| **Spiegel v Hawco** |
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| 2022 NY Slip Op 32431(U) |
| July 21, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 159930/2015 |
| Judge: Shlomo Hagler |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. SHLOMO HAGLER** **PART** **17**

***Justice***

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MARJORIE SPIEGEL,

Plaintiff,

- v -

KENNETH HAWCO,

Defendant.

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**INDEX NO.** 159930/2015

**MOTION DATE** N/A

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 82

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

In this action for legal malpractice, defendant Kenneth B. Hawco, Esq. ("Hawco" or "defendant") moves for summary judgment dismissing plaintiff Marjorie Spiegel's ("Spiegel" or "plaintiff") complaint and plaintiff's affirmative defenses asserted in reply to Hawco's counterclaims (Motion Sequence No. 003).[1] Plaintiff opposes the motion.[2] Defendant has withdrawn that portion of his motion seeking summary judgment based on lack of personal jurisdiction (tr of oral argument, dated 3/25/21 at 9-10 [NYSCEF Doc. No. 82]).[3]

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[1] In his answer, Hawco asserts thirteen counterclaims as follows: "Recission of Retainer Agreement (first counterclaim), Recission of the Waiver Letter (second counterclaim) [the heading in plaintiff's first two counterclaims incorrectly stated 'recession'], Quantum Meruit (third counterclaim), Unjust Enrichment (fourth counterclaim), Breach of Contract (fifth counterclaim), Fraud (sixth counterclaim), Constructive Fraud (seventh counterclaim), Fraudulent Misrepresentation (eighth counterclaim), Negligent Misrepresentation (ninth counterclaim), Fraudulent Concealment (tenth counterclaim), Fraudulent Inducement (eleventh counterclaim), Breach of the Implied Covenant of Good Faith and Fair Dealing (twelfth counterclaim) and Account Stated (thirteenth counterclaim). Hawco failed to move on said counterclaims and plaintiff failed to move to dismiss same. In plaintiff's reply to said counterclaims, plaintiff raises eight affirmative defenses (NYSCEF Doc. No. 19) which defendant is seeking to dismiss.

[2] At the time the complaint was filed, plaintiff was self-represented. By Order, dated September 17, 2018, this Court granted the motion by subsequently retained counsel, Adam B. Sherman, Esq. to withdraw as counsel for plaintiff (NYSCEF Doc. No. 58). At oral argument on the within motion on March 25, 2021, new counsel, Richard M. Borrelli, Esq. (Notice of Appearance, dated December 28, 2020 (NYSCEF Doc. No. 72) filed additional opposition to Hawco's motion that very day (tr of oral argument, dated 3/25/21 at 8-9 [NYSCEF Doc. No. 82]).

[3] By Order, dated April 13, 2018, this Court denied plaintiff's motion for a default judgment against Hawco for failure to answer or otherwise appear (Motion Sequence No. 001) and directed Hawco to answer the Complaint

BACKGROUND FACTS

Plaintiff alleges that in or about August 2012, plaintiff and Hawco entered into a retainer agreement (the "Retainer Agreement") in connection with representing her in a pending non-payment summary landlord/tenant proceeding in Housing Court entitled *49 Grove Realty, LLC v Marjorie Spiegel* (Housing Court Index No. 62309/12) relating to plaintiff's rent stabilized tenancy at 49 Grove Street, Apt 3 F, New York, New York 10012 (the "Apartment") (the "Housing Court Proceeding") (Verified Complaint ["Complaint"]) at ¶¶ 5-8 [NYSCEF Doc. No. 001]; Retainer Agreement, executed by plaintiff on August 13, 2012 and by Hawco on August 14, 2012 [NYSCEF Doc. No. 77]). On September 28, 2012, the parties entered into a handwritten two attorney stipulation, settling the Housing Court Proceeding (NYSCEF Doc. No. 46) (the "Stipulation"). The Stipulation provided:

> "1. In lieu of trial Respondent [plaintiff Spiegel herein] consents to a Final Judgment of possession & a Warrant to issue forthwith. Execution is stayed to 12/31/12.
> 2. Time is of the essence. This Agreement is for possession only.
> 3. Respondent does not have to pay any rent or use and occupancy to 12/31/12 the vacate date. In consideration of this Agreement, all rent arrears are waived.
> 4. All of Respondent's Supreme Court claims remain in full force and effect. This Stipulation does not affect either sides rights, claims & defenses in the Supreme Court action.
> 5. Respondent withdraws without prejudice all claims in this proceeding. Petitioner [49 Grove Realty LLC] preserves all defenses.
> 6. Petitioner will deposit $60,000.00 in its attorney's escrow account within 10 days. The $60,000.00 is the buyout amount.
> 7. $10,000.00 can be released directly to Respondent for moving expenses etc. upon three business days request by Respondent to Petitioner's attorneys. The balance of $50,000.00 to be paid to Respondent directly upon surrender of keys and vacant [*sic*] possession of Apt 3F, 49 Grove St., NY NY."

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within thirty days (NYSCEF Doc. No. 11). In addition, by Interim Order, dated March 11, 2019, this Court referred this matter to a Special Referee to hear and report on the issue of whether the summons and complaint were properly served pursuant to CPLR 308(2) (NYSCEF Doc. No. 64). Said hearing never took place and is moot in view of Hawco's withdrawal of that portion of his motion for summary judgment on personal jurisdiction grounds.

There is language scribbled on the side of the Stipulation which is illegible. During oral argument on the within motion, plaintiff's counsel represented that the scribbled language provides "counsel represented, Attorney Ween, if he consents, will withdraw 63783-09" (referring to a holdover proceeding) (tr of Oral Argument, dated March 23, 2021 ["tr of oral argument"] at 25-26 [NYSCEF Doc. No. 82]). The Stipulation is signed by Hawco, plaintiff's counsel in that proceeding, the landlord (or counsel) and most significantly, by Spiegel herself.

In the Complaint, plaintiff alleges that "plaintiff was pressured into signing said stipulation settlement without being given adequate time, and without having fully read it through" and that Hawco "pressured [her] to settle the lawsuit rather than go to trial" and "threatened to withdraw as plaintiff's counsel, and leave plaintiff without representation, if plaintiff would not agree to settle the proceeding" (Complaint ¶¶ 12-15 [NYSCEF Doc. No. 1]). The Complaint alleges that the Stipulation recovered no damages for plaintiff and would require her to separately litigate for damages, the $60,000 payment was far less than the legal fees plaintiff incurred in defending the subject lease and that the Stipulation failed to include provisions setting forth for events of default (*Id.* at ¶¶ 18-21). Plaintiff further contends that Hawco failed to advise her of the tax ramifications of the Stipulation (*Id.* at ¶ 28). At the time plaintiff's complaint was filed on September 28, 2015, plaintiff alleges that she had never received payment of the $60,000 provided for in the Stipulation.

Plaintiff alleges a cause of action for legal malpractice against Hawco, asserting that

> "[D] efendant failed to exercise the degree of skill, care and diligence commonly possessed by a member of the legal profession in that Defendant failed to properly represent the Plaintiff, failed to properly advise the plaintiff; recommended and pressured Plaintiff into accepting a grossly inadequate settlement agreement; failed to provide the legal services contracted for; induced Plaintiff into forfeiting her rent-stabilized lease, while requiring damages for loss of [*sic*] rent-stabilized apartment to be litigated at additional expense with unknown outcome in a separate court proceeding; failed to properly prepare for trial; failed to properly prepare for negotiation; failed to properly and

adequately communicate with Plaintiff; failed to competently negotiate; failed to prepare and Defendant was otherwise negligent and committed legal malpractice in his representation of Plaintiff" (*Id.* at ¶ 29).

Plaintiff alleges that "but for the legal malpractice of Defendant, Plaintiff would still be in possession of her rent-stabilized apartment, and would not have entered into the settlement agreement" and that defendant's "handling of the [] non-payment proceeding was a departure from and [*sic*] accepted standards of the practice of law in the New York Metropolitan community" (*Id.* at ¶¶ 30-31).

Defendant's Motion for Summary Judgment

Defendant argues that (1) plaintiff fails to state a cause of action because the proximate cause of any damages sustained by plaintiff was not any malpractice of defendant but the intervening and superseding failure of plaintiff's successor counsel to move to vacate the Settlement in the Housing Court Proceeding; (2) the Complaint fails to allege facts sufficiently particular to give defendant the requisite notice; and (3) plaintiff has failed to allege that defendant's malpractice caused any ascertainable damages. Defendant also seeks to dismiss all of plaintiff's affirmative defenses asserted in reply to defendant's counterclaims.

Defendant attaches certain documents from the Housing Court Proceeding, including a Notice of Attorney's Lien filed by defendant, dated May 9, 2018, asserting a lien for $29,150.97 arising out of the Housing Court Proceeding (NYSCEF Doc. No. 45). Defendant refers to a Notice of Lien allegedly filed by attorney Jeffrey S. Ween ("Ween") asserting a lien of $23,286.70 filed in connection with a different housing court proceeding. Defendant also presents evidence of a Notice of Appearance in the Housing Court Proceeding, dated December 12, 2012, by plaintiff's successor attorney Robert Levy ("Levy") (NYSCEF Doc. 47).

Defendant argues that Levy's failure to move to vacate the Stipulation or otherwise protect plaintiff's rights was a superseding cause of any injuries allegedly sustained by plaintiff.

As part of said Housing Court file, defendant also attaches a Decision/Order in the Housing Court matter, dated December 12, 2012 (Hon. Peter M. Wendt) rendered in connection with a Notice of Lien file by attorney Ween ("Judge Wendt Order"). The Judge Wendt Order provides:

> "This matter was settled with a 2 attorney stipulation (both sides represented by counsel). Jeffrey S. Ween, Esq. has attempted to file a 'Notice of Lien' in this proceeding, although he has never appeared for anyone or any party herein. Further, Mr. Ween has never made a motion to intervene in this proceeding. As stated in Judiciary Law § 475 'the attorney who appears for a party has a lien upon his client's cause of action, claim or counterclaim.' Here, Mr. Ween has never appeared for a party. Thus, he has no standing to file a Notice of Lien herein. Accordingly, motion granted. Petitioner and its counsel are directed as per petitioner's motion, to fully comply with the 9/28/12 stipulation [the Stipulation herein] settling this matter, made with both sides represented by counsel" (NYSCEF Doc. No. 47).

Plaintiff's opposition

In opposition, plaintiff self-represented at the time, proffered an Affidavit, sworn to on February 13, 2019, stating that she adequately states a cause of action for legal malpractice. Plaintiff alleges that defendant bullied her and disclosed that he would withdraw if plaintiff did not settle because he was "incompetent to litigate my case." Plaintiff states further that defendant "battered me with a barrage of erratic, hostile, intimidating and accusatory emails in which he bullied me to forfeit my lease, told me how I would lose in traverse and trial, 'predicted' that the judge would rule against me, and intimidated me with the prospect of being left without representation in a matter where my hospitalization (while *pro se*) had been the very cause of my requiring the assistance of counsel, and had resulted in my retaining defendant Hawco" (Affidavit, sworn to on February 13, 2019 at ¶¶ 26-28 [NYSCEF Doc. No. 62]). Plaintiff excerpts portions of purported emails which appear to reflect that defendant informed

plaintiff that he did not have experience with contamination issues (*Id.* at ¶¶ 28-29). Plaintiff further attests that the Stipulation precipitated a lien by another attorney, and that despite defendant's denial, he was served with motion papers seeking recovery on said lien (*Id.* at ¶¶ 31-32).

In opposition to defendant's argument that plaintiff's subsequent attorney could have sought to vacate the Settlement, plaintiff maintains that she retained said attorney solely for the purpose to contest the lien, and not to review defendant's work, and in any event, defendant's motion is premature as discovery would reveal the purpose of plaintiff's subsequent retention of a substitute attorney (*Id.* at ¶¶ 33-36). Finally, plaintiff argues that she has adequately set forth ascertainable damages on grounds that by signing the Stipulation, plaintiff was to be paid only $60,000 while forfeiting a lease to an apartment worth millions of dollars, and that plaintiff could only seek damages in a separate lawsuit necessitating additional expenses and resulting in an unknown outcome (*Id.* at ¶ 38).

Plaintiff submits a letter, dated November 30, 2012 from defendant to plaintiff (the "November 30 Letter") which provides:

> "On November 20, 2012, I sent you an email and included as an attachment to that email a copy of Petitioner's [the landlord] motion papers. That motion is returnable December 12, 2012. Eric Wughalter, Petitioner's attorney, sent me Petitioner's motion papers because he does not know that I am no longer representing you in this lawsuit.
>
> In my previous letter to you, dated October 1, 2012, I stated "[b]ecause you settled this lawsuit on September 28, 2012, by signing a Stipulation of Settlement, the work you retained me to do is complete." The easiest way to prevent any possible confusion, to permit Mr. Wughalter to communicate with you directly in the future (or any other attorney you may retain to represent you in this lawsuit), and for Judge Wendt to know for sure that I am no longer representing you in this lawsuit, is for me to send you this letter and very clearly state that I am no longer representing you in this lawsuit" (Affidavit in Opposition, Exhibit 4 [NYSCEF Doc. No. 62]).

Plaintiff filed further opposition including an affirmation by new counsel (NYSCEF Doc. No. 73) and an additional affidavit of plaintiff (NYSCEF Doc. Nos. 73, 74) while oral argument was proceeding on defendant's motion for summary judgment in this matter. Although it is undisputed that said opposition was late and inappropriately filed, the Court will review the late papers filed to the extent that many of the arguments and facts alleged were previously asserted and will not change this Court's determination.

In said affirmation, plaintiff's counsel argues that defendant failed to submit sufficient admissible evidence demonstrating that his representation of plaintiff was within the standards of care. Plaintiff argues that (i) the Settlement failed to include provisions addressing issues such as the parties' default and return of plaintiff's security deposit; (ii) on October 1, 2012 after the matter was settled on September 28, 2012, defendant unilaterally quit and declared that his representation of plaintiff was complete; (iii) in accordance with the Stipulation, although plaintiff vacated the Apartment, the landlord breached the Stipulation by failing to pay plaintiff $60,000; (iv) plaintiff was not paid the $60,000 until on or about February 19, 2019 causing plaintiff to suffered additional damages including hiring another attorney to represent her to collect said amount and not having the use of the money for more than six years; and (v) in accordance with language in the Stipulation, another Housing Court matter was linked to the instant matter causing a charging lien to be filed against plaintiff by attorney Ween resulting in plaintiff's retention of attorney Levy to defend plaintiff against said lien. Plaintiff avers that it was not Levy's legal responsibility to identify flaws in the Stipulation but to defend plaintiff against the charging lien asserted by Ween and the motion brought by the landlord's attorney.

Plaintiff argues that had defendant not quit before the case was concluded, and included additional provisions in the Stipulation, plaintiff would not have incurred her actual and

ascertainable damages and as such, there are genuine issues of material fact warranting a denial of defendant's motion.

In her Affidavit, sworn to on March 25, 2021 (NYSCEF Doc. No. 74), also untimely submitted, plaintiff states:

> "I had retained defendant Hawco to represent me in Index #62309/2012 [the Housing Court Proceeding] through to its conclusion. Because Defendant Hawco quit and stopped representing me before the case was over, and even though it was his negligence and negligent actions that caused my attorney Jeffery Ween to file the attorney charging lien in Index #62309/2012, I had to find and hire another attorney, Jeffrey Levy, Esq., to represent my interests and defend me against the attorney charging lien and the landlord's motion. That cost me $1,500."

Plaintiff also claims that she was forced to hire a new attorney to represent her to recover the $60,000 owed to her by the landlord pursuant to the Stipulation (*Id.*).

Oral argument

Defendant withdrew that portion his motion for summary judgment based on lack of personal jurisdiction (tr oral argument, dated March 25, 2021 at 9-10). Further, the record reflects that plaintiff did not submit any opposition to the striking of [plaintiff's] affirmative defenses to defendant's counterclaims (*Id.* at 22).

Plaintiff's attorney argued that defendant agreed to join a related holdover proceeding in Housing Court, where plaintiff was represented by Ween, with the non-payment Housing Court Proceeding which somehow resulted in Ween filing a Notice of Lien in the non-payment Housing Court proceeding even though the lien arose out of the holdover proceeding. This argument was rejected by this Court as the language scribbled on the side of the Stipulation clearly stated the holdover proceeding would be withdrawn only if Ween consented and there is no Housing Court order joining the two cases (*Id.* at 27) and no evidence of Ween's consent. In

any event, the Judge Wendt Order held that Ween had no standing to assert his lien in the non-payment Housing Court proceeding (NYSCEF Doc. No. 47).

SUMMARY JUDGMENT

In a summary judgment motion, the movant must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the movant fails this showing, the motion should be denied (*Id.*). However, where this showing is made, the burden then shifts to the party opposing the motion to produce sufficient evidentiary proof to establish the existence of a material issue of fact which requires a trial of the action (*Id.*).

In weighing a summary judgment motion, "evidence should be analyzed in the light most favorable to the party opposing the motion" (*Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997]). The motion should be denied if there is any doubt about the existence of a material issue of fact (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). Where different conclusions may reasonably be drawn from the evidence, the motion should also be denied (*Jaffe v Davis*, 214 AD2d 330 [1st Dept 1995]). On the other hand, bare allegations or conclusory assertions are insufficient to create genuine issues of fact to defeat the motion (*Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Rotuba Extruders v Ceppos,* 46 NY2d 223, 231 [1978]).

LEGAL MALPRACTICE

"To sustain its cause of action for legal malpractice, [plaintiff] must establish that [defendant] failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession and that the attorney's breach of this duty proximately caused plaintiff to sustain actual and ascertainable damages. An attorney's conduct or inaction is the proximate cause of a plaintiff's damages if 'but for' the attorney's negligence the plaintiff

would have succeeded on the merits of the underlying action, or would not have sustained 'actual and ascertainable' damages. Thus, in order for [defendant] to prevail on its summary judgment motion, it must establish that it provided the advice, and conducted the due diligence expected of counsel exercising the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession. If [defendant] fell short of this professional standard, it must demonstrate that its conduct was not the proximate cause of [plaintiff's] damages" (*Nomura Asset Capital Corp. v Cadwalader, Wickersham & Taft LLP*, 26 NY3d 40, 49-50 [2015] [internal quotations and citations omitted]; *see Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 442 [2007]; *Gallet, Dreyer & Berkey, LLP v Basile,* 141 AD3d 405, 405-406 [1st Dept 2016]).

"A claim for legal malpractice is viable, despite settlement of the underlying action, if it is alleged that settlement of the action was effectively compelled by the mistakes of counsel" (*Boone v Bender*, 74 AD3d 1111, 1112 [2d Dept 2010] [internal quotation marks and citation omitted]). "Plaintiff's claim for legal malpractice in connection with an underlying settlement fails to state a cause of action in the absence of allegations that the settlement … was effectively compelled by the mistakes of [defendant] counsel or the result of fraud or coercion" (*Freeman v Brecher*, 155 AD3d 453, 453 [1st Dept 2017] [internal quotation marks and citations omitted]).

"On a motion for summary judgment in the legal malpractice context, the defendant must 'demonstrate that the plaintiff is unable to prove at least one of the essential elements of a legal malpractice cause of action'" (*Alaimo v Mongelli*, 93 AD3d 742, 743-744 [2d Dept 2012] *quoting Greene v Sager*, 78 AD3d 777, 779 [2d Dept 2010]).

DISCUSSION

Defendant's motion for summary judgment dismissing plaintiff's affirmative defenses

In plaintiff's reply to defendant's counterclaims, plaintiff interposes eight affirmative defenses without specifying which counterclaim each of the affirmative defenses is asserted against. In any event, plaintiff has failed to oppose defendant's motion to the extent defendant seeks to dismiss plaintiff's affirmative defenses. As such, plaintiff's affirmative defenses are stricken (*see* tr oral argument at 20-22 [NYSCEF Doc. No. 82]).

Defendant's motion for summary judgment dismissing the Complaint

Here, defendant has established his prima facie entitlement to judgment as a matter of law on grounds that plaintiff's claims against him for legal malpractice have no merit and his conduct was not the cause of any actual and ascertainable damages to plaintiff. Defendant presents an Affidavit and the subject Stipulation settling the Housing Court Proceeding, which most significantly, is signed by plaintiff (NYSCEF Doc. No. 46). Furthermore, defendant's Verified Answer, quotes in full a letter, dated October 1, 2012, from defendant to plaintiff informing plaintiff that as a result of the foregoing Settlement, the work defendant was retained to do was complete and seeking costs and expenses (the "October 1 Letter"). The October 1 Letter also provides that plaintiff "read the Stipulation of Settlement to [her] Supreme Court attorney during a telephone conversation [she] had with him, while [she was] in Housing Court and before [she] signed it, and . . .he made some changes to it and then approved it" (Verified Answer at ¶ 28 [NYSCEF Doc. No. 43].[4] In addition, defendant proffers the Judge Wendt Order, wherein Judge Wendt directed the parties to fully comply with the Stipulation settling the

[4] The validity of the October 1 Letter is not in dispute as plaintiff herself submitted said letter in opposition [NYSCEF Doc. No. 76].

Housing Court Proceeding (NYSCEF Doc. No. 47). As such, defendant met his prima facie burden establishing lack of negligence.

Moreover, defendant has established *prima facie* an absence of proximate cause between his conduct and plaintiff's alleged damages (*Global Bus. Inst. v Rivkin Radler LLP*, 101 AD3d 651, 651-652 [1st Dept 2012] [internal quotation and citation omitted]); *Von Duerring v Hession & Bekoff*, 71 AD3d 760, 760 [2d Dept 2010]; *Carrasco v Pena & Kahn*, 48 AD3d 395, 396 [2d Dept 2008]). Given that plaintiff knowingly and with legal assistance from another attorney accepted the terms of the Stipulation, plaintiff's claims that her damages constituting the failure of the landlord to remit the $60,000 and loss of the value of the leased Apartment could be attributable to defendant's conduct, are entirely conclusory.

In opposition, plaintiff fails to raise an issue of fact. It is uncontroverted that plaintiff signed the Stipulation. "Since plaintiff was competent to execute the settlement agreement, and no fraud is alleged, he is responsible for his signature and is bound to read and know what he signed" (*Beattie v Brown & Wood*, 243 AD2d 395, 395 [1st Dept 1997]). Plaintiff has also failed to refute the evidence that before she signed the Stipulation, she consulted with her 'Supreme Court attorney' by telephone who purportedly made changes to the Stipulation before it was executed. Plaintiff's allegations that somehow Hawco abandoned her in the middle of the case is belied by the fact that there is no evidence in the record that she responded to his letter of October 1, 2012 informing her that his representation was concluded due to the settlement of the matter. Although plaintiff alleges dissatisfaction with the Stipulation, plaintiff never made a motion or otherwise sought to vacate the Stipulation. However, even had plaintiff sought such relief, she would have been unsuccessful in view of Judge Wendt's determination on October 12,

2012 (NYSCEF Doc. No. 47) with respect to Ween's charging lien, directing the parties to comply with the Stipulation.

Plaintiff's allegations that defendant pressured or coerced her into settling, that she was forced to sign, that defendant induced her into forfeiting her lease and that defendant threatened that he would withdraw as counsel if plaintiff did not settle are entirely conclusory. Plaintiff failed to particularize such allegations of duress, and it is uncontroverted that she signed the Stipulation and even consulted her 'Supreme Court attorney'.

Plaintiff also makes an illogical argument that the language scribbled on the side of the Stipulation providing that if Ween consents, he will withdraw a holdover proceeding in Housing Court, somehow evidences that Hawco caused that case and the nonpayment Housing Court proceeding to be linked resulting in Ween filing a Notice of Lien in the non-payment matter. The mere fact that Ween improperly filed a Notice of Lien in the non-payment matter, has absolutely no connection to Hawco.[5] In any event, by plaintiff agreeing to voluntarily surrender the Apartment, the holdover proceeding became moot.

Plaintiff also fails to claim ascertainable damages attributable to defendant's alleged breach of duty (*Engelke v Brown Rudnick Berlack Israels LLP*, 111 AD3d 444, 444 [1st Dept 2013]). Plaintiff makes a conclusory allegation that she was to be paid only $60,000 upon forfeiting a lease to an apartment that would "be worth millions of dollars over the course of a lifetime" (Affidavit in Opposition, sworn to on February 3, 2019 at ¶ 38 [NYSCEF Doc. No. 62] and that she has incurred "time and legal expenses" resulting from defendant's failure to provide her with proper representation (Plaintiff's Affidavit, sworn to on March 25, 2021 [NYSCEF Doc.

[5] Judge Wendt's determination that Ween had no standing to file a Notice of Lien in that proceeding was not related to Hawco whatsoever. Ween on his own, was free to file a Notice of Lien for work that he did for plaintiff, and as such, any such proceeding had no connection to defendant's representation of plaintiff.

No. 74]. "[S]ummary judgment dismissing [a] legal malpractice claim has been granted where the asserted damages are vague, unclear, or speculative" (*Gallet, Dreyer & Berkey, LLP v Basile*, 141 AD3d 405, 406 [1st Dept 2016] citing *Bellinson Law, LLC v Iannucci*, 102 AD3d 563, 563 [1st Dept 2013]). Plaintiff's allegation that the landlord in the Housing Court Proceeding failed to pay her the $60,000 settlement until February 2019 (more than six years after payment was due) because defendant quit forcing her to hire another attorney, is conclusory and not causally related to defendant's representation of plaintiff. In fact, plaintiff fails to refute defendant's affirmative defense alleging that plaintiff refused to authorize defendant to obtain the $60,000 which was being held in escrow (Fifteenth Affirmative Defense [NYSCEF Doc. No. 43]).[6]

Plaintiff's additional allegations of malpractice against Hawco, such as that Hawco failed to represent plaintiff, failed to provide legal services contracted for, failed to properly prepare for trial or negotiation and failed to properly communicate with plaintiff are entirely conclusory. In legal malpractice actions, "[u]nsupported factual allegations, conclusory legal argument or allegations contradicted by documentation do not suffice" (*Dweck Law Firm v Mann*, 283 AD2d 292, 293 [1st Dept 2001]). "The fact that the plaintiff subsequently was unhappy with the settlement does not rise to the level of legal malpractice" (*Holschauer v Fisher*, 5 AD3d 553, 554 [2d Dept 2004].

CONCLUSION

On the basis of the foregoing, it is

ORDERED, that the motion by defendant Kenneth B. Hawco, Esq. to dismiss the complaint and to dismiss plaintiff's affirmative defenses asserted in reply to defendant's counterclaims is granted.

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[6] Plaintiff in fact voluntarily refused to take the $60,000 for many years based on her claim of duress.

This matter shall continue with respect to defendant's counterclaims asserted in defendant's Verified Answer with Counterclaims, filed on June 28, 2018 [NYSCEF Doc. No. 43].

7/21/2022
DATE

SHLOMO HAGLER, J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | | X | NON-FINAL DISPOSITION | |
| | X | GRANTED | | DENIED | | GRANTED IN PART | OTHER |
| APPLICATION: | | SETTLE ORDER | | | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | | FIDUCIARY APPOINTMENT | REFERENCE |