

278 A.D.2d 811 (2000)  
718 N.Y.S.2d 519

**ROBERT E. ROLLER et al., Appellants,**  
v.  
**ROBERT G. WALSH, Respondent.**

**Appellate Division of the Supreme Court of the State of New York, Fourth  
Department.**

Decided December 27, 2000.

Present — Pigott, Jr., P.J., Green, Pine, Kehoe and Balio, JJ.

Order unanimously reversed on the law with costs, motion denied and complaint reinstated.

Memorandum:

Plaintiffs, three of the original members of two limited liability companies, commenced this action alleging claims for legal malpractice and breach of fiduciary duty against defendant attorney, who provided services in connection with the formation and operation of those companies. Plaintiffs allege that defendant breached his duty of care and fiduciary duty owed to them by advancing the interests of the fourth member of the companies to the detriment of plaintiffs. Defendant moved to dismiss the complaint based upon documents containing plaintiffs' acknowledgement and waiver of existing and future conflicts of interest arising from defendant's representation, and plaintiffs' agreement to hold defendant harmless from any claims arising from any conflict of interest.

Supreme Court erred in granting the motion. The documentary evidence submitted by defendant does not conclusively establish a defense to the action as a matter of law (see, [Leon v Martinez](#), 84 NY2d 83, 88). Plaintiffs allege that their waiver is ineffective because defendant failed to disclose the nature and extent of any existing and potential conflicts of interest (see, [Matter of Kelly](#), 23 NY2d 368, 376-377; [H.W. Collections v Kolber](#), 256 AD2d 240, 241), and the documents themselves do not dispose of that factual allegation (see, [Unadilla Silo Co. v Ernst & Young](#), 234 AD2d 754). Further, the documents do not support dismissal of the claims insofar as they allege conduct by defendant occurring subsequent to the execution of the documents (see, [Swift v Choe](#), 242 AD2d 188, 194).