UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ONEWEST BANK, FSB, *ET AL.*,

Plaintiffs,

No.: 1:10-CV-1063-JG-SMG

v.

JOAM LLC, *ET AL.*,

Defendants.

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MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION TO AMEND THE COMPLAINT BY DEFENDANT SACCO & FILLAS, LLP AND PROPOSED DEFENDANTS TONINO SACCO AND ELIAS N. FILLAS

SACCO & FILLAS, LLP
31-19 Newtown Avenue, 7th Floor
Astoria, New York 11102

(718) 746-3440

By Counsel:

Si Aydiner (SA-6264)
Jeremy Ribakove

INTRODUCTION

This memorandum of law is submitted in opposition to plaintiffs OneWest Bank, F.S.B. ("OneWest") and Deutsche Bank National Trust Company ("Deutsche Trust") (collectively "plaintiffs") motion to amend the complaint pursuant to Fed. R. Civ. P. 15. (DE #192). The undersigned, who represents defendant Sacco & Fillas, LLP ("S&F") appears on behalf of proposed defendants Tonino Sacco ("Sacco") and Elias N. Fillas ("Fillas") (collectively "proposed defendants").[1] For the reasons set forth below, plaintiffs' motion should be denied with respect to all claims other than unjust enrichment.

BACKGROUND

I. PROCEDURAL AND FACTUAL HISTORY

Considering this court's familiarity with the underlying facts given S&F's two previous motions to dismiss (DE #51, 99), the Reader's Digest version of the factual and procedural history is as follows: plaintiffs brought this action against S&F, co-defendant Dean A. Reskakis ("Reskakis") (a former employee of S&F), and several other defendants following their acquisition of a residential home loan peddled on the secondary and tertiary markets. The subject loan was issued by the defunct American Brokers Conduit ("American Brokers") to co-defendant Anthony Horan ("Horan") in connection with Horan's purchase of real property located at 1432 East 14th Street, Brooklyn, New York ("subject premises").

[1] Though not relevant to the merits of this dispute, plaintiffs incorrectly claim in their motion, like mantra, that S&F has been proceeding pro se. (Pl.'s Mem. (DE #192-1) pp. 4, 9, 17-18). Though a corporate entity cannot represent itself in a judicial proceeding, *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993), "[a] professional corporation of attorneys can appear by its member lawyers." *Toren v. Anderson, Kill & Olick, P.C.*, 185 Misc.2d 23, 26, 710 N.Y.S.2d 799, 801 (N.Y. Sup. Ct. [N.Y. Co.] June 8, 2000); *see also* 1 N.Y. Jur. 2d *Actions* § 82 (2013). Here, S&F has been represented by the undersigned, the firm's general counsel, since July 2010 (DE #12) and privately retained counsel, Furman, Kornfeld & Brennan LLP, since October 2012 (DE #172).

The theory of plaintiffs' case has remained static: Horan's purchase of the subject premises was a sham transaction involving a straw purchaser who acquired title from owners with no legal interest to convey. Reskakis, who represented American Brokers, allegedly committed various torts in allowing the transaction to close. No mythology surrounds Reskakis, a suspended attorney, who pled guilty to his participation in a mortgage fraud scheme while a solo practitioner following his termination by S&F.

II. PLAINTIFFS MISREPRESENT S&F'S CONDUCT IN DISCOVERY IN AN ATTEMPT TO AFFECT THE EQUITIES UNDERLYING THIS MOTION

In a transparent attempt to affect the equitable positions of the parties in this motion, plaintiffs contend that S&F has either actively evaded its responsibilities in discovery or otherwise chartered a course of gamesmanship over compliance. Two examples of this are captured below:

> Sacco and Fillas, have engaged in a defense strategy for this case that resulted, until recently, in Plaintiffs' inability to discover the extent of their personal involvement in the circumstances that led to the claims in this case.
>
> . . .
>
> In fact, their zealous attempts to delay and limit Plaintiffs' discovery would appear to indicate their clear knowledge of their own culpability.

(Pls.' Mem. pp. 9, 18). These contentions, and the inferences that emerge from them, are patently false. As the record reflects, S&F has not only faithfully met every discovery deadline and obligation set by Chief U.S. Magistrate Judge Steven M. Gold, but conversely, it is plaintiffs that have eschewed their own. Plaintiffs correctly acknowledge that S&F has moved on several occasions to limit or restrict the scope of discovery sought by plaintiffs. (*See id.* p. 12 n. 6). These motions have, following arguments before Judge Gold, been granted and complied with.

(*See* DE #52 (S&F's motion to stay depositions; granted by the court (DE #56)); DE #80 (S&F's motion to modify subpoena duces tecum; granted by the court in Minute Entry Order dated 05/02/2011); DE #140 (S&F's motion to modify subpoena ad testificandum; granted by the court (DE #150)). Conversely, S&F has filed motions to compel plaintiffs to produce perfunctory disclosure such as a privilege log and documentary evidence of its damages. (DE #152 (S&F's motion to compel production of purchase price of subject note and privilege log; granted by the court in Minute Entry Order dated 07/03/2012); (DE #167 (S&F's *second* motion to compel production of purchase price of subject note; granted by the court (DE #173, 179)).

Perhaps more importantly, the assertion that S&F delayed or withheld information concerning the "personal involvement" of the proposed defendants is belied by discovery obtained by plaintiffs. For example, on 8 September 2010 S&F served responses to OneWest's first interrogatories specifically identifying Sacco and Fillas as Reskakis's "immediate supervisor." (S&F's First Responses to Interrogatories p. 12 ¶ 6 (Attached as Exhibit-A)). And therefore OneWest knew (or should have known) approximately twenty-nine months before this motion that the proposed defendants personally supervised Reskakis during his employment with S&F.

Equally meritless is plaintiffs' assertion that "discovery which [it was] *permitted to conduct only after the statute of limitations* had run revealed that a mistake had been made in failing to name Sacco and Fillas as defendants in their role as responsible principals of S&F." (Pls.' Mem. p. 9 (emphasis added)). This argument greatly exalts form over substance because—as detailed later—OneWest filed suit against S&F on 6 April 2010 with approximately *seven days* remaining on the applicable three year statute of limitations. (*See* Third Am. Compl. ¶ 34 (alleging closing occurred on 13 April 2007 (Attached as Exhibit-B)); (DE #5 (amended

complaint dated 6 April 2010)). And considering the amended summons was not issued until 17 May 2010 it is unclear what discovery plaintiffs were entitled to before expiration of the limitations period. (*See* Minute Entry dated 05/17/2010). Augmenting the dubious nature of this position is an important omission by plaintiffs (though likely inadvertent) that OneWest was provided with S&F's *entire* underlying documentary file for this loan transaction on 30 April 2008—twenty-two months before suit was commenced. (*See* Letter from Richard Godosky to McCabe, Weissberg & Conway (Apr. 30, 2008) (Attached as Exhibit-C)).[2]

ARGUMENT

I. THE MOTION TO AMEND THE COMPLAINT SHOULD BE DENIED AS FUTILE BECAUSE PLAINTIFFS' CLAIMS DO NOT RELATE BACK UNDER RULE 15(c)

Under Rule 15(a) leave to amend a complaint should be "freely give[n] . . . when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave should be denied when the amendment is futile. *Lucente v. Int'l Business Machines Corp.*, 310 F.3d 243, 258 (2d Cir. 2002). An amendment seeking to assert a time barred claim that does not relate back to a timely pleading is futile. *In re Bernard L. Madoff Inv. Sec. LLC*, 468 B.R. 620, 627 (Bankr. S.D.N.Y. 2012). Futility is reviewed against an identical standard to a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Lucente*, 310 F.3d at 258.

In their motion, plaintiffs seek to assert claims for negligent supervision, breach of fiduciary duty, conversion (through respondeat superior), and unjust enrichment against Sacco and Fillas. A three year limitations period governs the claims for negligent supervision, *Weil v. Long Island Sav. Bank, FSB*, 77 F. Supp. 2d 313, 324 (E.D.N.Y. 1999), breach of fiduciary duty,

[2] Richard Godosky is S&F's outside ethics counsel. Upon information and belief, McCabe, Weissberg & Collins was retained by OneWest to pursue a foreclosure action prior to the retention of the Law Offices of Alison Greenberg, LLC, predecessor to plaintiffs' current counsel.

Kaufman v. Cohen, 307 A.D.2d 113, 119, 760 N.Y.S.2d 157, 164 (1st Dep't 2003), and conversion, *Komolov v. Segal*, 96 A.D.3d 513, 513, 947 N.Y.S.2d 14, 15 (1st Dep't 2012). The claim for unjust enrichment—contrary to plaintiffs' assertions—is *not* time barred because it has a six year limitations period. *37 Park Drive South, Inc. v. Duffy*, 63 A.D.3d 1040, 1041, 881 N.Y.S.2d 481, 482 (2d Dep't 2009); (Pls.' Mem. p. 9 ("[p]laintiffs have asserted claims against S&F for . . . unjust enrichment . . . which have now expired."). These causes of action accrue when all the elements to the claim can be alleged in a complaint. *Kronos, Inc. v. AVX Corp.*, 81 N.Y.2d 90, 94, 595 N.Y.S.2d 931, 934 (1993). And for the purposes of this motion, plaintiffs' claim accrued on 13 April 2007—the date of the Horan loan closing.[3]

The relation back of untimely claims is governed by Rule 15(c) which provides, in relevant part, a three-part conjunctive test:[4]

> (1) ***When an Amendment Relates Back.*** An amendment to a pleading relates back to the date of the original pleading when:
>
> . . .
>
> (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; []
>
> (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

[3] S&F, Sacco, and Fillas do not concede the relation back of any claim asserted by Deutsche Trust whose inclusion as a plaintiff to this action occurred on 28 December 2010 (DE #43). In the interest of efficiency and burdening the court with only the narrowest issue needed to resolve this dispute, S&F, Sacco, and Fillas expressly reserve the right to move for summary judgment on Fed. R. Civ. P. 17 grounds at the appropriate time.

[4] Though plaintiffs do not address the issue, the court has the option of applying either the federal or New York relation back tests. And the choice hinges on applying "the more forgiving principle of relating back." *Fisher v. County of Nassau*, No. 10-CV-0677-JS-ETB, 2011 WL 4899920, at *4 (E.D.N.Y. Oct. 13, 2011). S&F and the proposed defendants believe the federal standard is the appropriate one.

> (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
>
> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

Fed. R. Civ. P. 15(c)(1)(C)(i)-(ii). The aim of relation back under Rule 15 is "to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for resolving disputes on their merits." *Krupski v. Costa Crociere S. p. A.*, 130 S. Ct. 2485, 2494 (2012). Though this preference is militated where a proposed defendant "legitimately believed that the limitations period had passed without any attempt to sue him [because he] has a strong interest in repose." *Id.* Conversely, "repose would be a windfall for a proposed defendant who understood, or who should have understood, that he escaped suit during the limitations period only because the plaintiff *misunderstood* a crucial fact about his identity." *Id.* (emphasis added).

Plaintiff bears the burden of showing that relation back is proper. *In re Alstom SA Sec. Lit.*, 406 F. Supp. 2d 402, 430 (S.D.N.Y. 2005) (holding that "[i]t is the plaintiff's burden to establish the requirements for relation back under Rule 15(c)."). For the purposes of this motion, S&F and the proposed defendants concede the first two elements of this test: occurrence and notice. *Id.* 15(c)(1)(C) and 15(c)(1)(C)(i). But contest the remaining element of mistake. *Id.* 15(c)(1)(C)(ii).

A. Lack Of Knowledge As A Basis For Mistake Under Rule 15

Under Rule 15(c)(1)(C)(ii) the movant must show that the proposed defendant knew or should have known that suit would have been commenced against it but for a mistake. The inquiry therefore begins with "what the proposed defendant knew or should have known during

the period for serving the summons and complaint" and not the plaintiff's knowledge at the time of commencement. *Krupski,* 130 S. Ct. at 2496-97. Though the court can consider a "plaintiff's postfiling conduct [where it] informs the proposed defendant's understanding of whether the plaintiff initially made a 'mistake concerning the proper party's identity.'" *Id.*

Applying these principles here, plaintiffs claim they did not sue the proposed defendants because they "lacked sufficient facts to properly identify Sacco and Fillas as responsible principles of S&F." (Pls.' Mem. p. 16). And in support of their position plaintiffs rely extensively on *Krupski* and *Abdell v. City of New York*, 759 F. Supp. 2d 450 (E.D.N.Y. 2010). For the reasons set forth below, neither authority provides strong support for a mistake on the grounds presented.

i. *Krupski is distinguishable because OneWest's original complaint provides no basis to infer a mistake*

In *Krupski*, plaintiff was injured while on-board a cruise ship. *Krupski*, 130 S. Ct. at 2490. She commenced suit against Costa Cruise Lines ("Costa Cruise") after determining that name was prominently displayed on her travel documents, the relevant web site, and that no entity with a similar moniker was authorized to do business in her home state of Florida. *Id.* at 2491. Costa Cruise eventually moved for summary judgment after establishing that it was only a travel agent for non-party Costa Crociere S. p. A. ("Costa Crociere") and did not have any relationship to the subject ship. *Id.* Plaintiff subsequently discontinued against Costa Cruise and amended her complaint to name Costa Crociere. *Id.*

Believing the claims asserted were time-barred and did not relate back under Rule 15(c), Costa Crociere moved to dismiss. *Id.* The district court granted the application after finding plaintiff did not make a mistake when it was informed of Costa Crociere's role in the incident

and delayed in amending the complaint. *Id.* at 2491-92. The United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit") affirmed the district court's decision though it assigned weight to different underlying facts. *Id.* at 2492. Specifically, the Eleventh Circuit noted the absence of a mistake where the record showed plaintiff's passenger ticket identified Costa Crociere and that such information was provided to plaintiff's counsel within the limitations period. *Id.*

The United States Supreme Court granted certiorari and reversed the Eleventh Circuit on grounds distinguishable here. Focusing on what Costa Crociere knew—and not plaintiff—the court observed:

> Because the original complaint (of which Costa Crociere had constructive notice) *made clear that Krupski meant to sue the company that 'owned, operated, managed, supervised and controlled' the ship* on which she was injured and also indicated (mistakenly) that Costa Cruise performed those roles, Costa Crociere should have known that it avoided suit within the limitations period only because of Krupski's misunderstanding about which 'Costa' entity was in charge of the ship—clearly a 'mistake concerning the proper party's identity.'

Id. at 2497 (emphasis added). Here, OneWest's first amended complaint (DE #5) contains no such analogue that would have placed the proposed defendants on notice that a sophisticated banking institution misunderstood the identity of a targeted defendant. Indeed, the first amended complaint strongly supports the converse inference. And this is because OneWest's original complaint—unlike *Krupski*—was written in a rigid manner negating the inference of intended (but missed) targets. For example, the original complaint repeatedly refers to S&F as a corporate entity that employed and supervised Reskakis and owed American Brokers a fiduciary duty. (*E.g.*, Compl. (DE #5) 108-13, 125-38). It does not, as in *Krupski*, contain language providing a basis for the partners to believe they were a target of the suit though it is apparent OneWest knew

S&F was a limited liability partnership. (*Id.* ¶ 13). Nor did the first amended complaint signal to the proposed defendants, unlike *Krupski*, that OneWest's claims were platformed against a party with no legally recognized basis for liability for Reskakis's actions. The appropriate parallel to *Krupski* would have been present if OneWest, hypothetically, had sued either a fictional or incorrect legal entity. (OneWest named Reskakis as a defendant in the original complaint (DE #1) without naming S&F. It then filed the first amended complaint less than a month later to correct this.) But no such scenario is present here.

Furthermore, the "windfall" in repose that thematically underpinned the *Krupski* decision and drove its rationale is simply not present here. *See Krupski*, 130 S. Ct. at 2494-95. Plaintiff in *Krupski* initially sued a party with no colorable legal basis for liability because of similarities in name and the ubiquitous nature of the two Costa entities. And all of this occurred while the only legally responsible entity sat idle despite being the clear and only aim of the suit (waiting to become a recipient of a statute of limitations defense that would bar any recovery). No such scenario is present with S&F a defendant to this suit.

ii. ***Abdell reflects an anomalous extension of Krupski because conflicting authority suggests the Second Circuit's holding in Barrow v. Wethersfield Police Dep't remains valid***

Prior to *Krupski*, the United States Court of Appeals for the Second Circuit ("Second Circuit") held in *Barrow v. Wethersfield Police Dep't*, 66 F.3d 466, 470 (2d Cir. 1996) that lack of knowledge did not constitute a mistake under Rule 15(c). Though there is considerable debate among the district courts within the Second Circuit whether *Krupski* overrules *Barrow* or whether the two cases are harmonious. While *Abdell* clearly adopts the interpretation of the former there are numerous cases that rejected its rationale.

Abdell involved the mass arrest of protestors in the vicinity of the World Trade Center by the New York City Police Department. *Abdell*, 759 F. Supp. 2d at 452. The court was confronted with the relation back of a claim asserted against a police officer that plaintiffs knew but whose specific role in the events they did not appreciate. *Id.* at 452-53. Though the *Abdell* court did not refer to *Barrow* in its decision, it specifically held that "[c]areful review of the *Krupski* opinion, however, belies this narrow understanding of a Rule 15(c) 'mistake.'" *Id.* at 457. The court found that because lack of knowledge constituted a mistake after *Krupski*, plaintiffs' inclusion of another police officer whose role was closely related sufficiently removed any basis for the time-barred police officer to believe he was not an intended target of the suit. *Id.* at 457-58. To extent this court believes *Abdell* is persuasive on the issue of whether *Krupski* has overruled *Barrow* there are multiple decisions within the Eastern and Southern districts that reject this interpretation. *Cooper v. City of New Rochelle*, No. 11-CV-69-LMS, 2013 WL 684747, at *6 (S.D.N.Y. Feb. 26, 2013) (holding post-*Abdell* that "*Barrow's* holding that a lack of knowledge is not a mistake is still in tact."); *Wade v. Rosenthal, Stein & Assoc., LLC*, No. 11-CV-5672-FB-VVP, 2012 WL 3764291, at *5 (E.D.N.Y. Aug. 29, 2012) (holding that "[a]s the Second Circuit has made clear, lack of knowledge of the identity of a party is not a mistake that satisfies Rule 15."); *Rodriguez v. City of New York*, No. 10-CV-1849-PKC, 2011 WL 4344057, at *8 (S.D.N.Y. Sep. 7, 2011) (finding that *Barrow's* holding on lack of knowledge is not effected by *Krupski*); *Dominguez v. City of New York*, No. 10-CV-2620-BMC, 2010 WL 3419677, at *3 (E.D.N.Y. Aug. 27, 2010 (finding that "*Krupski* merely picks up where *Barrow* left off. *Barrow* asked whether a mistake has been committed; *Krupski* assumes the presence of a mistake and asks whether it is covered by Rule 15(c)(1)(C)(ii). Therefore, Barrow's holding that a lack of knowledge is not a mistake is still intact.").

Notwithstanding their reliance on *Abdell*, plaintiffs have not met *their burden* because they improperly emphasize the amending parties' lack of knowledge over the reasonableness of what the proposed defendants knew or should have known. This is, of course, improper under *Krupski*. *See Hunter v. Deutsche Lufthansa AG*, No. 09-CV-3166-RJD-JMA, 2013 WL 752193, at *4 (S.D.N.Y. Feb. 27, 2013) (finding that *Krupski* evaluates lack of knowledge from the perspective of the proposed defendant and not the plaintiff). Though plaintiffs claim here that they "lacked sufficient facts to properly identify the [proposed defendants] as responsible principals" they fail to meaningfully discuss the reasonableness of the proposed defendants' belief that absent a mistake they were not intended targets of the suit. Reliance on the conclusory assertion that the proposed defendants' belief was unreasonable because "their firm was being sued for their *personal failures* manage, supervise and train Reskakis" is belied by the first amended complaint. This is because the first amended complaint, and every other that preceded this motion, has neither alleged—express or inferential—the proposed defendants' "personal failures" or the failures of any individual separate and apart from Reskakis. Indeed, the rigid and confident nature of the allegations in the first amended complaint militates against the existence of confusion or misimpression on behalf of OneWest. Against this backdrop, it would have been reasonable for the proposed defendants to believe they were not sued but for a mistake because of S&F's inclusion as a defendant coupled with failure to provide any basis for partner-level liability.[5]

[5] Because OneWest knew that S&F was a limited liability partnership at the time it commenced suit—had it intended to sue the proposed defendants individually as now suggested—they could have properly used "information and belief" pleading which would have been proper post-*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 119-20 (2d Cir. 2010). And this would have allowed them to avoid a statute of limitations defense and Rule 12 motion for failure to state a claim.

B. Deliberate Choice Is Not Synonymous With Mistake Under Rule 15

Importantly, for our purposes here, *Krupski* acknowledged a distinction between deliberate choice and mistake for Rule 15. "When the original complaint and the plaintiff's conduct compel the conclusion that the failure to name the proposed defendant in the original complaint was the result of a fully informed decision as opposed to a mistake concerning the proper defendant's identity, the requirements of Rule 15(c)(1)(C)(ii) are not met." *Krupski*, 130 S. Ct. at 2496. For the reasons set forth below, OneWest's failure to originally sue the proposed defendants is deliberate choice disingenuously cast as mistake after plaintiffs' retention of new counsel.

Deliberate choice is supported by the linear nature of activity relevant to this issue. OneWest, a sophisticated corporate plaintiff with access to S&F's underlying file pre-suit, initially brought this action against Reskakis and other defendants. Approaching the statute of limitations, OneWest amended to name S&F in a complaint that cast no ambiguity over the target of this suit (*i.e.*, the firm) or the theory of liability or S&F's corporate form. Though S&F acknowledged in written discovery that Sacco and Fillas personally supervised Reskakis in an interrogatory response in September 2010, plaintiffs subsequently amended their complaint twice without effectuating a substantive change in their theory or target. (*See* DE #43, 45). Thereafter, the parties litigated for over two years until plaintiffs changed counsel from the Law Offices of Alison Greenberg LLC to Teitelbaum & Baskin LLP ("T&B") in October 2012. (*See* DE #172 (Notice of Appearance by Jay Teitelbaum)). After T&B appeared in this matter—nearing the tail end of discovery—the parties had multiple settlement conferences and one included participation

by S&F's professional liability carrier (that ultimately declined coverage).[6] (*See* DE #179, 184). Following failed attempts at settlement, plaintiffs—for the first time in this litigation—raised the issue of personal liability.

A letter from T&B to Judge Gold requesting a pre-motion conference for this motion reflects the true pathology behind this amendment:

> Additional facts which lead to this request at this time are (i) the December 4, 2012 disclosure that the denial of insurance coverage by Zurich, one of S&F's carriers, . . . (ii) the denial of coverage by the Hartford, S&F's other carrier. . . . Plaintiffs *are concerned that the individuals may be the only viable source of recovery in this case*.

(Letter from T&B to Judge Gold pp. 2-3 (Jan. 16, 2013) (DE #186) (Attached as Exhibit-D) (emphasis added)). This reasoning, against this chronology, is inconsistent with *Krupski* because "evidence suggesting that a plaintiff seeking to add a new defendant only after learning that the originally named defendant would not be able to satisfy a judgment 'counter[s] any implication that [the plaintiff] had originally failed to name [the proposed defendant] because of any 'mistake concerning the proper party's identity.'" *In re Bernard L. Madoff Inv. Sec. LLC*, 468 B.R. at 631 (quoting *Krupski*, 130 S. Ct. at 2495-96). Plaintiffs' claim of mistake is, therefore, a true reflection of buyer's remorse and not misimpression.

CONCLUSION

For the reasons stated above, plaintiffs' motion to amend the complaint should be denied as futile with respect to all claims other than unjust enrichment.

[6] Coverage for this claim, subject to a reservation, was originally provided by the Hartford who assigned the law firm of Abrams, Gorelick, Friedman & Jacobson, P.C. (*see* DE #7). After coverage was withdrawn, the undersigned assumed responsibility of this matter.

Dated: 15 March 2013
Astoria, New York

Respectfully submitted,

SACCO & FILLAS, LLP

By Counsel.

Si Aydiner (SA-6264)
31-19 Newtown Avenue, 7th Floor
Astoria, New York 11102
(718) 746-3440
saydiner@saccofillas.com