

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART THREE

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MARY ANNE FLETCHER,

Plaintiff,

-against-

Index No. 114698/2007
Motion Date: 4/29/2014
Motion Seq. No. 009

BOIES, SCHILLER & FLEXNER LLP and ANDREW
HAYES,

Defendants.

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BRANSTEN, J.

In this action, Plaintiff Mary Anne Fletcher asserts two legal malpractice claims against Defendants Boies, Schiller & Flexner LLP (“BSF”) and Andrew Hayes. These claims stem from Defendants’ representation of Fletcher, a fashion model, in her disputes with several prominent modeling agencies, as well as a major department store.

Plaintiff and Defendants each have filed cross-motions for summary judgment on the malpractice claims. Both sets of cross-motions are opposed. For the reasons that follow, Defendants’ motion is granted in its entirety, and Plaintiff’s cross-motion is denied.

I. Background

Plaintiff Fletcher’s first contact with Defendants came via an August 2003 letter sent by BSF. The letter concerned two class action lawsuits: (1) *Fears, et al. v. Wilhemina Model Agency, Inc.* (“Fears”), a federal class action asserting antitrust claims

premised on certain modeling agencies' alleged conspiracy to fix prices, and (2) *Shelton, et al. v. Elite Model Management, Inc., et al.* ("Shelton"), a separate class action in New York state court, likewise asserting certain General Business Law and common law fraud and fiduciary duty claims against modeling agencies. *See* Am. Compl. ¶ 55; Defs.' Rule 19-a Statement ¶ 9. After receiving the letter, Fletcher contacted BSF and spoke to Defendant Hayes regarding her participation in the *Fears* and *Shelton* actions, as well as certain individual claims that Fletcher wished to pursue. *See* Am. Compl. ¶ 59. At that time, Defendants had been appointed lead counsel in the *Fears* action. *See* Affirmation of Andrew W. Hayes ("Hayes Affirm.") Ex. 27.

A. *Fletcher's Underlying Claims*

Among the individual claims that Plaintiff wished to assert was a Civil Rights Law claim against Macy's, stemming from the company's allegedly unauthorized use of Fletcher's image in a newspaper advertisement. *Id.* ¶¶ 51, 54. In addition, Fletcher wished to pursue claims against two modeling agencies, IMG, Inc. and Elite.¹ Plaintiff sought relief from IMG, Inc. based on a "botched booking" that resulted in the loss of a modeling job, and claimed that Elite deliberately lost her portfolio. *Id.* ¶¶ 40, 59.

¹ Plaintiff alleges that she was a client of Elite Model Management Corp., Elite Model Management S.A, the Elite Group, S.A. (Switzerland), Elite Premier, and Elite NY, and refers to these entities collectively throughout her papers as "Elite." The Court will do the same here.

Plaintiff signed a contingent fee retainer agreement with Defendants on November 14, 2003. *See* Hayes Affirm. Ex. 13; *see also* Defs.’ Rule 19-a Statement ¶ 17.² Shortly thereafter, she joined the *Fears* and *Shelton* class actions as a class member. On January 13, 2004, Defendants filed a new action on Plaintiff’s behalf, captioned *Fletcher v. Elite Model Management Corp.*, Index No. 100459/2004 (Sup. Ct. N.Y. Cnty.), asserting Fletcher’s individual claims against Macy’s and Elite. Plaintiff’s claims in the *Fletcher* action eventually were consolidated with the *Shelton* case. *See* Hayes Affirm. Ex. 17.

On February 11, 2004, Elite filed for bankruptcy in the Southern District of New York. *See* Hayes Affirm. Ex. 29. Defendants assisted Fletcher in preparing and filing a proof of claim. While the proof of claim was submitted one day after the deadline had passed, it nonetheless was accepted and allowed by the court. *See* Defs.’ Rule 19-a Statement ¶ 41.³

² While Fletcher disputes Defendants’ Rule 19-a Statement that she signed the contingent fee retainer agreement on November 14, 2003, the document to which she cites in opposition is unsigned. *See* Pl.’s Rule 19-a Counterstatement ¶ 19; Affirmation of Douglas Capuder Ex. HH. Thus, Plaintiff fails to present evidence in support of her contention that the retainer agreement was signed on a different date.

³ In her Rule 19-a Counterstatement, Plaintiff disputes Defendants’ representation that her claim was accepted by the Bankruptcy Court. However, she points to no evidence substantiating the dispute. Instead, Plaintiff cites to her own affidavit, in which she states that her settlement of this bankruptcy claim was “influenced by the fact that my claim had been at risk of being expunged,” as well as her own interrogatory answers, in which she states that she was “forced to settle by reason of defendants’ breaches of fiduciary duty.” *See* Pl.’s Rule 19-a Counterstatement ¶ 41. Neither of these assertions controverts Defendants’ statement that the proof of claim was accepted.

B. *Settlements of the Underlying Claims*

Plaintiff ultimately settled her disputes with Macy's, IMG, and Elite. Plaintiff signed a release of her claims against Macy's in exchange for a payment of \$7,500. *See* Hayes Affirm. Ex. 7; Defs.' Rule 19-a Statement ¶ 11.⁴ In April 2005, Plaintiff mediated her booking-related claim against IMG as part of the *Fears* class action settlement and received \$60,000 from IMG. *See* Defs.' Rule 19-a Statement ¶ 35.⁵ Later, Plaintiff settled her claims with Elite.⁶ *Id.* ¶ 44. For each of these settlements, Fletcher was represented by counsel other than Defendants.

The *Fears* and *Shelton* class actions likewise settled. Under the *Fears* settlement, Fletcher received \$15,000 as compensation for her role as an active class member, as well as an additional \$74,149.50 for her claims – an amount satisfying 100% of her claims in that action. *See id.* ¶¶ 49-50; Pl.'s Ex. F at 30. As part of the *Shelton* settlement, Plaintiff

⁴ Plaintiff states without explanation that paragraph 11 of Defendants' Statement of Undisputed Facts regarding the settlement of Plaintiff's claim against Macy's is "controverted" and then cites to "Pl.'s Ex. 7" in support. However, Plaintiff did not file an Exhibit 7 with this motion. As a result, Plaintiff has not disputed paragraph 41, and the Court accepts the facts asserted therein by Defendants for the purpose of this motion.

⁵ Plaintiff does not point to any evidence disputing this statement. Instead, Plaintiff cites to interrogatory responses and paragraphs of her affidavit concerning different settlements. *See* Pl.'s Rule 19-a Counterstatement ¶ 35.

⁶ While Defendants cite to the Settlement Agreement, which states that the settlement was for \$115,000, Plaintiff nonetheless attests that she received \$125,000. The Court notes this dispute for the sake of completeness, but it is ultimately immaterial to the outcome of this case.

received \$5,915.98 for being a class member. *See* Defs.’ Rule 19-a Statement ¶ 51; *see also* Pl.’s Ex. F at 30. This amount compensated Plaintiff for her remaining class claims beyond those already covered in full by the *Fears* settlement. *See* Defs.’ Rule 19-a Statement ¶ 51.⁷

C. *Deterioration of Attorney-Client Relationship*

On October 13, 2004, Defendant Hayes notified Plaintiff by letter that the relationship had become unworkable, stating “we now appear to be in a position where you do not want us to represent you,” and “I advised you yesterday, and repeated today, that I do not think we can continue to represent you, and I have urged you to find other counsel.” *See* Hayes Affirm. Ex. 30; *see also* Defs.’ Rule 19-a Statement ¶ 29.⁸ Notwithstanding Hayes’ statements in the October 13, 2004 letter, Defendants were not relieved as Plaintiff’s counsel on her individual state court claims until January 22, 2007. *See* Hayes Affirm. Ex. 31 (*Shelton v. Elite Model Management Corp.* January 22, 2007 Order).

⁷ This statement is not disputed by Plaintiff in either her Rule 19-a Counterstatement or the exhibits cited therein.

⁸ Again, Fletcher purports to dispute the existence of the October 13, 2004 letter; however, the two documents she cites are emails that do not bear on the existence or content of the letter. In the absence of a showing of a dispute, the Court will treat the existence of the October 13th letter as uncontroverted.

D. *The Instant Action*

Fletcher filed the instant action on November 1, 2007. *See* Docket No. 001. In her Amended Complaint, filed February 16, 2012, Fletcher asserts two claims for legal malpractice. The first claim asserts that Defendants were negligent in their representation of Fletcher in the *Fears*, *Shelton*, and *Fletcher* actions, as well as in the Macy's, IMG, and Elite disputes, and that she would have been "more highly compensated" for each claim but for Defendants' purported malpractice. Plaintiff's second claim contends that Defendants made an untimely filing on Fletcher's behalf in a bankruptcy court proceeding involving a defendant in the *Fears* case. But for this negligence, Plaintiff contends that she would have obtained a "full recovery" in the bankruptcy court.

II. **Discussion**

Presently before the Court are the parties' cross-motions for summary judgment. Defendants contend that both of Plaintiff's claims should be dismissed, while Plaintiff

asserts that there are no material facts in dispute and that she is entitled to judgment on her claims.

It is well-understood that summary judgment is a drastic remedy and should only be granted if the moving party has sufficiently established the absence of any material issues of fact, requiring judgment as a matter of law. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503 (2012) (citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986)). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). When deciding a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-movant. *Branham v. Loews Orpheum Cinemas, Inc.*, 8 N.Y.3d 931, 932 (2007). However, mere conclusions, unsubstantiated allegations or expressions of hope are insufficient to defeat a summary judgment motion. *Zuckerman*, 49 N.Y.2d at 562; *see also Ellen v. Lauer*, 210 A.D.2d 87, 90 (1st Dep’t 1994) (“[it] is not enough that the party opposing summary judgment insinuate that there might be some question with respect to a material fact in the case. Rather, it is imperative that the party demonstrate, by evidence in admissible form, that an issue of fact exists ...”) (citations omitted).

A. *Plaintiff's Legal Malpractice Claims*

“An action for legal malpractice requires proof of the attorney's negligence, a showing that the negligence was the proximate cause of the plaintiff's loss or injury, and evidence of actual damages.” *Pellegrino v. File*, 291 A.D.2d 60, 63 (1st Dep’t 2002). Plaintiff must show that “but for counsel’s alleged malpractice, [she] would not have sustained some actual ascertainable damages.” *Id.* Accordingly, “[a] failure to establish proximate cause requires dismissal regardless of whether negligence is established.” *Russo v. Feder, Kaszovitz, Isaacson, Weber, Skala & Bass, LLP*, 301 A.D.2d 63, 67 (1st Dep’t 2002). “Notwithstanding counsel's purported negligence, the client must demonstrate his or her own likelihood of success; absent such a showing, counsel's conduct is not the proximate cause of the injury.” *Id.*; *see also Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267, 271-72 (1st Dep’t 2004) (“Under New York law, to establish the elements of proximate cause and actual damages, where the injury is the value of the claim lost, the client must meet the ‘case within a case’ requirement, demonstrating that ‘but for’ the attorney's conduct the client would have prevailed in the underlying matter or would not have sustained any ascertainable damages.”) Moreover, speculative or conclusory allegations of damages cannot support a legal malpractice claim. *See Pellegrino*, 291 A.D.2d at 63; *Russo*, 301 A.D.2d at 281; *John P. Tilden, Ltd. v. Profeta & Eisenstein*, 236 A.D.2d 292, 292-93 (1st Dep’t 1997).

1. Underlying Claims as to Macy's, IMG, and Elite

Plaintiff asserts that but for Defendants' handling of her claims against Macy's, IMG, and Elite, "there would have been a different and better outcome" and that she "would have been more highly compensated." (Am. Compl. ¶¶ 121-122.) Defendants counter that Plaintiff's claim against Macy's was unsustainable, while its claims against IMG and Elite were voluntarily settled by Fletcher. These claims will be addressed in turn.

a. **Claim Against Macy's**

Plaintiff's claim against Macy's stemmed from the company's unauthorized use of her image in newspaper advertisements running between May and July 2002. As the Amended Complaint explains, by using the images, Macy's "received the benefit of a top model enhancing the reputation of their lower level brand." (Am. Compl. ¶ 4.) However, in the process, Fletcher's "top career" was "lost the second [Macy's] ran the unauthorized advertising images ... associating her with low level brands." *Id.* ¶ 35.

Fletcher now contends that Defendants mishandled her claim against Macy's. Her claim fails for two reasons. First, Plaintiff appears to assert a claim for violation of the

right to privacy under Section 51 of New York’s Civil Rights Law. Such a claim has a one-year statute of limitations, which runs from the date of the first use of the image, here May 2002. *See* CPLR 215(3); *see also Costanza v. Seinfeld*, 279 A.D.2d 255, 255-256 (1st Dep’t 2001) (deeming plaintiff’s Section 51 claim time-barred since “the one-year Statute of Limitations (CPLR 215) ran from the inception of the Seinfeld program in 1989” and rejecting argument that “the Statute of Limitations ran anew with the airing of each episode featuring the George Costanza character.”). However, it is undisputed here that Plaintiff did not retain Defendants until November 2003 – over one year after the alleged unauthorized usage by Macy’s. Thus, by the time Plaintiff retained Defendants, the statute of limitations had already run on her claim against Macy’s. Accordingly, Plaintiff has failed to demonstrate negligence, let alone proximate cause, to support her legal malpractice claim against BSF and Hayes. Moreover, Fletcher has failed to show a likelihood of success on her claim but for Defendants’ actions. In fact, Defendants have demonstrated definitively that the claim would be dismissed. Therefore, Fletcher’s malpractice claim as it pertains to Macy’s fails.

b. IMG Claim

Plaintiff also alleges that IMG sabotaged bookings that Plaintiff obtained through another modeling agency. While Plaintiff asserts that Defendants’ handling of this claim constitutes malpractice, this claim was mediated and voluntarily settled by Plaintiff with

the assistance of counsel other than Defendants. In April 2005, Plaintiff mediated this claim against IMG as part of the *Fears* class action settlement, and resolved the claim for \$60,000. See Hayes Affirm. Ex. 9 (April 29, 2005 Settlement Agreement).

While Plaintiff is correct that settlement of an action in and of itself will not preclude an award of damages for legal malpractice, to prevail on her claim, Plaintiff must affirmatively demonstrate that “the settlement was caused by the malpractice.” *Fusco v. Fauci*, 299 A.D.2d 263, 263 (1st Dep’t 2002). Plaintiff attempts no such showing here. Instead, Plaintiff states without substantiation that she felt compelled to settle this claim because she could not afford to hire new attorneys and “felt that the prudent thing to do was to try to mitigate the mess defendants left [her] with.” See Affidavit of Mary Anne Fletcher ¶ 18. This statement does not demonstrate that the settlement was caused by malpractice. Nor does it establish Fletcher’s likelihood of success notwithstanding counsel’s purported negligence. See *Russo v. Feder, Kaszovitz, Isaacson, Weber, Skala & Bass, LLP*, 301 A.D.2d 63, 67 (1st Dep’t 2002). In the absence of a showing of causation, this claim must be dismissed.

c. Claims Against Elite

As with the IMG-related claim, Defendants demonstrate that Fletcher settled her claim against Elite regarding the loss of her portfolio. See Hayes Affirm. Ex. 11 (August 11, 2007 Settlement Agreement between Fletcher and Elite). Plaintiff points to no

evidence rebutting Defendants' assertion that this settlement was voluntary. See *Bellinson Law, LLC v. Iannucci*, 102 A.D.3d 563, 563 (1st Dep't 2013) (affirming dismissal of legal malpractice claim on summary judgment where "[t]he record does not support defendant's contention that he was forced to settle the underlying action ... Indeed, even if plaintiff was negligent, there is evidence in the record indicating that defendant had other options besides settling the case."). While Plaintiff argues in her affidavit that she was forced to settle her claim due to Defendants' shortcomings, she makes no showing as to the merits of the claim, let alone the requisite showing that she would have prevailed in her claims against Elite and recovered more damages than the \$240,000 that she recovered through her settlements.⁹ See *Russo*, 301 A.D.2d at 67; see also *Ellen v. Lauer*, 210 A.D.2d 87, 90 (1st Dep't 1994) ("[it] is not enough that the party opposing summary judgment insinuate that there might be some question with respect to a material fact in the case. Rather, it is imperative that the party demonstrate, by evidence in admissible form, that an issue of fact exists ...") (citations omitted). Accordingly, in the absence of any material facts in dispute, summary judgment as to this portion of Plaintiff's claim is granted to Defendants.

⁹ Plaintiff recovered \$115,000 from Elite and two of its principals, see *Hayes Affirm. Ex. 11*, as well as \$125,000 in satisfaction of her approved individual claim in the bankruptcy proceeding, see *id. Ex. 4*.

2. Claims Related to the *Fears*, *Shelton*, and *Fletcher* Class Actions

With regard to the *Fears* class action, Plaintiff maintains that Defendants committed malpractice by failing to add her as a class representative. However, again, Plaintiff fails to demonstrate the merit of her claim. Plaintiff does not dispute Defendants' showing that she retained BSF and Hayes long after the deadline for adding class representatives had passed. See Hayes Affirm. Ex. 12 (court order setting December 9, 2002 deadline for naming of class plaintiffs); *id.* Ex. 13 (November 13, 2003 retention letter signed by Fletcher and Hayes). Therefore, Defendants could not have timely added Fletcher as a class representative. Since Plaintiff does not rebut Defendants' showing, Defendants' motion for summary judgment is granted, as Fletcher fails to demonstrate negligence.

Further, to the extent that Plaintiff challenges the amount of her settlement recovery in the *Fears* action, she does not dispute Defendants' showing that she recovered 100% of her approved claim. See Hayes Affirm. Ex. 14 at 8 (May 6, 2005 Decision in the *Fears* action stating that the settlement fund covered the entirety of class plaintiffs' claims). Fletcher likewise does not demonstrate that her entitlement to a greater recovery. Therefore, this claim alternatively merits dismissal on this basis.

Plaintiff likewise challenges the settlement amount in the *Shelton* action. The *Shelton* action is the state court class action, with which Plaintiff's complaint – *Fletcher*

v. Elite Model Management Corp. – was consolidated. Although Fletcher asserts that she was forced to settle the *Shelton* action to mitigate the damage caused by Defendants’ purported malpractice, once again, Plaintiff makes no showing as to her likelihood of success on the claims asserted. Moreover, Defendants demonstrate that Plaintiff’s claims against Macy’s were time-barred and that Fletcher settled her claims against Elite in 2007, well before the *Shelton* settlement. *See* Hayes Affirm. Ex. 11; *id.* Ex. 18 (March 26, 2010 check made out to “Maryanne Fletcher” containing *Shelton* recovery). Plaintiff does not rebut this showing.

Further, Plaintiff contends that Defendants improperly dismissed her individual claims against Macy’s in the *Fletcher* action without her consent, constituting a separate instance of malpractice. While the parties present a factual issue as to whether Fletcher consented to the dismissal without prejudice of her claims, once again, Plaintiff fails to demonstrate that but for the dismissal without prejudice she would have prevailed against Macy’s. As discussed several times in this opinion, Defendants already have demonstrated that Plaintiff’s claims were time-barred, and Plaintiff offers nothing to rebut that showing. Further, Defendants contend that following the agreement to dismiss Plaintiff’s claims in the *Fletcher* action without prejudice, Defendants drafted a complaint against Macy’s, asserting Fletcher’s same claims. *See* Hayes Affirm. Ex. 30 (October 13, 2004 letter from Hayes to Fletcher attaching draft complaint against

Macy's). Plaintiff does not rebut Defendants' assertion that she chose not to file this complaint, again demonstrating Plaintiff's inability to establish causation. Accordingly, Defendants' motion for summary judgment as to this claim is granted.

3. Claims Related to Defendants' Alleged Conflict of Interest

In addition to the various claims addressed above, Plaintiff alleges that Defendants committed malpractice through their simultaneous representation of both Fletcher individually and the class plaintiffs in the *Fears* and *Shelton* actions. Fletcher contends Plaintiff's individual claims lessened the potential recovery for the class, and conversely, the class claims lessened the recovery for Fletcher individually.

Even accepting *arguendo* that such a conflict of interest existed, Plaintiff's claim nonetheless merits dismissal. Plaintiff's assertion that Defendants violated a rule of ethical conduct does not, in and of itself, establish a malpractice claim. *See Cohen v. Kachroo*, 115 A.D.3d 512, 512 (1st Dep't 2014) ("To the extent that plaintiff seeks to allege malpractice based on a violation of the New York Rules of Professional Conduct, such an alleged violation does not, without more, support a malpractice claim. Moreover, the violation of a disciplinary rule does not, without more, generate a cause of action."); *Sumo Container Station, Inc. v. Evans, Orr, Pacelli, Norton & Laffan*, 278 A.D.2d 169, 170 (1st Dep't 2000) ("The cited conflict of interest, even if a violation of the Code of

Professional Responsibility, does not by itself support a legal malpractice cause of action.”). Instead, Plaintiff is required to make the same three-part showing required for any legal malpractice claim: (1) the attorney’s negligence, (2) that the negligence was the proximate cause of the plaintiff's loss or injury, and (3) actual damages. *Brooks v. Lewin*, 21 A.D.3d 731, 734 (1st Dep’t 2005). For the reasons set forth above, Plaintiff has failed to make this requisite showing, particularly as to proximate cause. Plaintiff’s invocation of the ethical rules does not cure the deficiencies of her underlying claims. Accordingly, Defendant’s motion for summary judgment is granted as to this claim as well, and Plaintiff’s first cause of action for legal malpractice is dismissed in its entirety.

4. Claims Related to the Elite Bankruptcy

Plaintiff’s second claim alleges only one act of legal malpractice, pertaining solely to Defendants’ representation of Fletcher in the Elite bankruptcy. Fletcher alleges that Defendants made untimely filings on her behalf, which included filing her proof of claim after the court-ordered deadline. As a result, Plaintiff asserts that she was forced to settle her claim with Elite for far less than it was worth, since the claim was “at risk of being expunged” due to the late filing. *See Fletcher Aff.* ¶ 20.

Defendants seek summary judgment, arguing that the claim was accepted by the bankruptcy court, notwithstanding its late filing. *See Defs.’ Rule 19-a Statement* ¶ 41;

Hayes Affirm. Ex. 4, 36. Plaintiff does not rebut or otherwise address Defendants' factual showing as to the court's acceptance of her proof of claim.¹⁰ Defendants therefore rebut Plaintiff's allegation that a cloud existed over her bankruptcy claim as a result of the late filing and that the risk of having the claim rejected forced her to accept a lower settlement. Accordingly, Plaintiff once again has failed to demonstrate that Defendants' alleged negligence caused her injury.

Moreover, just as Fletcher has failed to show that the settlement was caused by the alleged malpractice, she has not demonstrated that value of her underlying claim was in excess of the settlement. *See Fusco v. Fauci*, 299 A.D.2d 263, 263 ("Settlement of an action will not preclude an award of damages for legal malpractice where the plaintiff is able to demonstrate that the settlement was caused by the malpractice and resulting damages, namely, that the value of the underlying claim was in excess of the settlement.") While Plaintiff contends that she will prove the amount of her damages at trial, she attempts no showing here on summary judgment of the value of her claim against Elite, let alone a showing that the claim's value exceeded the amount of her settlement -- \$125,000. While Plaintiff baldly states that the claim was worth

¹⁰ Plaintiff purports to dispute paragraph 41 of Defendants' Rule 19-a Statement, in which Defendants state that Fletcher's proof of claim was accepted by the Bankruptcy Court; however, the evidence to which Plaintiff cites – Fletcher Aff. ¶¶ 18-21 and Plaintiff's Ex. F at p. 30 – does not bear on Defendants' statement nor does it address the proof of claim. Therefore, while Plaintiff attempts to mark this as a disputed fact, the Court finds no such dispute exists based on the record as presented.

\$3,000,000, she offers no evidence to support that assertion. *see also Ellen v. Lauer*, 210 A.D.2d 87, 90 (1st Dep’t 1994) (“[it] is not enough that the party opposing summary judgment insinuate that there might be some question with respect to a material fact in the case. Rather, it is imperative that the party demonstrate, by evidence in admissible form, that an issue of fact exists ...”) (citations omitted).

Accordingly, Plaintiff’s motion for summary judgment is denied, while Defendants’ motion is granted.

III. Conclusion

For the foregoing reasons, it is

ORDERED that Defendants Boies, Schiller & Flexner LLP (“BSF”) and Andrew Hayes’s motion for summary judgment is granted, and the complaint is dismissed with costs and disbursement to defendants as taxed by the Clerk of the Court, upon submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff’s cross-motion for summary judgment is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: New York, New York
July 30, 2014

E N T E R

/s/_____
Hon. Eileen Bransten, J.S.C.