

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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CA 08-02071

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, GREEN, AND PINE, JJ.

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DAVID YOUNIS, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

NORMAN J. MARTIN, ET AL., DEFENDANTS,  
AND CHARLES FARRELL, DEFENDANT-APPELLANT.

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HISCOCK & BARCLAY, LLP, SYRACUSE (MATTHEW J. LARKIN OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

BURKE AND BURKE, ROCHESTER (PATRICK J. BURKE OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County  
(Deborah H. Karalunas, J.), entered May 1, 2008 in a legal malpractice  
action. The order, insofar as appealed from, denied that part of the  
motion of defendant Charles Farrell to dismiss the legal malpractice  
claim against him.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: We affirm for reasons stated at Supreme Court. We  
add only that, contrary to the contention of Charles Farrell  
(defendant), the court applied the appropriate standard of review in  
denying that part of the motion to dismiss the claim for legal  
malpractice against him pursuant to CPLR 3211 (a) (7). In determining  
such a motion, "[t]he facts pleaded are to be presumed to be true and  
are to be accorded every favorable inference, although . . . factual  
claims flatly contradicted by the record are not entitled to any such  
consideration" (*Gershon v Goldberg*, 30 AD3d 372, 373; see *Parola*,  
*Gross & Marino, P.C. v Susskind*, 43 AD3d 1020, 1021-1022). Although  
we agree with defendant that some factual claims by plaintiff in the  
complaint were contradicted by evidentiary material that he appended  
to the complaint, the record establishes that the court's decision to  
deny the motion was not predicated upon those factual claims.

Entered: March 20, 2009

JoAnn M. Wahl  
Clerk of the Court