

Richter, J.P., Webber, Gesmer, Oing, JJ.

10274 Sutton Animal Hospital PLLC,  
Plaintiff-Respondent,

Index 652781/16

-against-

D&D Development, Inc., et al.,  
Defendants,

Joseph Gabriel, et al.,  
Defendants-Appellants.

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Sinreich Kosakoff & Messina LLP, Central Islip (Michael Stanton of counsel), for Joseph Gabriel, AIA Architects, P.C., and Joseph Gabriel, appellants.

Byrne & O'Neill, LLP, New York (Thomas J. Cirone of counsel), for Sterling Engineering Services, P.C., appellant.

Fischer Porter & Thomas, P.C., New York (Noelle Robinson of counsel), for respondent.

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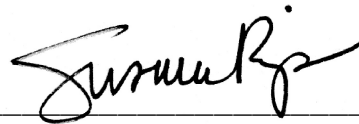
Order, Supreme Court, New York County (Debra A. James, J.), entered October 30, 2018, which, to the extent appealed from, upon defendants Joseph Gabriel, AIA, Architects, P.C., and Joseph Gabriel's and Sterling Engineering Services, P.C.'s motions to dismiss the complaint as against them, granted plaintiff leave to file a second amended complaint to plead a cause of action for negligent misrepresentation, unanimously reversed, on the law, without costs, and the grant to plaintiff of leave to amend vacated.

The motion court should not have sua sponte granted

plaintiff leave to file a second amended complaint to assert an unpleaded negligent misrepresentation claim in the absence of a cross motion and an accompanying proposed pleading (CPLR 3025[b]). The lack of a proposed pleading precludes meaningful review of the sufficiency of the allegations, including defendant's contention that such a claim is time barred (see *Crossbeat N.Y., LLC v LIIRN, LLC*, 169 AD3d 604 [1st Dept 2019]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 14, 2019

A handwritten signature in black ink, appearing to read "Susan R. [unclear]", written over a horizontal line.

CLERK