

294 A.D.2d 114, 743 N.Y.S.2d 65, 2002 N.Y. Slip Op. 03475  
(Cite as: 294 A.D.2d 114, 743 N.Y.S.2d 65)

## H

Supreme Court, Appellate Division, First Department,  
New York.

Bonnee LINDEN, Plaintiff–Appellant,  
v.

Brian MOSKOWITZ, Esq., et al., Defend-  
ants–Respondents.

May 2, 2002.

Participant in prior litigation brought fraud, breach of contract, and malpractice claims against attorneys. The Supreme Court, New York County, [Alice Schlesinger](#), J., dismissed complaint, and appeal was taken. The Supreme Court, Appellate Division, held that claims were time-barred.

Affirmed.

### West Headnotes

#### [\[1\] Limitation of Actions 241](#) [100\(8\)](#)

##### [241](#) Limitation of Actions

##### [241II](#) Computation of Period of Limitation

[241II\(F\)](#) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action

##### [241k98](#) Fraud as Ground for Relief

##### [241k100](#) Discovery of Fraud

[241k100\(8\)](#) k. Fraud of Agent or Attorney. [Most Cited Cases](#)

Six-year limitations period for fraud action against attorneys, based on claim that action had been improperly settled, began to run when plaintiff became aware of circumstances surrounding settlement. [McKinney's CPLR 213](#), subd. 8.

#### [\[2\] Pleading 302](#) [18](#)

##### [302](#) Pleading

##### [302I](#) Form and Allegations in General

[302k18](#) k. Certainty, Definiteness, and Particularity. [Most Cited Cases](#)

Fraud claim against attorneys, alleging improper settlement of underlying action, failed to allege fraud with requisite detail; there was no allegation that attorneys knowingly misrepresented material fact or that plaintiff relied upon any such misrepresentation to her detriment. [McKinney's CPLR 3016\(b\)](#).

#### [\[3\] Attorney and Client 45](#) [112](#)

##### [45](#) Attorney and Client

##### [45III](#) Duties and Liabilities of Attorney to Client

##### [45k112](#) k. Conduct of Litigation. [Most Cited](#)

##### [Cases](#)

Attorneys who allegedly wrongfully settled case could not be held liable for breach of fiduciary duty, malpractice, or breach of contract absent showing of attorney-client relationship or other contractual relationship with plaintiff.

#### [\[4\] Attorney and Client 45](#) [112](#)

##### [45](#) Attorney and Client

##### [45III](#) Duties and Liabilities of Attorney to Client

##### [45k112](#) k. Conduct of Litigation. [Most Cited](#)

##### [Cases](#)

Resolution of fee dispute settled all issues between attorney and former client, and thus barred subsequent claim for malpractice.

#### [\[5\] Attorney and Client 45](#) [112](#)

##### [45](#) Attorney and Client

##### [45III](#) Duties and Liabilities of Attorney to Client

##### [45k112](#) k. Conduct of Litigation. [Most Cited](#)

##### [Cases](#)

Plaintiff involved in underlying litigation could not recover from attorneys in quantum meruit absent allegation that she had rendered any service to them for which she reasonably expected compensation.

#### [\[6\] Abstracts of Title 6](#) [3](#)

##### [6](#) Abstracts of Title

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[6k3](#) k. Rights, Duties, and Liabilities of Examiners of Title. [Most Cited Cases](#)

## **Banks and Banking 52** **100**

[52](#) Banks and Banking

[52III](#) Functions and Dealings

[52III\(A\)](#) Banking Franchises and Powers, and Their Exercise in General

[52k100](#) k. Torts. [Most Cited Cases](#)

## **Conspiracy 91** **8**

[91](#) Conspiracy

[91I](#) Civil Liability

[91I\(A\)](#) Acts Constituting Conspiracy and Liability Therefor

[91k8](#) k. Conspiracy to Injure in Property or Business. [Most Cited Cases](#)

Plaintiff could not recover from title companies, mortgage companies, and banks, who allegedly conspired to omit blanket lis pendens from title reports so that condominium units could be sold at inflated values, absent showing of how she was damaged by their actions.

## **71** [Pretrial Procedure 307A](#) **696.1**

[307A](#) Pretrial Procedure

[307AIII](#) Dismissal

[307AIII\(B\)](#) Involuntary Dismissal

[307AIII\(B\)6](#) Proceedings and Effect

[307Ak696](#) Vacating or Setting Aside Dismissal

[307Ak696.1](#) k. In General. [Most Cited Cases](#)

Motion to renew, following court's granting of motion to dismiss tort and contract claims brought against participants in prior litigation, was properly denied absent offering of valid excuse for failing to submit new material on original motion.

**\*\*66** Bonnee Linden, for Plaintiff–Appellant Pro Se.

[Richard Y. Im](#), [David K. Fiveson](#), [Thomas J. Maimone](#), [Julianna Ryan](#), [Fred N. Knopf](#), Mary Doherty, William J. O'Brien, [Edward M. Roth](#), [Debora A. Pitman](#), for Defendants–Respondents.

[ANDRIAS](#), J.P., SULLIVAN, [WALLACH](#), [RUBIN](#), and [GONZALEZ](#), JJ.

**\*114** Order, Supreme Court, New York County (Alice Schlesinger, J.), entered July 17, 2000, which, *inter alia*, granted the motions of defendants Brian Moskowitz, Esq., Fidelity National Title Insurance Company, First American Title Insurance Company, Chicago Title Insurance Company, Security Title and Guaranty Company, Home Abstract Corporation and First Manhattan Abstract Corporation, Commonwealth Land and Title Insurance Company, Equicredit Corporation, Bank of America, Federal Insurance Company, Reliance Insurance Company, Greenpoint Bank, Henry P. Baer, Esq., Skadden, Arps, Slate, Meagher and Flom, Albert Lewis, Esq., Henry B. Portnoy, Esq., Irwin Silbowitz, Esq. and Cullen and Dykman, to dismiss the complaint, and order, same court and Justice, entered May 16, 2001, which, to the extent appealable, denied **\*\*67** plaintiff's motion to renew and for leave to amend the complaint, unanimously affirmed, with costs.

[\[1\]](#) The motion court properly determined that the claim for fraud against the moving attorney defendants and law firms, based on allegations that an action involving appellant had **\*115** been improperly settled, is barred by the six-year Statute of Limitations. Appellant's attempt to rely on the two-year discovery rule ([CPLR 203](#)[g]; 213[8] ) was properly rejected inasmuch as the record establishes that she was aware, in 1991, of the circumstances surrounding the settlement of the action (*see, Lentini v. Lentini*, [280 A.D.2d 330, 720 N.Y.S.2d 464](#)).

The remaining claims against the attorney defendants—breach of fiduciary duty, breach of contract, attorney malpractice and civil conspiracy—are also time-barred since they arose from the same set of alleged facts as the fraud claim, and are well beyond the six-year statutory period for breach of contract or the three-year Statute of Limitations for malpractice.

[\[2\]](#) In any event, the fraud claim against the attorney defendants and law firms was properly dismissed for failure to state the circumstances of the alleged fraud in detail, in accordance with the requirement of [CPLR 3016](#)(b) (*see, e.g., Longo v. Butler Equities, II, L.P.*, [278 A.D.2d 97, 97–98, 718 N.Y.S.2d 30](#)). There is no allegation that the defend-

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ants knowingly misrepresented a material fact much less that plaintiff relied upon such a misrepresentation to her detriment. The fraud claim asserted in the first cause of action against Brian Moskowitz, Esq. is similarly deficient.

Since the underlying fraud claim is not viable, the civil conspiracy claim was properly dismissed (*see, Small v. Lorillard Tobacco Co.*, 94 N.Y.2d 43, 57, 698 N.Y.S.2d 615, 720 N.E.2d 892).

[3] The breach of fiduciary duty claim fails against defendants Skadden, Arps, Slate, Meagher and Flom, Henry P. Baer, Cullen and Dykman, and Irwin Silbowitz since none of these defendants represented appellant in the prior litigation (*see, Polovy v. Duncan*, 269 A.D.2d 111, 112, 702 N.Y.S.2d 61). Similarly, the attorney malpractice, breach of fiduciary duty and breach of contract claims against these defendants were properly dismissed since the complaint fails to allege the existence of an attorney-client relationship, or indeed, any other contractual relationship with defendants (*see, D'Amico v. First Union Natl. Bank*, 285 A.D.2d 166, 172, 728 N.Y.S.2d 146). For the same reason, the eighth cause of action against Brian Moskowitz for attorney malpractice was properly dismissed. The claims against Albert Lewis were properly dismissed inasmuch as the complaint makes no allegations giving rise to either a breach of fiduciary duty or attorney malpractice claim.

[4] The attorney malpractice and breach of fiduciary duty claims against Henry Portnoy, who represented appellant at one point in the prior litigation, were properly dismissed since the resolution of their fee dispute barred the subsequent claim for malpractice (*see, \*116 Koppelman v. Liddle, O'Connor, Finkelstein & Robinson*, 246 A.D.2d 365, 668 N.Y.S.2d 29) and resolved all issues between the parties.

[5] The claim for quantum meruit, asserted against all the moving defendants, was properly dismissed since there was no allegation that appellant rendered any service to any of these defendants for which she reasonably expected compensation (*see, Geraldi v. Melamid*, 212 A.D.2d 575, 576, 622 N.Y.S.2d 742).

\*\*68 [6] The claims against the moving title companies, mortgage companies and banks, based on

allegations that they conspired with one another and with the owners of condominium units to omit from title reports a blanket lis pendens which enabled units to be sold at inflated values and caused purchasers to obtain inflated mortgages, were properly dismissed since appellant failed to establish how she was damaged by these actions.

Since appellant was not an insured of either Federal Insurance Company or Reliance Insurance Company and there is no claim that she obtained a judgment against any entity or individual qualifying as an “insured” in the insurance contracts at issue, the claims against the insurance companies were properly dismissed (*see, Insurance Law § 3420*[a][2]; *see also, Thrasher v. United States Liability Ins. Co.*, 19 N.Y.2d 159, 166, 278 N.Y.S.2d 793, 225 N.E.2d 503; *Mt. Vernon Fire Ins. Co. v. NIBA Constr., Inc.*, 195 A.D.2d 425, 600 N.Y.S.2d 936).

[7] The motion to renew was properly denied since appellant failed to offer a valid excuse for failing to submit the new material on the original motion (*see, e.g., Matter of Creole Enters., Inc. v. Giuliani*, 240 A.D.2d 279, 659 N.Y.S.2d 742, appeal dismissed 90 N.Y.2d 936, 664 N.Y.S.2d 273, 686 N.E.2d 1368). Denial of leave to amend was also proper (*Lichtman v. Mount Judah Cemetery*, 269 A.D.2d 319, 705 N.Y.S.2d 23, lv. denied in part and dismissed in part 95 N.Y.2d 860, 714 N.Y.S.2d 704, 737 N.E.2d 946). Appellant's claim that she is entitled to discovery under CPLR 3211(d) is without merit (*see, Vargas v. 1387 Grand Concourse Realty*, 288 A.D.2d 24, 732 N.Y.S.2d 6).

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