# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. PAUL A. GOETZ** **PART** **IAS MOTION 47EFM**

***Justice***

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AMY LIEBOWITZ,

Plaintiff,

- v -

ARONSON MAYEREFSKY & SLOAN LLP, DAVID ARONSON

Defendant.

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**INDEX NO.** 150157/2020

**MOTION DATE** 10/16/2020

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 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, 68, 69, 70, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90

were read on this motion to/for DISMISSAL.

Plaintiff commenced this legal malpractice action against defendants, her former attorneys in a pending divorce action against her ex-husband David Liebowitz (*Butte Liebowitz v. Liebowitz*, Sup. Ct. N.Y. Cty Index No. 313944/2015). Plaintiff alleges that defendants committed malpractice in their representation of plaintiff in the divorce action by negotiating a stipulation which was unfavorable to plaintiff and allegedly bound her to purchase the couple's Bridgehampton house regardless of the cost. Defendants now move pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint.

Defendants' motion to dismiss plaintiff's legal malpractice action must be granted. Plaintiff's allegation that she was not advised and did not understand that she would be bound by the valuation protocol in the prenuptial agreement is flatly contradicted by the 2016 Stipulation, which, as Justice Sattler held in the underlying divorce action, clearly and unambiguously binds plaintiff to this protocol. *Bishop v. Maurer*, 33 A.D.3d 497, 499 (1st Dep't 2006) (rejecting

plaintiff's claim that he was misled by defendant attorneys with regard to how the estate planning instruments restricted his rights where the instruments were clear on their face); *Beattie v. Brown & Wood*, 243 A.D.2d 395, 395 (1st Dep't 1997) (dismissing malpractice claim where settlement agreement contradicted plaintiff's allegation that defendant law firm did not advise him that he was withdrawing his counterclaims with prejudice); *see also Preferred Fragrance Inc. v. Buchanan Ingersoll & Rodney PC*, 2015 WL 6143612, at *6 (E.D.N.Y. 2015) (discussing New York cases holding that failure to advise regarding the consequences of a contractual provision is not a basis for a malpractice claim where contract on its face reveals what the client alleges he was not told).

Plaintiff also alleges that defendants committed malpractice by including the word "exercise" in the 2016 Stipulation, which was a departure from the procedure in the prenuptial agreement. According to plaintiff and her expert, the prenuptial agreement provided that the valuation would be conducted prior to a party exercising the first acquisition option under paragraph 3.5 of the agreement. This is why, according to plaintiff, the prenuptial agreement provided 180 days for the first option to be exercised, thereby allowing the valuation process to be completed.

However, plaintiff and her expert misconstrue the plain terms of the prenuptial agreement. The agreement provides, in paragraph 3.3, that the marital property is to be divided between the parties within 180 days of a separation event (as defined in the agreement) and if the parties cannot agree on how to divide the property, it would be sold under paragraph 3.4 after the 180 days expire. However, paragraph 3.5, which is the clause at issue in this action, provides the parties with another option – to buy out the property themselves pursuant to the valuation protocol outlined in this paragraph.

Under paragraph 3.5, the party who has secured the first option to acquire the property ("first acquisition option") has 180 days after the separation event to exercise their option to purchase the property. If the first acquisition option is exercised, then and only then do the parties proceed with the valuation protocol. Thus the 180 days was not built into the agreement to provide time for the valuation—rather, it was meant to give the parties time to decide how to divide up the property before it is automatically sold pursuant to paragraph 3.4. Contrary to plaintiff and her expert's opinion, the protocol in the agreement did not require a valuation to be conducted until one of the parties exercised their acquisition option. Thus, the use of the term "exercise" in the 2016 stipulation was necessary to effectuate the buy-out under the prenuptial agreement and does not constitute malpractice. To the extent that plaintiff is dissatisfied with the buy-out procedure in the prenuptial agreement, any malpractice claims arising out of this agreement are time-barred. CPLR 214(6); *Hahn v. Dewey LeBoeuf Liquidation Trust,* 143 A.D.3d 547, 547 (1st Dep't 2016).

Finally, plaintiff's allegations that the defendants delayed in enforcing the prenuptial agreement are speculative and insufficient to support her malpractice claim. *Freeman v. Brecher,* 155 A.D.3d 453, 453 (1st Dep't 2017). Plaintiff's cause of action for breach of contract arising from the same conduct must be dismissed as duplicative of the malpractice claim. *Olsen v. Smith,* 187 A.D.3d 675 (1st Dep't 2020).

Accordingly, it is

ORDERED that the motion is granted the complaint is dismissed against both defendants with costs and disbursements awarded to defendants, and the Clerk shall enter judgment

accordingly.


**12/14/2020**
**DATE**

**PAUL A. GOETZ, J.S.C.**

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