

**H**Helie v. McDermott, Will & Emery  
56 A.D.3d 398, 869 N.Y.S.2d 27  
NY,2008.

56 A.D.3d 398869 N.Y.S.2d 27, 2008 WL 4977610,  
2008 N.Y. Slip Op. 09289

Marc Hélie, Respondent

v

McDermott, Will & Emery et al., Respondents. Gramercy Financial Group, LLC, Nonparty Appellant. Supreme Court, Appellate Division, First Department, New York

November 25, 2008

CITE TITLE AS: Hélie v McDermott, Will & Emery

#### HEADNOTE

Attorney and Client  
Privilege  
Attorney's Self-Defense Exception to Duty of Confidentiality

O'Shea Partners LLP, New York (Mark A. Weissman of counsel), for appellant.  
Liddle & Robinson, L.L.P., New York (Christine A. Palmieri of counsel), for Marc Hélie, respondent.  
Patterson Belknap Webb & Tyler LLP, New York (Mark G. Young of counsel), for McDermott, Will & Emery and John J. Sullivan, respondents.  
Order, Supreme Court, New York County (Michael D. Stallman, J.), entered June 28, 2007, which, to the extent appealed from, permitted defendant Sullivan to testify at a deposition and ordered production of documents concerning certain topics even if his responses revealed information or communications that Gramercy Financial Group claimed were privileged and/or confidential, unanimously affirmed, without costs.

Code of Professional Responsibility DR 4-101 (c) ([22 NYCRR 1200.19 \[c\]](#)) provides: "A lawyer may reveal: . . . (4) Confidences or secrets necessary . . . to defend the lawyer . . . against an accusation of wrongful conduct." We decline to make defendants' invocation of this rule dependent on plaintiff's dem-

onstration of a prima facie case of defendants' liability (*see* Justice Stallman's later ruling on a related matter in this case, [18 Misc 3d 673, 683](#) [Dec. 17, 2007]).

The issue of whether plaintiff was defendants' client is to be tried (*see id.* at 684), so Gramercy should not assume that plaintiff is a nonclient. Even if plaintiff were not defendants' client, DR 4-101 (c) (4) does not require the nonclient's allegation of wrongful conduct to involve criminal or regulatory charges rather than malpractice (*see* Restatement [Third] of Law Governing Lawyers § 64, Comment c).

Gramercy's argument that the motion court should have deferred decision until after summary judgment (even though neither plaintiff nor defendants have moved for summary \*\*2 judgment) is without merit. It is not for Gramercy to dictate the litigation decisions of the parties. Concur-Mazzarelli, J.P., Friedman, Nardelli, Buckley and Freedman, JJ. [[See 2007 NY Slip Op 31861\(U\)](#).] \*399

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