

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

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PAUL GRIFFIN, IRENE GRIFFIN and HELEN-MAY
HOLDINGS, LLC

Index No: 2546/08

Plaintiffs,

VERIFIED COMPLAINT

-against-

GERALD ORSECK and THE ORSECK LAW OFFICES,

Defendants.
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Plaintiffs, PAUL GRIFFIN, IRENE GRIFFIN and HELEN-MAY HOLDINGS, by their attorneys, SCHER & SCHER, P.C., complaining of defendants, upon information and belief, respectfully allege as follows:

1. Plaintiffs, PAUL GRIFFIN and IRENE GRIFFIN, are residents of Sullivan County, State of New York.
2. Plaintiff, HELEN-MAY HOLDINGS, is a domestic Limited Liability Company, duly organized under the Laws of the State of New York.
3. Defendant, GERALD ORSECK, is a resident of Sullivan County, State of New York.
4. At all times relevant to the issues in this suit, defendant, GERALD ORSECK, was an Attorney-at-Law duly licensed to practice in the State of New York.
5. At all times, defendant, GERALD ORSECK, practiced law under the firm name of THE ORSECK LAW OFFICES in Liberty, Sullivan County, State of New York.
6. Heretofore and on or about May, 2005, plaintiffs retained defendants GERALD ORSECK and THE ORSECK LAW OFFICES to

substitute for their prior attorneys of record and to represent them and to provide legal services and advice in connection with a certain matter pending in Bankruptcy Court for the Southern District of New York entitled:

In Re:
KOLLEL MATEH EFRAIM, LLC, a/k/a Chapter 11
MATEH EPHRAIM LLC, a/k/a Case No. 04-16410
KOLEL MATEH EFRAIM,

(hereinafter referred to as "KOLLEL MATEH MATTER") and matters and proceedings related thereto.

7. The said proceeding involved the filing of a Chapter 11 Petition in Bankruptcy by an entity that was a contract vendee in default under a Contract with the Plaintiff HELEN-MAY HOLDINGS for the sale and purchase of the premises located at 1141 County Road 114, Fosterdale, NY 12726 owned by HELEN-MAY HOLDINGS which is known as "The Meadows."

8. At all relevant times and to the date hereof plaintiff, HELEN-MAY HOLDINGS, was the owner of the Meadows.

9. At all relevant times and to the date hereof, plaintiffs PAUL GRIFFIN and IRENE GRIFFIN, were the sole members and principal managers of plaintiff, HELEN-MAY HOLDINGS, LLC.

10. At or about the time that plaintiffs retained defendants GERALD ORSECK and THE ORSECK LAW OFFICES to substitute for their prior attorneys of record, Defendant GERALD ORSECK represented to the plaintiffs that he was knowledgeable and experienced in the field of Bankruptcy law and that he would get their property back for them in two (2) weeks.

11. Although plaintiffs were unaware of the falsity of the representations so made, defendants well knew at the time when made that such representations were false untrue and that the normal course of events in Bankruptcy Court would not permit the matter to be resolved within such a brief period of time.

12. Same were made for the purpose of inducing plaintiffs to retain defendants in order that defendants would be paid substantial fees for such efforts.

13. Plaintiffs relied upon the truth of such representations and in such reliance thereon terminated the services of their attorney representing them in the KOLLEL MATEH MATTER and retained defendants.

14. Thereafter defendants entered into the representation of plaintiffs as aforesaid.

15. Thereafter and in connection with the said proceeding, plaintiffs and defendants had numerous discussions concerning, among other things, their position with respect to the property and communicated to defendants their firm position that if the Debtor was not willing to cure all of its defaults and pay the proper amount, defendant was to just get the property back for them free of the Bankruptcy proceedings to sell to another.

16. The defendants counseled Plaintiffs to re-finance the Meadows at about June, 2005 in order that they could pay certain arrears in mortgage payments on the Meadows as well as legal fees to the defendants.

17. Said advice was improper advice for the reason that it was given solely out of concerns of self interest by defendants for the purpose of securing excessive fees on the refinance at excessive expense to plaintiffs who would have been better advised not the refinance at that time or to secure financing from other sources.

18. Defendants were also partially motivated by a long standing friendship and/or a business relationship with the lender and therefore stood to profit from the refinancing on unfavorable terms with other direct consideration, the nature and amount of which are unknown to plaintiffs.

19. The defendants made all of the arrangements for the refinancing of the Meadows and advised the plaintiffs that it was necessary for them to increase the mortgage on the premises and increase the debt by \$220,000.00.

20. Notwithstanding that the mortgage on the Meadows was increased by \$220,000.00, plaintiffs realized little additional money from the refinancing arranged by the defendants most of which went to the payment of arrears and fees to defendants.

21. Prior to July 20, 2005, plaintiffs and defendants were made aware that the Kolliel Match matter was scheduled for a Hearing in Bankruptcy Court on July 20, 2005.

22. For some time prior thereto, plaintiffs had planned to appear at said Hearing for the purposes of observing the

proceedings, making themselves available for full participation in the Hearing and any other matters before the Court and between counsel.

23. In the late afternoon of July 19, 2005, plaintiffs were informed by defendants that the Hearing scheduled for July 20, 2005 was not going to take place.

24. Defendants informed plaintiffs that plaintiffs ought not to travel to Court for any proceedings.

25. In reliance upon such advice, plaintiffs absented themselves from Court on July 20, 2005 on the belief that no proceedings would take place.

26. Thereafter, and notwithstanding such advice, defendants appeared in Bankruptcy Court on July 20, 2005 on behalf of plaintiffs and participated in a Conference and commenced a Hearing without notice to plaintiffs.

27. During the course of the proceedings and as a result of discussions in which plaintiffs did not participate before, after or during the Hearing on such appearance, defendants without authority to do so entered into a Settlement on the record with the debtor.

28. The said settlement was on terms well below any of the terms previously discussed with plaintiffs, was totally unacceptable to plaintiffs and in direct contravention of plaintiffs instructions, goals and expectations previously discussed with and memorialized in a writing sent to defendants.

29. The said settlement was unauthorized and was made and entered into on the record without the knowledge of the plaintiffs.

30. At the time, defendants well knew that they had no authority to enter into any settlement on the terms and conditions agreed to by defendants on behalf of plaintiffs.

31. Notwithstanding such lack of authority and knowledge of such lack of authority, defendants failed to secure the authority of plaintiffs before entering into the settlement.

32. Thereafter and notwithstanding that the case had been marked settled by the defendants on July 20, 2005, defendants attempted to deceive plaintiffs on several occasions between July 20, 2005 through August 5, 2005, representing to plaintiffs that the Court had made "favorable rulings".

33. Between July 20, 2005 and August 5, 2005, defendant GERALD ORECK deliberately failed to disclose to plaintiffs, specifically that the case had actually been settled and denied that any settlement had been reached.

34. Defendants were aware at each of the times that they denied that a settlement had been reached that such denial was false and untrue.

35. Defendants deliberately withheld information from plaintiffs by failing to fully report the events that occurred on July 26, 2005, including that a Hearing and Conference was held and that defendants had, without authority, agreed to a Settlement in open Court and on the Record.

36. By such denials defendants intended to and did actually deceive plaintiffs into believing that the case which had actually been settled on the record was not settled.

37. Thereafter an application was made by the Debtor in the proceeding to confirm the settlement entered into by defendants on behalf of plaintiffs on July 20, 2005.

38. Thereafter and notwithstanding that defendants well knew that one of the reasons to object to the confirmation of the settlement was that defendants lacked authority to enter into the settlement on plaintiffs' behalf, defendants filed objections to the confirmation of the settlement on plaintiffs' behalf without disclosing to the Court, claiming or objecting on the grounds that they lacked the authority to enter into the settlement.

39. Defendants filed objections without an informed review of said objections, without disclosure to plaintiffs of what it was that was being filed, without raising a claim of lack of authority and without any explanation to plaintiffs of the significance to be attached to the failure to raise at that stage a claim of lack of authority.

40. At the time of the filing of the objections, defendants well knew, even if they did not know before, that they had lacked authority to enter into the settlement on July 20, 2005 or on any occasion prior or subsequent thereto.

41. Thereafter plaintiffs terminated the services of defendants and substituted counsel in the Bankruptcy proceeding.

42. Thereafter substituted counsel promptly filed amended objections to the confirmation and alleged therein that defendants lacked authority to enter into the settlement on the terms and conditions set forth in the Motion to confirm.

43. Thereafter the Bankruptcy Court declined to sign the Order confirming the Settlement and the Debtor moved in the Bankruptcy Court to enforce the Settlement.

44. The Motion to enforce the settlement was decided by Hon. Stuart M. Bernstein on February 23, 2007 wherein he decided that defendant lacked the authority to enter into the settlement and denied the Motion to enforce the settlement and determined that a Hearing was necessary to determine whether or not defendants had authority to settle the case.

45. Judge Stuart M. Bernstein in his published Opinion Order dated December 15, 2005 made the following Findings of Fact with respect to the defendant GERALD ORSECK:

(a) On or about July 20, 2005. GERALD ORSECK entered into a binding settlement agreement on the record in open Court and stated that the settlement was agreeable to plaintiffs;

(b) Thereafter defendant ORSECK stated in an Affidavit that he "realized that I never had authority to settle this case in any fashion";

(c) That ORSECK's secretary advised the plaintiffs falsely that a Hearing before the Court had been adjourned and that they should not come;

(d) Plaintiffs met with ORSECK two (2) days later on July 22, 2005 wherein he failed to tell them that a Hearing had taken place on their matter and that he had entered into a settlement on their behalf.

(e) The Court found that "ORSECK appeared alone on July 20, 2005 after allegedly duping the GRIFFINS into believing that the Court Hearing had been adjourned.

(f) That ORSECK had lied about a conversation with plaintiffs business counsel.

(i) That defendant ORSECK lied to the plaintiffs.

46. Thereafter, defendants through defendant, GERALD ORSECK, appeared and testified in proceedings both prior to the Hearing and on the Hearing.

47. As a result, defendants are bound to the findings and the results of the proceedings concerning the Settlement.

48. After a Hearing before the Court, the Court made findings which were contained in the Post Trial Findings of Fact and Conclusions of Law of Hon. Stuart M. Bernstein dated February 23, 2007 that included the following:

(a) As of July 19, 2005, ORSECK knew that the plaintiffs never expressly agreed to authorize a settlement within the parameters of the settlement ORSECK entered into on July 20, 2005;

(b) Defendant ORSECK spoke to the plaintiffs at 10:43 a.m. on July 20, 2005 wherein plaintiffs failed and refused to authorize ORSECK to enter into the settlement;

(c) Defendant ORSECK filed objections with the Court on August 11, 2005 stating that the case is not settled;

(d) On August 30, 2005 plaintiffs obtained a transcript of the July 20, 2005 Hearing wherein it "confirmed that ORSECK had made the settlement he had consistently denied;"

(e) That defendant ORSECK lacked the actual and apparent authority to settle their case;

(f) That it was undisputed that plaintiffs did not give defendant ORSECK the authority to settle the case within the range of \$300,000.00 to \$400,000.00 over the contract price.

(g) That defendant ORSECK substituted his judgment for plaintiffs wishes;

(h) The Court reiterated that it found that ORSECK lacked the actual authority to enter into the settlement that he did.

49. By virtue of all the foregoing, defendants failed to exercise the degree of skill, diligence and care normally possessed by attorneys of ordinary skill and knowledge.

AS AND FOR A FIRST CAUSE OF ACTION

50. Plaintiffs have incurred great loss and incurred expenses to set aside the settlement made by defendants without

authority, delays and diminution in value of the affected property, delay in returning their property to the market for sale, rental or otherwise and a total change in market conditions respecting the affected and similar properties.

51. All of the foregoing were well within the contemplation of defendants and were foreseeable by them.

52. As a result, plaintiffs have been damaged in the amount of \$10,000,000.00.

AS AND FOR A SECOND CAUSE OF ACTION

53. By virtue of the foregoing, defendants breached their fiduciary duties to the plaintiffs.

54. Plaintiffs have been damaged in the amount of \$10,000,000.00.

AS AND FOR A THIRD CAUSE OF ACTION

55. Defendants between July 20, 2005 and August 5, 2005 made false, deceptive and fraudulent statements to plaintiffs deliberately intending to deceive them with respect to material facts such as but not limited to whether a settlement had in fact been entered into, the details thereof and the significance and consequences thereof.

56. The conduct of defendants was deliberately deceptive.

57. By virtue of the foregoing, defendants willfully and deliberately attempted to deceive plaintiffs and the Court in connection with his handling of the matter, his misrepresentation of plaintiffs and the entry into the settlement.

58. As a result plaintiffs are entitled to recover triple damages of defendants under Judiciary Law § 487.

AS AND FOR A FOURTH CAUSE OF ACTION

59. During the defendants' representation of plaintiffs, certain payments were made to the plaintiffs for the use and occupancy of the Meadows by payment to the defendant as attorney for the Plaintiffs by the Debtor in possession and its representatives.

60. Notwithstanding that the plaintiffs had not expressly agreed to any retention of their funds, the defendants wrongfully retained certain of those payments purportedly on account of fees claimed to be due and owing to defendants.

61. Further, payments from the re-financing of the Meadows were retained by defendants on account of fees wrongfully claimed to be due and owing to the defendants.

62. The defendants failed to account to the plaintiffs for moneys so received and such fees paid to defendant as well as fees claimed to be due and owing to defendants prior to, during and after defendants' representation of the plaintiffs.

63. By virtue of the defendants' various breaches of their duties to plaintiffs, plaintiffs have and had no obligation to pay defendants for any services rendered.

64. Plaintiffs are therefore entitled to the return of all moneys paid to defendants.

65. Plaintiffs have been damaged in the amount of not less than \$23,000.00.

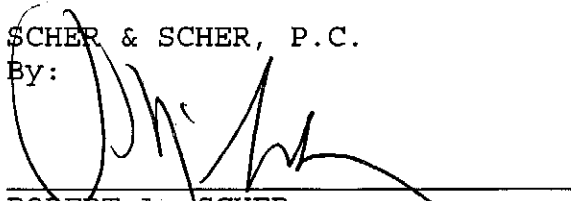
WHEREFORE, plaintiffs demand Judgment as follows:

- a). On the first Cause of Action in the amount of \$10,000,000.00.
- b). On the Second Cause of Action in the amount of \$10,000,000.00.
- c). On the Third Cause of Action treble damages in the amount of \$30,000,000.00.
- d). On the Fourth Cause of Action in the amount of \$23,000.00.
- e). Punitive damages in an amount to be determined by the trier of the facts.

All together with interest from July 20, 2005 and their costs and disbursements in this action.

Yours, etc.,

SCHER & SCHER, P.C.
By:



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