Shenzhen Kehuaxing Indus. Ltd. v Curtis, Mallet-Prevost, Colt & Mosle LLP
2016 NY Slip Op 31593(U)
August 12, 2016
Supreme Court, New York County
Docket Number: 150005/2015
Judge: Eileen Bransten

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 3

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SHENZHEN KEHUAXING INDUSTRIAL LTD., ARTISAN MANUFACTURING CORP., LIANSHENG YAO, EZHONG HAN and HUAQIONG HAN,

Plaintiffs,

- against -

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP, DANIEL L. PORTER, ESQ., ROSS BIDLINGMAIER, ESQ., and JOHN DOE and JANE DOE,

Defendants,

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Index No.: 150005/2015
Motion Seq. No. 001
Motion Date: 3/21/2016

BRANSTEN, J.:

In this action, plaintiffs Shenzhen Kehuaxing Industrial Ltd. ("SKI") and Artisan Manufacturing Corp. ("Artisan") (together, "companies" or "plaintiff companies") bring suit against their former legal counsel. Plaintiffs assert that counsel committed legal malpractice in connection with their representation of plaintiffs' related to a U.S. government investigation into Chinese companies exporting stainless steel sinks to the United States. Plaintiffs likewise assert claims for breach of fiduciary duty and breach of contract. Defendants make this pre-answer motion to dismiss the complaint, pursuant to CPLR 3211(a)(7), for failure to state a cause of action.[1] For the reasons that follow, the motion is granted in part and denied in part.

[1] Although defendants do not, in their notice of motion or initial moving papers, identify the

I. Background

SKI, a Chinese corporation, manufactures stainless steel sinks and related accessories, such as faucets. Artisan, a New York corporation, imports and sells SKI's products in the United States under the Artisan brand. (Am. Compl. ¶¶ 1, 2, 17.) Plaintiff Liansheng Yao is Chief Executive Officer of SKI and Artisan, the sole shareholder of Artisan, and a 50% shareholder of SKI. *Id.* ¶ 3. Yao's husband, plaintiff Ezhong Han ("E. Han"), and her husband's sister, plaintiff Huaqiong Han ("H. Han"), are 45% and 5% shareholders of SKI, respectively. *Id.* ¶¶ 4, 5.

A. *Commencement of Antidumping and Countervailing Duty Investigations*

In March 2012, the U.S. Department of Commerce ("Commerce") initiated antidumping ("AD") and countervailing duty ("CVD") investigations into SKI and other Chinese manufacturers of stainless steel sinks. *See* Am. Compl. ¶ 21 & Ex. A. SKI and Artisan retained defendant Curtis, Mallet-Prevost, Colt & Mosle LLP ("Curtis" or "the firm") to represent them during the investigations. (Am. Compl. ¶¶ 11, 24, Ex. D.) Defendants Daniel L. Porter and Ross Bidlingmaier (collectively, with Curtis,

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CPLR 3211 section(s) on which their motion is based, they indicate in their reply memorandum of law that they are moving pursuant to CPLR 3211(a)(7). See Defs.' Reply Br. at 2 n.1.

"defendants") are attorneys at the firm, who provided legal services to plaintiffs. *Id.* ¶¶ 7, 8; 23; *see* Affidavit of Daniel Porter ("Porter Aff.") ¶ 11.[2]

At the start of the AD investigation, Commerce set deadlines for various submissions, including a quality and value ("Q&V") questionnaire, used by Commerce to determine which exporters will be individually investigated. *See* Porter Aff. Ex. 4 at 18210; *see also* Am. Compl. Ex. I at 5. The deadline for submission of the Q&V questionnaire was April 11, 2012. *See* Porter Aff. Ex. 4 at 18210; Am. Compl. Ex. I at 4. The deadline for submitting a separate rate application, which gave exporters an opportunity to obtain a lower antidumping rate than other manufacturers engaged in antidumping practices, was "60 days after publication of this initiation notice," or May 28 or 29, 2012. *See* Am. Compl. Ex. G ¶ 6.

B. *Commerce's Rate Determination*

Defendants admittedly failed to file the Q&V questionnaire by the April 11 deadline "due to an inadvertent lapse." (Am. Compl. ¶ 27.) Instead, Defendants submitted the Q&V questionnaire before the start of business the following day, April 12,

[2] Plaintiffs allege other employees of the firm, sued as John Doe and Jane Doe, and as yet unidentified, also provided services to them. Complaint, ¶ 9. In his affidavit, Porter identifies Yu Li as an associate at the firm who did work for plaintiffs. Porter Aff., ¶ 11.

with a request for a one-day extension of the filing deadline, which was denied. *See* Porter Aff. Ex. 8. Defendants then timely filed plaintiffs' separate rate application on or about May 25, 2012. (Am. Compl. ¶ 6.) Nevertheless, Commerce rejected plaintiffs' separate rate application on June 6, 2012, stating that both the Q&V questionnaire and the separate rate application had to be timely filed before it would grant separate rate status, and, because plaintiffs' Q&V questionnaire was submitted after its deadline, it also would not consider the separate rate application. *See* Am. Compl. Ex. H. On June 11, 2012, defendants requested that Commerce reconsider its rejection of the separate rate application. *See* Porter Aff. Ex. 11.

In September 2012, Commerce made a preliminary determination that Chinese stainless steel sinks were being sold in the U.S. for less than fair value and imposed antidumping duties on plaintiffs and numerous other Chinese exporters and producers. *See* Am. Compl. Ex. I. The preliminary AD rate imposed on those exporters granted separate rate status was 59.06%, and the combined AD/CVD rate was 67.09%. For those exporters not granted separate rate status, the general China-wide rate imposed was 76.53%, while the combined AD/CVD rate was 84.56%.

In February 2013, Commerce issued its final AD and CVD determinations, reducing the AD rate assigned to exporters with separate rate status to 33.51%, which, with the final CVD rate of 8.51%, resulted in a combined AD/CVD rate of 42.02%.

Plaintiffs' final general China-wide AD rate remained 76.53%, with a resulting combined AD/CVD rate of 85.04%.

Plaintiffs allege that the AD duty rate imposed on them, requiring them to pay upfront cash deposits on their stainless steel sinks shipped to the U.S. in the amount of 76.53% of the customs value of the imports, put them at a severe disadvantage against both U.S. and Chinese competitors, and rendered their stainless steel sinks largely uncompetitive at a profitable price. (Am. Compl. ¶ 33.) When defendants informed plaintiffs that the final determination was issued, plaintiffs responded, in an email dated February 20, 2013, that "[t]his decision is very bad for Artisan. 30% to 50% is what most customer would accept for price increase, not 76% . . . . We will not be able to survive in China now." *Id.* ¶ 34.

C. *SKI's Appeal*

In May 2013, defendants appealed Commerce's decision to reject plaintiffs' separate rate application to the Court of International Trade ("CIT"). *See* Porter Aff. Ex. 24 (*Artisan Mfg. Corp. v United States*, 978 F. Supp. 2d 1334, 1340 (CIT 2014) decision). The CIT determined that "Commerce abused its discretion in rejecting [SKI's] separate-rate application and assigning [SKI] the PRC-wide rate based on the use of adverse inferences . . . " and required Commerce to file a "remand redetermination" on an

expedited basis "because the rate assigned to [SKI] affects cash deposits that are now being collected pursuant to the Final Determination and the antidumping duty order." *Id.* at 1348-49. On remand, Commerce determined that plaintiffs were entitled to the 33.51% separate AD rate. *See* Porter Aff. Ex. 25. In a judgment dated June 27, 2014, the CIT affirmed the remand redetermination and ordered Commerce to refund any overpayments made by plaintiffs while subject to the 76.53% rate. *See* Porter Aff. Ex. 26; Am. Compl. ¶ 50.

D. *The Instant Action*

Plaintiffs allege that the "prohibitively high" assessed AD rate of 76.53% resulted from defendants' malpractice, and caused the prices of their sinks to be non-competitive. In addition, plaintiffs assert that distributors and customers to cancel orders and terminate their business with plaintiffs. As a result, plaintiffs seek to recover damages for lost sales, revenues, profits and good will. (Am. Compl. ¶¶ 52, 53.) Plaintiffs also allege that, as a result of the imposition of the 76.53% AD rate and the uncertainty about whether it would be rescinded, they had to move their operations out of China to avoid the high AD rates, and they seek to recover relocation costs. *Id.* ¶¶ 54-57.

II. Discussion

A. *Motion to Dismiss Standard*

On a motion to dismiss a complaint for failure to state a cause of action, all factual allegations must be accepted as truthful, the complaint must be construed in a light most favorable to the plaintiffs and the plaintiffs must be given the benefit of all reasonable inferences. *Allianz Underwriters Ins. Co. v. Landmark Ins. Co.*, 13 A.D.3d 172, 174 (1st Dep't 2004). "We . . . determine only whether the facts as alleged fit within any cognizable legal theory." *Leon v. Martinez,* 84 N.Y.2d 83, 87-88 (1994). This Court must deny a motion to dismiss, "if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 152 (2002) (internal quotation marks and citations omitted).

B. *SKI's Legal Malpractice Claim*

To state a cause of action for legal malpractice, a plaintiff must allege that the defendant attorney "'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.'" *Rudolf v. Shayne, Dachs, Stanisci, Corker & Sauer*, 8 N.Y.3d 438, 442 (2007) (quoting

McCoy v Feinman, 99 N.Y.2d 295, 301-302 (2002)); *see also Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP*, 26 N.Y.3d 40, 49-50 (2015); *Dombrowski v. Bulson*, 19 N.Y.3d 347, 350 (2012). "To establish causation, a plaintiff must show that he or she would have prevailed in the underlying action or would not have incurred any damages, but for the lawyer's negligence." *Rudolf*, 8 N.Y.3d at 442 (citations omitted); *see also Nomura Asset Capital Corp.*, 26 N.Y.3d at 50; *AmBase Corp. v. Davis Polk & Wardwell*, 8 N.Y.3d 428, 434 (2007). "The failure to establish proximate cause mandates the dismissal of a legal malpractice action, regardless of the attorney's negligence." *Brooks v. Lewin*, 21 A.D.3d 731, 734 (1st Dep't 2005) (citations omitted); *see also Leder v. Spiegel*, 31 A.D.3d 266, 268 (1st Dep't 2006), *aff'd* 9 N.Y.3d 836 (2007).

"A plaintiff must plead actual, ascertainable damages resulting from the attorney's negligence. Conclusory or speculative allegations of damages are insufficient." *Rhodes v. Honigman*, 131 A.D.3d 1151, 1153 (2d Dep't 2015) (citation omitted); *see also Dempster v. Liotti*, 86 A.D.3d 169, 177 (2d Dep't 2011); *Russo v. Feder, Kaszovitz, Isaacson, Weber, Skala & Bass*, 301 A.D.2d 63, 67 (1st Dep't 2002). "However, '[a] plaintiff is not obligated to show, on a motion to dismiss, that it actually sustained damages. It need only plead allegations from which damages attributable to the defendant's malpractice might be reasonably inferred.'" *Randazzo v. Nelson*, 128 A.D.3d

935, 937 (2d Dep't 2015) (citations omitted); *see Lieberman*, 139 A.D.3d at 817; *Fielding v. Kupferman*, 65 A.D.3d 437, 442 (1st Dep't 2009); *Lappin v. Greenberg*, 34 A.D.3d 277, 279 (1st Dep't 2006).

The parties do not dispute that defendants failed to timely file the Q&V questionnaire, which is the primary basis of plaintiffs' malpractice claim, and which, generally, sufficiently alleges professional negligence. *See, e.g., Brodeur v. Hayes*, 18 A.D.3d 979, 979 (3d Dep't 2005) (failure to timely file an answer constitutes negligence); *Stanski v. Ezersky*, 210 A.D.2d 186, 186 (1st Dep't 1994) (failure to properly effect service to commence action is negligence); *Baker v. Dorfman*, 1998 WL 642762, at *4 (S.D.N.Y. 1998) (failure to file claims in a timely manner constituted negligence as a matter of law). Instead, defendants maintain that plaintiffs have failed to plead the requisite elements of proximate cause and damages.

1. Proximate Cause

Defendants first contend that the Amended Complaint fails to state a claim for legal malpractice because plaintiffs cannot show that defendants' alleged negligence proximately caused actual, ascertainable damages. Defendants argue that the complaint is "irremediably deficient in two critical respects," as it ignores that plaintiffs would have been subjected to "at least 33.51% in AD duties and 8.51% in CVD duties on their

products from China regardless of the filing delay;" and "Commerce's improper rejection" of the Q&V questionnaire and separate rate application was "the intervening and actual cause of any damages suffered by Plaintiffs." (Defs.' Moving Br. at 9.)

According to defendants, if plaintiffs had been granted separate rate status, they would have been assigned a combined AD/CVD rate of 42.02%, after the final determination, and, even at that lower rate, neither plaintiffs nor any Chinese manufacturers could compete with manufacturers in the U.S. and elsewhere not subject to the AD duties. *Id.* at 14-15. Further, defendants contend, during the period the separate rate companies were assigned a combined AD/CVD rate of 67.09% and plaintiffs were assigned a higher combined AD/CVD rate of 84.56% – between Commerce's preliminary determination and its final determination – plaintiffs "were not at a comparative disadvantage to Chinese exporters receiving the separate AD rate" because "'*all exporters* [were] assigned prohibitively high dumping margins.'" *Id.* at 14 (emphasis in original).

For the purpose of this motion, plaintiffs have sufficiently alleged proximate cause, i.e., but for defendants' untimely filing of the Q&V questionnaire, "what would have been a favorable outcome was an unfavorable outcome." *Zarin v. Reid & Priest*, 184 A.D.2d 385, 386 (1st Dep't 1992). While defendants content that Commerce's rejection of the separate rate application was the actual, intervening cause of plaintiffs' alleged damages, such an argument is unavailing on this motion. Defendants do not

establish that Commerce's decision, even if ultimately overturned, was "[a]n independent, unforeseeable or extraordinary act . . . far removed from the defendants' conduct," so as to "sever[] the causal link" between defendants' untimely filing and the denial of separate rate status to plaintiffs. *Taylor v. Paskoff & Tamber, LLP*, 2011 WL 1480892 at *11 (Sup. Ct. N.Y. Cnty. 2011), *aff'd* 102 A.D.3d 446 (1st Dep't 2013) (citing *Maheshwari v. City of N.Y.*, 2 N.Y.3d 288, 295 (2004)); *Arbor Realty Funding, LLC v. Herrick & Feinstein LLP*, 103 A.D.3d 576, 576 (1st Dep't 2013); *see also Derdiarian v. Felix Contr. Corp.*, 51 N.Y.2d 308, 315 (1980). "[T]he general rule is that an intervening act which is a normal consequence of the situation created by a defendant cannot constitute a superseding cause absolving the defendant from liability." *Lynch v. Bay Ridge Obstetrical & Gynecological Assoc., P.C.*, 72 N.Y.2d 632, 636-637 (1988). Courts further "have cautioned that whether an act is foreseeable and the course of events normal are questions . . . generally . . . presenting issues for the fact finder to resolve." *Id.* at 636.

2. Damages

As to damages, plaintiffs allege that defendants' negligence resulted in plaintiffs' paying significantly higher upfront cash deposits on their stainless steel sinks, which rendered the sinks non-competitive in the market. (Am. Compl. ¶ 33.) In addition,

plaintiffs contend that they were forced to incur additional legal fees to appeal the higher AD rate. *Id.* ¶ 37.

Although speculative damages cannot support a legal malpractice claim, plaintiffs need not establish actual damages at the pleading stage. Instead, they are only required to "plead allegations from which damages attributable to [defendant's conduct] might be reasonably inferred." *InKine Pharmaceutical Co., Inc. v. Coleman*, 305 A.D.2d 151, 152 (1st Dep't 2003). The pleadings here meet this standard, alleging damages in the form of higher duties and lost sales and profits, which are capable of being proven. *See Miuccio v. Straci*, 129 A.D.3d 515, 516 (1st Dep't 2015) (deeming that difference between interest rate earned and interest rate that would have been earned is ascertainable).

"[W]hether the pleading will later survive a motion for summary judgment, or whether . . . [plaintiffs] will ultimately prevail on the claims, is not relevant on a pre-discovery motion to dismiss." *Lieberman v. Green*, 139 A.D.3d 815, 816 (2d Dep't 2016). Thus, even if Porter's affidavit and the accompanying documents raise issues of fact as to whether plaintiffs can prove they sustained the alleged damages, such issues of fact are not properly resolved on a motion to dismiss addressed to the pleadings. *See Home Ins. Co. v. Liebman, Adolf & Charme*, 257 A.D.2d 424, 424 (1st Dep't 1999) ("[D]efendants' conclusory assertion that [plaintiff] will never be able to prove damages

does not provide a sufficient basis for dismissal at this stage of the proceedings"). Construing the Amended Complaint liberally, as the court must do, plaintiffs SKI and Artisan have sufficiently stated a cause of action to recover damages for legal malpractice to survive the instant motion to dismiss.

C. *Individual Plaintiffs' Legal Malpractice Claim*

The parties do not dispute that Curtis was retained to represent SKI and Artisan – not the individual plaintiffs Yao, E. Han, and H. Han. As a result, Defendants contend that the individual plaintiffs' legal malpractice claim must be dismissed because they had no attorney-client relationship with defendants. The individual plaintiffs acknowledge that they had no direct attorney-client relationship with defendants but nonetheless assert that "special circumstances" exist to satisfy the privity requirement and support their claim.

The individual plaintiffs' legal malpractice claim rests on allegations about the individual plaintiffs' percentage ownership in SKI and Artisan. They assert that Yao was, and was known by defendants to be, the sole shareholder in Artisan, a 50% shareholder of SKI, and the CEO of SKI and Artisan, while E. Han and H. Han were 45% and 5% shareholders of SKI, respectively. (Am. Compl. ¶¶ 3, 4, 5.) As the sole shareholders of the two closely held and related companies, the individual plaintiffs argue

that they were "foreseeable third-party beneficiaries of Defendants' representation of Artisan and SKI, . . . [who] were personally relying on Defendants' proper and timely rendition of legal services." *Id.* ¶ 80.

Generally, "[a] cause of action for legal malpractice cannot be stated in the absence of an attorney-client relationship." *Waggoner v. Caruso*, 68 A.D.3d 1, 5 (1st Dep't 2009), *aff'd* 14 N.Y.3d 874 (2010). Moreover, it "is well settled that a corporation's attorney represents the corporate entity, not its shareholders or employees." *Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 N.Y.3d 553, 562 (2009); *see also Campbell v. McKeon*, 75 A.D.3d 479, 480-481 (1st Dep't 2010) (law firm's representation of corporation does not establish attorney-client relationship with individual shareholder unless law firm "assumed an affirmative duty to represent the individual").

"'New York courts impose a strict privity requirement to claims of legal malpractice; an attorney is not liable to a third party for negligence in performing services on behalf of his client.'" *Federal Ins. Co. v. N. Am. Specialty Ins. Co.*, 47 A.D.3d 52, 59 (1st Dep't 2007). Nonetheless, an attorney may be liable for malpractice "to those with whom the relationship is so close as to approach that of privity," *Millennium Import, LLC v. Reed Smith LLP*, 104 A.D.3d 190, 194 (1st Dep't 2013) , or where plaintiff "set[s] forth

a claim of fraud, collusion, malicious acts or other special circumstances." *AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.*, 5 NY3d 582, 595 (2005).

"Special circumstances" are present where the relationship between the plaintiff and the defendant attorney is "tantamount to one of contractual privity." *Good Old Days Tavern, Inc. v. Zwirn*, 259 A.D.2d 300, 300 (1st Dep't 1999). Courts also have found that "for a relationship to approach 'near' privity's borders, for the purpose of maintaining a professional negligence claim, the professional must be aware that its services will be used for a specific purpose, the plaintiff must rely upon those services, and the professional must engage in some conduct evincing some understanding of the plaintiff's reliance." *Allianz Underwriters Ins. Co. v. Landmark Ins. Co.*, 13 A.D.3d 172, 175 (1st Dep't 2004).

In this case, neither the status of E. Han and H. Han as shareholders of SKI, nor Yao's status as CEO of Artisan and SKI and sole shareholder of Artisan, is sufficient without more to demonstrate "special circumstances" giving rise to a "near privity" relationship. *See Leggiadro, Ltd. v Winston & Strawn, LLP*, 119 A.D.3d 442, 442 (1st Dep't 2014). Further, there are no allegations here that any of the individual plaintiffs were clients of the firm, hired the firm, were parties to any agreement with the firm, or otherwise had any communications or direct contact with defendants. Documents submitted by the parties, including documents annexed to the complaint, instead show

that defendants communicated exclusively with non-party Alex Han, President of Artisan. There also are no allegations that any individual plaintiff participated in the management of, or received her or his livelihood from, the companies. Nor do the individual plaintiffs allege any damages independent of damages incurred by plaintiff companies.

Even assuming that the individual plaintiffs were meant to benefit from defendants' actions on behalf of SKI and Artisan, "that circumstance does not give rise to a duty [to plaintiffs] on the part of the [firm]." *Federal Ins. Co. v. N. Am. Specialty Ins. Co.*, 47 A.D.3d 52, 60 (1st Dep't 2007). Moreover, although the individual plaintiffs claim that they were intended third-party beneficiaries of defendants' contract with SKI and Artisan, they have not made the requisite pleading that the contract was intended for their benefit and that "the benefit to [them was] sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate [them] if the benefit is lost." *California Pub. Employees Ret. Sys. v. Shearman & Sterling*, 95 N.Y.2d 427, 434-435 (2000). Accordingly, the individual plaintiffs' legal malpractice claim is dismissed.

D. *Breach of Fiduciary Duty*

As a threshold matter, plaintiffs' breach of fiduciary duty claim arises out of the same factual allegations underlying the legal malpractice claim and seeks the same damages, rendering it duplicative. *See, e.g., Cohen v. Kachoo*, 115 A.D.3d 512, 513 (1st Dep't 2014); *Cobble Creek Consulting, Inc. v. Sichenzia Ross Friedman Ference LLP*, 110 A.D.3d 550, 551 (1st Dep't 2013); *Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267, 271 (1st Dep't 2004). Contrary to plaintiffs' argument, *see* Pls.' Opp. Br. at 24, "there is no independent cause of action for 'concealing' malpractice." *Zarin v. Reid & Priest*, 184 A.D.2d 385, 387 (1st Dep't 1992); *see also Weiss v. Manfredi*, 83 N.Y.2d 974, 977 (1994) ("an attorney's failure to disclose malpractice does not give rise to a fraud claim separate from the customary malpractice action").

To the extent that plaintiffs argue that their breach of fiduciary duty claim is distinguishable because it seeks punitive damages, "punitive damages are awarded only in 'singularly rare cases' such as cases involving an improper state of mind or malice or cases involving wrongdoing to the public." *Bothmer v. Schooler, Weinstein, Minsky & Lester, P.C.*, 266 A.D.2d 154, 154 (1st Dep't 1999) "[T]o recover punitive damages, a plaintiff must show, by 'clear, unequivocal and convincing evidence,' 'egregious and willful conduct' that is 'morally culpable, or is actuated by evil and reprehensible

motives.'" *Munoz v. Puretz*, 301 A.D.2d 382, 384 (1st Dep't 2003). "[P]unitive damages are not available for ordinary negligence." *Id.* Even assuming the allegations of the complaint to be true, plaintiffs do not "allege facts demonstrating that the defendants' conduct was so outrageous as to evince a high degree of moral turpitude and showing such wanton dishonesty as to imply a criminal indifference to civil obligations," *Zarin*, 184 A.D.2d at 388, or constituted more than ordinary negligence. Therefore, the punitive damages claim is unavailing and does not render the breach of fiduciary claim distinct from alleged malpractice.

E. *Breach of Contract*

Plaintiffs' claim for breach of contract similarly should be dismissed as duplicative, as it arises from the same facts and circumstances as the malpractice claim and alleges similar damages. *See, e.g, Schulte Roth & Zabel, LLP v. Kassover*, 80 A.D.3d 500, 500 (1st Dep't 2011). "[A] breach of contract claim premised on the attorney's failure to exercise due care or to abide by general professional standards is nothing but a redundant pleading of the malpractice claim." *Sage Realty Corp. v. Proskauer Rose L.L.P.*, 251 A.D.2d 35, 38-39 (1st Dep't 1998). Further, "[u]nless a plaintiff alleges that an attorney defendant 'breached a promise to achieve a specific result,' a claim for breach of contract is 'insufficient' and duplicative of the malpractice

claim." *Mamoon v. Dot Net Inc.*, 135 A.D.3d 656, 658 (1st Dep't 2016). Plaintiffs' allegations that defendants promised to continue to represent them to resolve "any and all problems" resulting from the untimely filing of the Q&V questionnaire, *see* Am. Compl. ¶ 44, do not plead the existence of a contract outside the retainer agreement, or an express promise to achieve a particular result. *See Pacesetter Communs. Corp. v. Solin & Breindel, P.C.*, 150 A.D.2d 232, 236 (1st Dep't 1989).

III. **Conclusion**

Accordingly, defendants' motion is granted in part and denied in part and it is

ORDERED that defendants' motion is denied as to the first cause of action; and it is further

ORDERED that defendants' motion is granted to the extent that the second, third, and fourth causes of action are dismissed; and it is further

ORDERED that the remaining claim is severed and shall continue; and it is further

ORDERED that the remaining defendant Curtis, Mallet-Prevost, Colt & Mosle LLP is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 442, 60 Centre Street, on October 11, 2016, at 10 AM.

Dated: New York, New York
August 12, 2016

ENTER

Hon. Eileen Bransten, J.S.C.