

Law360, New York (April 15, 2014, 1:18 PM ET) -- A New York state judge on Friday partly dismissed an \$8 million legal malpractice suit accusing [Davis & Gilbert LLP](#) of bungling copyright transfers for a documentary, nixing a major investor's allegations but preserving negligence claims levied by a production company.

New York Supreme Court Judge Eileen Bransten ruled that Cynthia Newport, who had invested roughly \$4.5 million in the documentary "Dance Cuba," could not show that she had established a personal relationship with the firm when Davis & Gilbert was retained to work on transferring the movie's rights.

"The amended complaint does not plead facts showing that D&G performed any task specifically to benefit Newport as an individual," Judge Bransten wrote. "Accordingly, Newport's causes of action arising out of D&G's representation of her personally is dismissed."

Newport first retained Davis & Gilbert in 2007 on behalf of a production company called [Candela Entertainment Inc.](#), in order to transfer the "Dance Cuba" rights to Candela from her nonprofit organization.

She had been funding the film, which depicts the first time a U.S. dance company performed on a Cuban stage in 40 years, through her nonprofit, and hoped to reduce her financial risk in the project by transferring the rights to Candela, the suit says.

According to the plaintiffs, Davis & Gilbert failed to tell them that they needed permission from copyright licensors in order to transfer the rights, and consent was never secured. A cloud subsequently formed over the film's title, scaring off investors, hindering completion of the film, and prompting Candela and Newport to sue the firm in 2011.

On Friday, Judge Bransten dismissed Newport's assertions that she had an express privity with the firm, ruling that a personal attorney-client relationship had not been established by the fact that Newport had signed the firm's retainer on behalf of Candela.

The judge also rejected the idea that Newport had "near privity" with Davis & Gilbert, as the firm did not perform work for her and was solely responsible for transferring rights to Candela and facilitating a loan.

However, Judge Bransten declined to dismiss Candela's negligence claims against Davis & Gilbert, finding that the amended complaint had been sufficiently pled and that there were still disputed issues of fact.

The defendants had argued that the amended complaint was too vague, and that the firm had advised Candela on the need to obtain copyright consents in an assignment agreement. But since the agreement was unsigned, it remained unclear as to whether Candela ever saw the agreement, according to Friday's order.

Judge Bransten did dismiss a \$12 million claim for punitive damages, finding that the

second complaint was devoid of “wantonly dishonest” or “outrageous” claims. She also chucked claims for breach of contract and breach of fiduciary duty, ruling that they were duplicative of the legal malpractice claims.

This was the firm’s **second attempt** to secure dismissal of the suit. Judge Bransten nixed the case last year, but allowed the plaintiffs to file an amended complaint.

Daniel Brecher of Scarinci & Hollenbeck LLC, an attorney for the plaintiffs, told Law360 on Tuesday that while he didn’t agree with the decision to oust Newport from the suit, he was eager to move forward with the case.

“It’s a decision that we’re pleased with to the extent that it allows us to move forward with discovery,” Brecher said. “We’ll see if a proper showing of negligence occurred, and then it will be for a jury to decide.”

Attorneys for Davis & Gilbert did not immediately respond to requests for comment Tuesday.

The plaintiffs are represented by Daniel S. Brecher of Scarinci & Hollenbeck LLC.

The defendant is represented by Vincent J. Syracuse and Matthew R. Maron of **Tannenbaum Helpert Syracuse & Hirschtitt LLP**.

The case is Candela Entertainment vs. Davis & Gilbert LLP, case number 150553/2011, in the Supreme Court of the State of New York, County of New York.