

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: March 7, 2024

CV-23-0465

LORA COLUCCI et al.,
Appellants,

v

THOMAS J. RZEPKA,
Respondent,
et al.,
Defendants.

MEMORANDUM AND ORDER

Calendar Date: January 18, 2024

Before: Egan Jr., J.P., Clark, Lynch, McShan and Mackey, JJ.

Oliver Law Office, Albany (Lewis B. Oliver Jr. of counsel), for appellants.

Costello Cooney & Fearon, PLLC, Syracuse (Paul G. Ferrara of counsel), for respondent.

Mackey, J.

Appeal from a judgment of the Supreme Court (Justin O. Corcoran, J.), entered November 2, 2022 in Albany County, which granted defendant Thomas J. Rzepka's motion for summary judgment dismissing the complaint against him.

The underlying facts of this legal malpractice action are fully set forth in our prior decision wherein this Court affirmed Supreme Court's order granting a motion by defendants Osborne Reed & Burke, LLP, Bressler & Kunze, Burke Albright Harter & Reddy, LLP and Moyer Russi & Randall, PC for summary judgment dismissing the complaint against them as time-barred (209 AD3d 1205 [3d Dept 2022], *lv denied* 39

NY3d 909 [2023]). Upon reviewing the record on appeal in this case, we find that the arguments raised by plaintiffs on the present appeal mirror those raised by them on their prior appeal – as does the evidence tendered in support of defendant Thomas J. Rzepka's motion for summary judgment dismissing plaintiffs' complaint against him and the proof submitted by plaintiffs in opposition thereto. Accordingly, as plaintiffs' arguments and proof are indistinguishable from those previously raised, we affirm for the reasons set forth in our prior decision (*id.* at 1207-1208).

Egan Jr., J.P., Clark, Lynch and McShan, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court