Golub v Shalik, Morris & Co., LLP
2018 NY Slip Op 32358(U)
September 21, 2018
Supreme Court, New York County
Docket Number: 158055/2017
Judge: Barbara Jaffe

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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AARON RICHARD GOLUB and DARROW GOLUB, AN INFANT BY HIS FATHER AND NATURAL GUARDIAN, AARON RICHARD GOLUB,

Plaintiffs,

- v -

SHALIK, MORRIS & COMPANY, LLP and WIENER FRUSHTICK & STRAUB, CERTIFIED PUBLIC ACCOUNTANTS, P.C.,

Defendants.

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INDEX NO. 158055/2017

MOTION DATE

MOTION SEQ. NO. 2

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69

were read on this motion to dismiss

HON. BARBARA JAFFE:

In this action for accountant malpractice, defendants move pursuant to CPLR 3211(a)(4), (5), and (7) for an order dismissing the action. Plaintiff opposes.

I. BACKGROUND

A. The complaint (NYSCEF 7)

Prior to December 31, 2014, plaintiff received certified public accounting services from defendant Weiner Frushtick & Straub PC (WFS) which, as of January 1, 2015, merged into defendant Shalik, Morris & Company, LLP (SM), and continued to provide such services to plaintiff. There was no written retainer agreement.

In or about the beginning of May 2016, plaintiff terminated defendant's services due to "copious errors and instances of professional malpractice." Specifically, defendants prepared and filed plaintiff Aaron Richard Golub's (Golub) 2012 US Gift and Generation-Skipping Transfer (GST) Tax Return, Form 709 (2012 Form 709), and thereby committed several costly errors and acts of professional negligence. ARG's engagement of defendants included preparing and filing Forms 709 for 2012 and 2014.

On August 16, 2012, ARG transferred his 50 percent interest in a property in Southampton, New York, as a gift to The Aaron Richard Golub 2012 Qualified Personal Residence Trust (QPRT). As of August 27, 2012, the property as a whole was appraised at $9 million. In reporting the value of the gift as one-half the appraised value, defendants erred as the 50 percent interest was "non-controlling" and not easily sold. Defendants also failed to observe that the correct value of the gift should have been the remainder interest after the expiration of the QPRT, not the gross value of the non-controlling interest. These errors resulted in the gift being "overreported" and the expenditure of too much of ARG's lifetime gift tax exemption.

Defendants also incorrectly prepared and filed the 2012 Form 709 by reporting that the recipient was plaintiff Darrow Golub (DG) instead of the QPRT. As a result, the gift was also "under-reported" by $13,000 due to defendants' erroneous application of the annual gift tax

exclusion to the gift which does not qualify for it. The basis of the gift was also incorrectly reported as $4.5 million, which will result in an inaccurately high figure for purposes of calculating capital gain or loss.

B. The amended complaint (NYSCEF 15)

Plaintiffs amended the complaint by adding the following allegations:

Defendants were negligent in failing to file the 2014 Form 709, thereby subjecting the gift to the "automatic allocation" rules whereby a portion of ARG's GST exemption was "allocated to the . . . QPRT." A form should have been filed for 2014, when the QPRT terminated. The errors committed by defendants caused ARG to incur significant legal fees to correct them, although nothing could be done to regain the loss of the GST exemption.

The period of the engagement of defendants was from approximately 2005 until the services were terminated in or about 2016. Defendants managed, advised, and accounted for ARG's pension and profit-sharing plans and pension interests with respect to all possible taxable opportunities and deductions from gross income, including but not limited to IRA roll overs, and advice as to all possible deductions. For tax years 2009 through 2014, defendants failed to advise ARG of his entitlement to create a second pension and profit-sharing plan for his law practice. As a result, deductions amounting to approximately $50,000 a year were lost, or $300,000, with interest. And after federal, state, and city taxes, ARG was proximately damaged by some $150,000.

In or about July 2015, SM informed ARG that he was entitled to create a Second Profit Sharing Plan for his law practice and that Steve Frushtick and WFS should have told him and instructed him of his entitlement to deductions of no less than $50,000 a year.

Based on the foregoing, plaintiffs advance a cause of action for professional malpractice against both defendants; ARG advances another cause of action for professional malpractice against WFS.

C. Other related actions

On or about May 22, 2016, ARG commenced an action against SM in New York County Supreme Court asserting causes of action for replevin and breach of the covenant of good faith and fair dealing whereby he alleged that SM refused to return his accounting records and files. SM asserted a counterclaim alleging that ARG refused to pay it for services rendered. (NYSCEF 17, 18).

On or about June 29, 2016, SM commenced an action against ARG and a related nonparty in Supreme Court, Nassau County, seeking to recover its fees for services rendered to ARG. (NYSCEF 19). By decision and order dated July 19, 2016, the New York County case was disposed of and SM's counterclaim for fees was severed. (NYSCEF 20).

On or about August 19, 2016, ARG served SM with his answer in the Nassau County action, asserting affirmative defenses including one for professional malpractice. (NYSCEF 21).

By decision and order dated August 30, 2016, SM's motion for an order transferring the New York County action to Nassau County and to join it for trial in Nassau County was granted. (NYSCEF 22). Discovery ensued in Nassau County, with ARG's responses and objections to interrogatories including an allegation that SM was negligent in preparing ARG's 2012 Form 709 by "incorrectly report[ing] the value of the Gift," resulting in it being over-reported and using up more than ARG's lifetime gift tax allowance. (NYSCEF 23).

The court record reflects that plaintiffs commenced the instant action on September 8, 2017.

II. ANALYSIS

A. CPLR 3211(a)(4)

Pursuant to CPLR 3211(a)(4), a judgment dismissing one or more causes of action may be granted where "there is another action pending between the same parties for the same cause of action in a court of any state or the United States." The court has "broad discretion" in considering whether to dismiss an action based on another pending action. (*Jadron v 10 Leonard St.*, LLC, 124 AD3d 842, 843 [2d Dept 2015]). Dismissal is warranted "where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same." (*Id.*).

As the statute requires that the cause of action advanced in the prior action be the same as that set forth in the present action, and absent any authority cited by defendants for the proposition that an affirmative defense constitutes a cause of action, defendants fail to demonstrate, *prima facie*, entitlement to dismissal on this ground. (*See Viafax Corp. v Citicorp Leasing, Inc.*, 54 AD3d 846 [2d Dept 2008] [although core allegations set forth in cause of action in second action duplicative of affirmative defenses in pending first action, as affirmative defenses merely challenged plaintiff's right to recover amount claimed, they did not entitle plaintiff to affirmative relief; motion court's dismissal on ground of prior action pending reversed]). The potential for conflicts may be avoided by issue or claim preclusion. Given this result I need not address whether there is a substantial identity of parties.

B. CPLR 3211(a)(5)

Pursuant to CPLR 3211(a)(5), a defendant seeking dismissal of an action as time-barred bears the initial burden of proving, *prima facie*, that the time within which the action must be brought has expired. (*Lebedev v Blavatnik,* 144 AD3d 24, 28 [1st Dept 2016]; *Kuo v Wall St.*

Mortg. Bankers, Ltd., 65 AD3d 1089, 1090 [2d Dept 2009]). If the defendant meets its burden, the burden shifts to the plaintiff to establish that, accepting its complaint as true and affording it the benefit of every favorable inference (*Leon v Martinez,* 84 NY2d 83, 87-88 [1994]; *Matter of Schwartz*, 44 AD3d 779, 779 [2d Dept 2007]), its cause of action falls within an exception to the statute of limitations, or to raise an issue of fact as to whether an exception applies (*see Encalada v McCarthy, Chachanover & Rosado, LLP*, 160 AD3d 475, 475-476 [1st Dept 2018]; *Gravel v Cicola*, 297 AD2d 620, 621 [2d Dept 2002]).

Where the plaintiff is continuously represented by the defendant, the three-year statute of limitations for malpractice is tolled in recognition of a client's "right to repose confidence in the professional's ability and good faith, and realistically cannot be expected to question and assess the techniques employed or the manner in which the services are rendered (*Greene v Greene,* 56 NY2d 86, 94)." (*Shumsky v Eisenstein*, 96 NY2d 164, 167–168 [2001] [citation omitted]). It is also acknowledged, albeit in the context of a legal malpractice case, that "it is impossible to envision a situation where commencing a malpractice suit would not affect the professional relationship, the rule of continuous representation tolls the running of the Statute of Limitations on the malpractice claim until the ongoing representation is completed (*Glamm v Allen,* 57 NY2d 87] at 94)." (*Id.*). Moreover, a client ought not be required to interrupt a professional's remedial measures and thereby undermine the trust in the relationship to ensure a timely action for malpractice. (*See eg, Williamson v PricewaterhouseCoopers, LLP*, 9 NY3d 1, 9 [2007] [in context of medical malpractice claim, "patient should not be required to interrupt corrective medical treatment by a physician and undermine the continuing trust in the physician-patient relationship" in order to ensure claim not time-barred], quoting *Young v New York City Health & Hosps. Corp.*, 91 NY2d 291, 296 [1998]).

Representation is continuous when there is "clear indicia of an ongoing, continuous, developing, and dependent relationship between the client and the attorney" (*Farage v Ehrenberg*, 124 AD3d 159, 164 [2d Dept 2014], *lv denied* 25 NY3d 906 [2015]), "a mutual understanding of the need for further representation on the specific subject matter underlying the malpractice claim" (*Zorn v Gilbert,* 8 NY3d 933, 934 [2007]; *McCoy v Feinman*, 99 NY2d 295, 306 [2002]; *Matter of Estate of Merker*, 18 AD3d 332, 333 [1st Dept 2005]), or where it is shown that the plaintiff "relied upon a continuous course of services related to the particular professional duty allegedly breached" (*Shumsky*, 96 NY2d at 168). Continuous representation is evidenced by continuing trust and confidence between the professional and the client. (*Farage*, 124 AD3d at 168).

That the work underlying the malpractice claim is complete is not dispositive of whether the defendant continuously represented the plaintiff. Rather, representation is continuous "if inadequacies or other problems with the contemplated work timely manifest themselves after that date and the parties continue the professional relationship to remedy those problems." (*Regency Club at Wallkill, LLC v Appel Design Group, PA*, 112 AD3d 603, 607 [2d Dept 2013]). Thus, unless the facts reflect a gap between services on the particular matter, dismissal is not warranted. (*Id.*). Even if the representation is continuous, it must pertain to the subject matter of the alleged malpractice. (*Williamson*, 9 NY3d at 11). Consequently, "'[t]he mere recurrence of professional services does not constitute continuous representation where the later services performed were not related to the original services.'" (*Ackerman v PriceWaterhouse*, 252 AD2d 179, 205 [1st Dept 1998], internal quotes omitted).

1. ARG's 2012 Form 709

a. Defendants' contentions (NYSCEF 14, 24)

Anticipating plaintiffs' reliance on the continuous representation toll of the statute of limitations, defendants deny it and observe that the amended complaint contains no facts tending to show that they continuously represented plaintiffs with respect to ARG's 2012 form 709, or that the parties shared an understanding of the need for further representation with respect to it. Rather, they assert that their services to plaintiffs consisted of discrete and severable transactions in the form of individual filings of successive tax returns.

b. Plaintiffs' contentions (NYSCEF 27, 32, 51, 57, 58, 59)

Plaintiffs allege that the three-year limitations period is tolled by defendants' continuous representation of them until the termination of their services in 2016, and observe that defendants offer no supporting affidavit of anyone with personal knowledge of the scope of the services they provided.

In an affidavit, ARG states that he retained WFS to provide "a broad range of financial advice and public accounting services" for himself, his law firm, Sunset Boulevard Films Ltd. (SBFL), DG, and his stepdaughter. The services included all taxable transactions, deductions, gift and estate taxes and all other taxes, all tax impacted transactions, retirement plans, income statements, balance sheets, cash flow, bookkeeping, IRAs, bank loans, employment accounting, and medical insurance. In support, he offers a December 2012 post on defendants' website announcing the affiliation between WFS and SM and the services offered: certified public accounting, tax planning and compliance, and advisory and accounting services.

ARG also claims to have been "in constant contact" with defendants "almost" weekly concerning the wide variety of the accounting matters to which he attests, and he relies on their

mutual understanding that defendants' tax advisory and planning services were part of their continuing and uninterrupted relationship and representation. He alleges that he discussed the two-year QPRT with WFS partner Frushtick, who assured him that he was knowledgeable about the requirements for such trusts and acknowledged that a 2014 Form 709 must be filed for the QPRT to "achieve its purpose." Moreover, upon Frushtick's death in February 2015, a partner of SM assured him that he would continue to provide the same accounting services performed by Frushtick. A 2014 Form 709was never filed even though, according to ARG, there was "no doubt" that the parties had agreed that defendants would provide continuing accounting services to him in connection with the QPRT for 2012 and 2014.

By affidavit dated February 3, 2018, ARG's estate counsel Arlene Harris states that in 2016, at ARG's request, the law firm Arnold & Porter Kaye Scholer LLP (Kaye Scholer) reviewed the 2012 Form 709 prepared by Frushtick and discovered that WFS had overreported the value of the gift by failing to discount it as a non-controlling remainder interest, which resulted in an over-allocation of ARG's lifetime gift tax exemption. Harris also maintains that WFS erred in reporting that the gift had been to DG instead of the QPRT. As such it was also underreported because WFS had applied the annual gift tax exclusion "to reduce the value of the Gift, even though a gift to a QPRT does not qualify for such an exclusion (whereas a gift to an individual does)." In another error on the 2012 Form 709, Harris contends that WFS reported the basis of the gift as $4.5 million, such that upon its sale or transfer, the tax basis of the 50 percent held by the QPRT, for purposes of calculating capital gain or loss, would be inaccurate. In 2016, at ARG's request, Kaye Scholer had the property reappraised, and Harris prepared and filed an amended 2012 form 709, thereby correcting the above errors.

According to Harris, the 2012 Form 709 and 2014 Form 709 are "inextricably interconnected" as they "must be filed for the year a QPRT terminates if the taxpayer making the gift to the QPRT wishes to 'elect out' of the automatic allocation of his generation-skipping transfer tax exemption . . . with respect to the QPRT." Due to defendants' failure to prepare or file "the companion" 2014 Form 709, Harris contends, ARG's GST exemption was permanently and automatically allocated to the trust. Thus, she states, the 2014 Form 709 had to be filed to avoid the automatic allocation, and the failure to do so was not remediable.

c. Defendants' reply (NYSCEF 67)

Defendants allege that it is undisputed that the 2014 Form 709 could only have been filed "if a different (allegedly nonnegligent) gift tax return had been filed for 2012," and observe that plaintiffs "do not allege that any further [Form 709] could have been filed, or should have been filed in connection to the 2012 [Form 709], once it allegedly incorrectly identified [DG] as the recipient of the gift." Rather, they claim, plaintiffs concede that the 2014 Form 709 would and could have been filed only if the 2012 Form 709 reflected a transfer to the QPRT instead of to DG. Thus, in effect, defendants contend that due to their negligence with respect to the 2012 Form 709, they were precluded from filing a 2014 Form 709, and consequently maintain that they could not have continuously represent plaintiffs with respect to the QPRT.

d. Findings

Apart from ARG's self-serving and unsupported allegations, plaintiffs offer no clear indicia of an ongoing, continuous, developing, and dependent relationship between the parties such that absent other circumstances, defendants' representation was continuous with respect to the QPRT. WFS's website, containing a general description of services rendered does not constitute an agreement between the parties, and the assurance of the SM partner that he would

continue to provide the same accounting services performed by Frushtick is not sufficiently specific to satisfy the legal requirements for proving continuous representation as to the underlying malpractice relating to the QPRT. That defendants offer no affidavit is of no moment as it is plaintiffs' burden to demonstrate continuous representation. (*See Davis v Cohen & Gresser LLP*, 160 AD3d 484 [1st Dept 2018] [plaintiff bears burden of showing that statute of limitations has been tolled or does not apply]).

However, as it is undisputed that a 2014 Form 709 was required for the QPRT to achieve its purpose and that the errors in the 2012 Form 709 were not discovered until 2016, it was reasonably expected that until the termination of their services, defendants would follow through with the filing of a 2014 Form 709. This reasonable expectation reflects both a mutual understanding of the need for further representation with respect to the QPRT and plaintiffs' reliance upon a continuous course of services related thereto. That defendants failed to file the 2014 Form 709, that they were not asked to do so, or that the alleged errors in the 2012 Form 709 precluded the filing of a 2014 Form 709 does not disprove the mutual understanding absent any offer of proof from defendants and given Harris's assertion that the duty to file a 2014 Form 709 is implicit in the filing of the 2012 Form 709. Thus, plaintiffs satisfy their burden of demonstrating a factual issue as to whether defendants continuously represented them with respect to the QPRT. To accept defendants' argument that they are shielded from liability by their own negligence would be inequitable at this stage of the proceedings. (*Cf. Deitz v Kelleher & Flink*, 232 AD2d 943 [3d Dept 1996] [defendant cannot use own negligence to shield itself from malpractice]).

2. Profit sharing plan

a. Defendants' contentions (NYSCEF 24)

Defendants assert that plaintiffs' claims for lost deductions for years 2009 to 2013 are likewise, time-barred, and deny that they served plaintiffs as retirement and pension fund experts, or that they agreed or undertook to provide plaintiffs with such services, or any other service beyond the scope of those provided by certified public accountants.

b. Plaintiffs' contentions (NYSCEF 57-59)

According to ARG, when he "retained" WFS in or about 2004, his PC had a defined benefit contribution plan in place that provided for substantial deductions and tax savings, and that Frushtick had handled the accounting, tax, and tax filing requirements for that plan until 2008 when the plan terminated because it was overfunded. It was not until 2015 that the SM partner who took over the accounting services specifically advised him multiple times that Frushtick had erred by not recommending that he create a replacement plan. Such a plan was established in 2015 "in conjunction with a company called Standard Pension Services, LLC." Thus, he claims, defendants failed, from 2008 to 2014, to advise that him of the option of creating a replacement plan, and absent that failure, plaintiffs could have saved some $210,000 to $280,000. ARG argues that for each year of defendants' continuing representation of him concerning his pension interests, they "repeated and built on the same negligence and malpractice that resulted in them failing to advise [him] between 2008 and 2014 that [he] was entitled to create a second pension plan . . ."

By affidavit of a certified public accountant retained by ARG in or about mid-2016, states that "[he was] informed that, in or about July 2015," SM advised ARG to create a Profit Sharing Plan."

Plaintiffs argue that based on ARG's affidavit, having undertaken in 2015 to correct their malpractice relating to the tax treatment of the pension and profit sharing plan "by creating a second profit sharing plan in 2015," defendants continuously represented them, thereby tolling the three-year limitations period.

c. Defendants' reply (NYSCEF 67)

Defendants observe that nowhere in plaintiffs' amended complaint or opposition papers is it alleged that WFS or Frushtick created the original defined benefit contribution plan. Rather, according to defendants, ARG states that the plan was in place before he engaged WFS and that WFS provided tax-related services in connection thereto until 2008 when the plan terminated. Moreover, even if they had a duty to provide such advice, absent a mutual understanding of the need for continued financial advice in connection with retirement plans or that WFS provided such representation, plaintiffs do not demonstrate the requisite continuous representation and rely, instead, on their general relationship with WFS encompassing a wide range of financial advice and public accounting services. Nor are any facts alleged tending to show that WFS assumed a duty to provide such advice.

d. Findings

While counsel indicates in plaintiffs' memorandum of law that defendants created the replacement plan, ARG says nothing of the kind, and the succeeding accountant's assertion is based on inadmissible hearsay. Moreover, the continuing failure to advise over the years does not constitute continuing representation, absent any admissible evidence beyond ARG's self-serving

and unsupported allegation that there was a mutual agreement to do so. (*See Collins Bros. Moving Corp. v Pierleoni*, 155 AD3d 601 [2d Dept 2017] [plaintiffs' conclusory allegation that parties mutually contemplated continuing representation insufficient to raise triable issue]; *Mahran v Berger*, 137 AD3d 1643 [4th Dept 2016] [plaintiff's unilateral belief that defendant continued to represent him did not establish continuing relationship]). Again, the website announcement does not prove the particular duty alleged.

That defendants admitted in 2015 that Frushtick had erred in not recommending that ARG establish a replacement plan does not constitute evidence beyond just that, absent any evidence that they created the replacement plan. Given the more than six years during which defendants performed no services pertaining to the plan, plaintiffs raise no issue of fact as to the existence of a continued professional relationship between the parties regarding a retirement or pension plan.

C. CPLR 3211(a)(7)

It is well-established that the determination of a motion pursuant to CPLR 3211 (a) (7) is limited to an examination of the pleadings to determine whether they state a cause of action. The facts alleged must be accepted as true and interpreted in the light most favorable to the plaintiff. Moreover, the plaintiff is not to be penalized for failing to set forth evidence in support of a complaint if it states a claim on its face. (*Miglino v Bally Total Fitness of Greater New York, Inc.*, 20 NY3d 342, 351 [2013]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 [1976]).

A claim for accounting malpractice requires a showing that the accountant "failed to exercise due care and proof of a material deviation from the recognized and accepted professional standards for accountants and auditors, ... which proximately causes damage to plaintiff." (*Town of Kinderhook v Vona*, 136 AD3d 1202, 1203-1204 [3d Dept 2016]).

1. Defendants' contentions (NYSCEF 24)

Defendants maintain that absent any facts set forth in the amended complaint tending to show that plaintiffs asked or instructed them to prepare and file a 2014 Form 709, plaintiffs fail to demonstrate that they had such a duty, and they reiterate the argument advanced (*supra*, at II.B.1.c.) that their negligence in preparing the 2012 Form 709 precluded them from filing a 2014 Form 709. They also argue that plaintiffs set forth no facts in the amended complaint tending to show that they acted as wealth managers, financial advisors, business managers, or retirement and pension fund experts, or that they agreed or undertook to provide them with such services. Consequently, defendants assert that plaintiffs fail to state causes of action relating to each alleged claim, and additionally argue that plaintiffs fail to state a cause of action for accounting malpractice as asserted by DG, absent any supporting facts or any indication that he sustained any damages proximately resulting from their alleged errors.

2. Plaintiffs' contentions (NYSCEF 32, 51, 58, 59, 63, 64)

Plaintiffs rely on the allegations set forth (*supra*, at II.B.1.b.), to support their contention that defendants agreed to perform all of the services alleged in their amended complaint, and they argue that having committed malpractice with respect to the QPRT, defendants also caused damage to DG's future inheritance.

In her affidavit, Harris alleges that on August 16, 2012, at ARG's request, Kaye Scholer created the two-year QPRT with DG as remainder beneficiary, after which DG's remainder interest would vest and ARG's retained interest would terminate. The gifting to the QPRT of an undivided 50 percent interest in the Southampton property, the entirety of which was appraised at $9 million as of August 27, 2012, was facilitated by Kaye Scholer, which provided WFS with

a copy of the appraisal and information about the QPRT. Emails reflect the understanding of the parties as to the purpose of the QPRT.

ARG also alleges that defendants performed accounting services for DG and that his ability to gift his descendants without incurring a GST tax is impaired, and any monetary loss or lost opportunity he sustains decreases the size of DG's inheritance.

3. Defendants' reply (NYSCEF 67)

Defendants argue that nothing in the amended complaint or plaintiffs' papers demonstrates that they had any duty to advise plaintiffs about retirement or pension plans, and observe that they did not create the initial plan but only provided tax-related services with respect thereto. Nor is there any allegation or evidence demonstrating that they were negligent in the preparation of DG's tax returns. Defendants also contend that any loss to DG as derived from the alleged malpractice with respect to the QPRT is speculative.

4. Findings

Defendants neither dispute their error with respect to the QPRT nor take issue with Harris's allegations, and given my finding that the claim relating to the QPRT is not time-barred (*supra*, at II.B.1.d.), plaintiff ARG states a cause of action for accountant malpractice with respect to QPRT. They fail, however, to state a cause of action with respect to the pension plan or as to DG, whose inheritance constitutes an expectation only.

III. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendants' motion to dismiss is granted solely as to the first cause of action as it relates to plaintiff Darrow Golub and as to the second cause of action, and is otherwise denied; it is further

ORDERED, that defendants serve and file an answer within 30 days of the date of this order; and it is further

ORDERED, that the parties appear for a preliminary conference on November 14, 2018 at 2:15 pm, at 60 Centre Street, Room 341, New York, New York.

9/21/2018
DATE

BARBARA JAFFE, J.S.C.
HON. BARBARA JAFFE

CHECK ONE:	☐	CASE DISPOSED			☒	NON-FINAL DISPOSITION	
	☐	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	DO NOT POST			☐	FIDUCIARY APPOINTMENT	☐ REFERENCE