didn't like it" (Hearing Tr p 137). He testified further that "I didn't like being beat up. I felt they were being economic bullies and beating me up. Every time I discussed it with Mr. Goldstein, I tried to negotiate with him, but apparently his client...had his own ideas about what things were worth and what he was willing to give me" (Hearing Tr pp 137-138).

Hyman subsequently provided Gerard with a letter from a Town Councilman addressed to "Concerned Citizens" regarding the Town's proposal with respect to the Buckskill Farm property and a scheduled public hearing on the matter (Hearing Tr p 35). That letter reflected that the property owner would agree to abandon its plan for an eight-lot subdivision and apply for four 1/2- to 3/4-acre lots in the southern portion of the property. The Town would then take full ownership of the remaining 6.8-acre field (representing a merger of the remaining four lots with the original proposed reserve area), which it would then lease to an organic farmer.

On September 30, 2004, Hyman sent Gerard and Goldstein a copy of the proposed contract with the Town. His cover sheet stated: "Here is final negotiated deal with town. Looking to sign Friday early P.M. – Time is becoming a factor! Please call any Q." Gerard testified that at the time, his attorney Goldstein was out of the country, and he instructed Hyman not to sign the contract because he had not yet reviewed it with his attorney and they did not have an executed agreement on the distribution modification (Hearing Tr p 40). Hyman denied that Gerard had told him not to sign the contract (Hearing Tr pp 130, 134).

It is undisputed that on October 17, 2004, Hyman unilaterally entered into a contract with the Town to sell the property for $1.9 million without obtaining the consent of Gerard as required by the Agreement (Art III, p 3) . The contract describes the property to be purchased as "an agricultural reserved area of 297,056 sq. ft." In a telephone conference call on October 20, 2004, Gerard, Goldstein and Hyman discussed the fact that Hyman signed the contract in violation of the operating agreement which Hyman acknowledged required the consent of both LLC members (Hearing Tr p 150). Gerard testified that they also addressed the fact that the property to be sold to the Town included the reserve area and that therefore the $950,000 price for Hyman's interest was no longer equitable. Gerard testified that he offered Hyman the option of taking $850,000 or, at Hyman's option, one of the lots, in exchange for his interest in the LLC. Gerard, Goldstein and Hyman all testified that the three of them discussed the "$850,000 or one lot" option (Hearing Tr pp 42, 135). Gerard and Goldstein both testified that there was an agreement reached during that call that Hyman would receive $850,000 or one lot (Hearing Tr pp 42, 99). Hyman denied that he agreed to the proposal (Hearing Tr pp 135, 148).

The record reflects that in the wake of that October 20th telephone call, Hyman sent a letter dated October 29, 2004 to Goldstein acknowledging Gerard's "latest proposal to purchase my interest for $850,000 or take a lot," and reflecting uncertainty as to whether a cash distribution (presumably of the $850,000) or a building lot would be preferable. In Hyman's words, "This issue should sort out within the next couple of months and we can revisit the subject at that time." Both Goldstein and Gerard testified that they regarded Hyman as having agreed to the proposal and that the only outstanding issue was for Hyman to decide whether he wanted to take the cash or a lot. Indeed, Gerard testified that "I never would have agreed to this purchase and sale without an agreement in place for taking [Hyman's] interest out of the LLC" (Hearing Tr p 66, p 82), and Hyman conceded that without Gerard's approval, he would not have had a right to close the deal with the Town (Hearing Tr p 150). Both Gerard and Goldstein testified that they were waiting for Hyman to decide whether he was going to take the cash or a lot before preparing a formal agreement (Hearing Tr pp 45, 103).

Gerard testified that after he agreed to accept the contract with the Town in light of Hyman's agreement to the $850,000/one lot deal, he repeatedly asked Hyman for updates about when the sale was going to close (Hearing Tr p 44). He testified that on September 27, 2005, he had a phone conversation with Hyman in which he again asked if there was a closing date scheduled, and that Hyman told him there was not (Hearing Tr p 45-46). Although Hyman testified that he did not recall having had a phone conversation with Gerard on that date (Hearing Tr p 127), plaintiff produced phone records appearing to confirm that the parties had such a conversation.

It is undisputed that on September 21, 2005, Hyman filed a subdivision map depicting the four reduced-size lots to be retained by Buckskill Farms and the 6.8-acre parcel to be purchased by the Town, which was identified thereon as the "agricultural reserved area." It is undisputed that on September 28, 2005, after he filed the subdivision map, Hyman closed the sale to the Town – without Gerard's knowledge – and deposited the sale proceeds of approximately $1.9 million into Buckskill Farm's bank account. It is also undisputed that Hyman then drew a check on the Buckskill Farm account for virtually the entire amount of the sale proceeds, payable to himself, which he alone signed, and then deposited into a joint account he maintained with his wife, Catherine Cahill.[4]

Hyman testified that he had determined, based on a review of the operating agreement, that he was entitled to receive all of the proceeds of the sale to the Town as it was solely the reserve area that was being sold, and the operating agreement provided for him to receive the reserve area in a five- or four-lot subdivision while the remaining four lots would be distributed to Gerard (Hearing Tr p 140). Hyman testified that he did not recall when he concluded that under the Agreement, he was entitled to the sale proceeds from the Town, but that it was sometime after he signed the contract of sale and before he filed the subdivision map (Hearing Tr p 143). It is undisputed that Hyman did not discuss his interpretation of the Agreement with Gerard or Goldstein, either in his capacity as a member and manager of the LLC or in his capacity as attorney for the LLC, nor did he convey to them his intention to appropriate all of the sale proceeds to himself.

Defendant Hyman died on December 15, 2005, shortly after he testified at the preliminary injunction hearing. His wife, Catherine Cahill, was appointed the executrix of his will and substituted in the action (Action No. 1). On October 17, 2007, defendant Catherine Cahill testified at a deposition. Although Cahill answered certain questions posed to her about conversations she had had with her husband about Buckskill Farm and its property, she asserted a spousal privilege with respect to certain other questions on the same topic. The questions which Cahill refused to answer involved the following:

> "Q: What's the first conversation you recall having with [Hyman] about Buckskill or its property?" (Cahill Deposition Tr p 13).

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[4] Plaintiffs' trial memorandum reflects that the amount deposited in the Hyman-Cahill joint account on September 29, 2005 was $1,895,400. Although no specific proof was presented at trial as to the exact amount, defendants do not dispute the accuracy of the $1,895,400 figure.

> "Q: So is it your testimony that [Hyman] never told you, prior to his death, what he expected to earn from Buckskill Farm, LLC?" (Cahill Deposition Tr p 18).
>
> "Q: Did you ever discuss with [Hyman] what happened to the proceeds of the sale to the Town of East Hampton of the Buckskill property?" (Cahill Deposition Tr p 24).
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> "Q: Did you ever discuss with [Hyman], after reading Mr. Gerard's complaint, the question whether he had promised to receive $850,000 or a lot out of this transaction?" (Cahill Deposition Tr p 25).

At the conclusion of Cahill's deposition, plaintiffs moved to compel Cahill to answer the questions as to which she had asserted the spousal privilege. Cahill vigorously opposed the motion (which the record reflects was subsequently withdrawn) but three years later, and a year after the Appellate Division reversed the grant of summary judgment to her, Cahill offered, by counsel, to appear for a further deposition as to those matters previously claimed to be privileged. Plaintiffs' counsel, who had argued before the Appellate Division that an adverse inference should be taken against Cahill based on her refusal to say under oath whether Hyman had told her "he had promised to receive $850,000 or one lot out of this transaction," refused the further deposition.

Defendant Cahill had argued before the Appellate Division that the "$850,000 or a lot" oral agreement alleged by plaintiffs was unenforceable under General Obligations Law ("GOL") §15-301 because the Agreement prohibits oral modifications. The Appellate Division found that, contrary to defendant's contentions, the alleged oral agreement did not operate to modify the distribution provisions of the Agreement. Rather, the Court found that the alleged oral agreement "was a separate, additional agreement addressing a scenario that was not anticipated and not covered by the terms of the operating agreement." Since none of the five subdivision scenarios described in the Agreement came to pass, and instead the LLC contracted to sell 6.8 acres of its property to the Town, the LLC was left with only four lots to distribute to its members. Thus, "[a]t the time when the map was filed, Buckskill was not in a position to distribute the reserve area depicted on the map since that parcel was already subject to a contract requiring it to be sold to the Town." The Appellate Division thus implicitly determined that Hyman's purported "distribution" to himself of the sale proceeds based on Exhibit "C" of the operating agreement was not authorized by the Agreement, and that determination is the law of the case. The Appellate Division declined to grant summary judgment to plaintiffs, however, finding that triable questions of fact existed, "including whether Hyman accepted the plaintiffs' offer to redeem his interest in the subject property."

Accordingly, the principal issue to be determined upon the trial of these matters was whether, as alleged by plaintiffs, Hyman orally agreed with Gerard to accept the sum of $850,000 or, at Hyman's option, the distribution of one lot, in exchange for his interest in the LLC, as a condition of Gerard's ratification of the contract with the Town and agreement to the filing of the subdivision map reflecting the sale. The evidence before the undersigned consisted principally of

a "cold record," comprising substantially the same record that was before the Appellate Division when it found insufficient evidence of an oral agreement to warrant an award of summary judgment to the plaintiffs.

The only "live" testimony presented at the trial on the issue of whether there was an agreement between the parties on this point was that of defendant Cathleen Cahill. Cahill sought to remediate the effects of her having invoked the spousal privilege in her prior deposition by purporting to waive the privilege at trial and answer the propounded questions. In response to her attorney's questions on direct examination, she acknowledged, as she had in her deposition, that she and her husband had had several conversations regarding the "$850,000 or one lot" proposal, but stated for the first time that her husband "indicated to me that he did not agree to anything" (Tr p 115).

Plaintiffs, however, urge the Court to disregard Cahill's trial testimony and draw a negative inference against Cahill for having asserted the privilege during her deposition (PJI 1:76). Specifically, plaintiffs argue that had the answer to the question whether her husband told her "he had promised to receive $850,000 or a lot out of this transaction" been "no," Cahill would have answered it in the negative, as she did with respect to numerous other questions pertaining to the Buckskill Farm project. The only questions, plaintiffs argue, which Cahill refused to answer on the grounds of spousal privilege were those as to which the answer would have been "yes" and which would have been prejudicial to her. Moreover, plaintiffs argue that the questions which Cahill refused to answer were questions concerning ordinary business affairs as to which the spousal privilege would not attach.

The Court is constrained to agree with plaintiffs that Cahill's purported waiver at trial of the spousal privilege is ineffective, and that she is bound by the answers she gave during her sworn deposition, which she admitted she subsequently read and signed without making any corrections or changes (Tr p 166). It is improper for a party to obstruct discovery by the assertion of a privilege at deposition only to waive it and subject the opponent to surprise testimony at trial (*U.S. v The Incorporated Village of Island Park*, 888 F Supp 419 [EDNY 1995]).

Moreover, the Court agrees with plaintiffs that the question whether Cahill's husband told her that he had agreed to accept $850,000 or one lot was not one as to which the spousal privilege could properly have been asserted. CPLR §4502 provides that "[a] husband or wife shall not be required, or, without consent of the other if living, allowed, to disclose a confidential communication made by one to the other during marriage." The spousal privilege does not attach to "ordinary conversations relating to matters of business which there is no reason to suppose [the spouse] would have been unwilling to hold in the presence of any person" (*Parkhust v Berdell*, 110 NY 386 [1888]).

Hyman himself had already given sworn testimony in which he stated that he did not agree to accept $850,000 or one lot (Hearing Tr p 135, 148), and his answer to the complaint denied the existence of any such agreement. Accordingly, Cahill could have answered the propounded question in the negative, as she purported to do at the trial, without undermining her husband's position, which she testified was the basis for her invoking the spousal privilege (Tr p 123). Her further assertion that she did not want to open the door to other questions regarding the position her husband was taking regarding the reserve area or what she might have said to her husband in

response is not credible, as she could have asserted the privilege only in response to those questions had they been asked, which they were not (Tr p 123, p 129).

Indeed, the Court finds Cahill's testimony as a whole to be not credible. Her answers to the straightforward questions posed by plaintiffs' attorney were either self-serving or intentionally vague and disingenuous. In both her trial testimony and her deposition testimony, Cahill repeatedly purported not to understand the questions that were posed to her, or to have the knowledge or understanding or expertise to answer substantive questions about her husband's business dealings or the administration of his estate of which she is the executrix. Mindful of Cahill's professional stature and standing as an officer of the Court not only as an attorney but as a sitting judge as well, the Court finds that Cahill's professed ignorance as to matters fully within the comprehension of any lawyer or judge is not credible. Accordingly, the Court invokes the presumption urged by plaintiffs (PJI 1:76) and concludes, on the basis of Cahill's deposition answers and her demeanor and credibility on the witness stand during her trial testimony, as well as the other corroborating evidence contained in the record, that, in order to induce Gerard to ratify the contract with the Town and endorse the filing of the subdivision map, Hyman did agree to accept either the sum of $850,000 or the distribution of one lot in exchange for his LLC interest.

The preponderance of the evidence reflects that Hyman concocted a contrived construction of the Agreement – which he drafted – that enabled him to arrogate to himself (and thereafter to his wife Cahill) virtually the entire $1.9 million proceeds of the sale, notwithstanding the fact that his capital investment in the project was a mere fraction of that of his business partner, and notwithstanding that he was acting as the attorney for the LLC whose funds he had determined to appropriate. Having adopted his self-serving interpretation of the Agreement, Hyman then deliberately and stealthily carried out his plan to spirit away the proceeds of the sale out from under the nose of his partner. The conclusion is unavoidable that he induced Gerard to ratify the contract with the Town and approve the subdivision map by agreeing to accept a cash payment or a lot in exchange for his interest and by thereafter purporting to procrastinate about deciding which option he would accept. The record reflects that Hyman secretly filed the new subdivision map depicting a substantially expanded "reserve area" which, unbeknownst to Gerard, he was claiming as his own. He scheduled a closing of the sale with the Town a week later and lied to Gerard about it, telling him that a closing had not been scheduled when in fact the closing was scheduled for the very next day. He attended the closing without Gerard and signed the closing documents on behalf of the LLC even though he knew that Gerard's consent was required pursuant to the Agreement. Finally, after depositing the sale proceeds into the LLC account, he signed a check payable to himself for virtually the entire sale amount without obtaining Gerard's signature on the check, as required by the operating agreement he drafted. Throughout this process, Hyman continually and repeatedly misrepresented his intentions, solely for the purpose of stalling Gerard and assuaging his concerns about the fact that a written agreement about the buyout had not been signed.

Although Gerard himself did not testify at the trial, his testimony at the preliminary injunction hearing reasonably reflects the fact that he would never have agreed to ratify the contract with the Town and approve the subdivision map if he did not have an agreement with Hyman as to the buyout of Hyman's interest. It goes without saying that Gerard never would have agreed to the purchase and sale if he'd known that Hyman intended to take all of the sale proceeds for himself.

The Court thus finds that plaintiffs have met their burden of proof herein with respect to the first cause of action in plaintiffs' amended verified complaint in Action No. 1. Accordingly it is ordered, adjudged and declared that there was an agreement reached between Gerard and Hyman for the LLC to buy out the interest of Hyman for $850,000 or one lot conditioned on Gerard's consent to the signing and filing of a subdivision map for Buckskill Farm and the sale of approximately 6.8 acres of Buckskill Farm property to the Town of East Hampton. In accordance with the foregoing, defendant is directed to restore the sum of $1,045,400 to the account of Buckskill Farm, LLC (representing the $1,895,400 appropriated by Hyman, less the buyout price of $850,000), together with interest from the date of the closing of the sale to the Town. No proof has been submitted with respect to the remaining causes of action for injunctive and other relief and accordingly the relief sought therein is denied.

With respect to plaintiffs' arguments regarding the Judiciary Law §487 claim set forth in paragraph 62 of the amended complaint, it is clear that, in his representation of his client, Buckskill Farm, LLC, Hyman committed acts which raise serious ethical questions. Notwithstanding the foregoing, the Court finds that plaintiffs have failed to establish their claim for treble damages under Judiciary Law §487, assuming, *arguendo*, it survived the Appellate Division's dismissal of their second cause of action for fraud. Accordingly, any relief arising out of Judiciary Law §487 is denied.

The counterclaims are dismissed.

With respect to Action No. 2, the proof set forth hereinabove conclusively establishes the liability of individual defendant Catherine Cahill to plaintiffs on the first and second causes of action and accordingly plaintiffs are awarded judgment against individual defendant Catherine Cahill in the amount of $1,045,400 (representing the $1,895,400 appropriated by Hyman, less the buyout price of $850,000), together with interest from the date of the closing of the sale to the Town, such judgment to be joint and several with the judgment to be entered against Catherine Cahill as Executor in Action No. 1.

The foregoing constitutes the decision, order and judgment of this Court.

Settle formal order(s) and judgment(s).

Dated: April 21, 2014

HON. PAUL J. BAISLEY, JR.
J.S.C.