

**Cambridge Integrated Servs. Group, Inc. v Faber**

2010 NY Slip Op 33286(U)

November 22, 2010

Sup Ct, NY County

Docket Number: 104108/2009

Judge: Marcy S. Friedman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMAN, J.S.C.

PART 57

*Justice*

Index Number : 104108/2009

**CAMBRIDGE INTEGRATED SERVICES**

vs.

**FABER, NORMAN L., ESQ.**

SEQUENCE NUMBER : 002

SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

this motion ~~is~~ for summary judgment

PAPERS NUMBERED

1  
2

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

*Memo. filed M1-M3, Supp1, Supp2*

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion and cross-motion be

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER.**

**FILED**

NOV 30 2010

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 11-22-10

*[Signature]*  
**MARCY S. FRIEDMAN, J.S.C.**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK -- PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

\_\_\_\_\_ x  
CAMBRIDGE INTEGRATED SERVICES  
GROUP, INC.,

*Plaintiff(s),*

- against -

NORMAN L. FABER, ESQ., et al.,  
*Defendant(s).*

Index No.: 104108/2009

DECISION/ORDER

**FILED**

NOV 30 2010

NEW YORK  
COUNTY CLERK'S OFFICE

\_\_\_\_\_ x  
In this action, plaintiff Cambridge Integrated Services Group, Inc. ("Cambridge") moves for summary judgment seeking to enforce a workers' compensation lien against defendants Pressley and Norman L. Faber and the Law Office of Norman L. Faber, Esq. (collectively "Faber"), for workers' compensation benefits paid in New Jersey to defendant Pressley. Faber cross-moves for summary judgment dismissing the complaint on the ground, among others, that New York law applies to the instant action, and that the action is time barred.

By interim order dated June 7, 2010 (interim order), this court determined that New Jersey law applies to the merits of Cambridge's claims. The interim order also directed the parties to submit supplemental briefing on the statute of limitations.

The court now holds that under New Jersey Law, "a workers' compensation lien pursuant to N.J.S.A. 34:15-40 attaches to the proceeds of a legal malpractice action brought to recover damages from an attorney who failed to institute an action against a third-party tortfeasor." (Frazier v N.J. Mfrs. Ins. Co., 142 NJ 590, 607 [NJ 1995].) New York law is to the contrary, and holds that a workers' compensation lien applies "only against recoveries from the third-party

tortfeasors who are responsible for the claimant's injuries." (Shutter v Phillips Display Components Co., 90 NY2d 703, 708 [1997].) However, under settled law, "[t]he rights of an employer to be reimbursed for workers' compensation benefits paid to an employee are governed by the law of the State in which the benefits were paid." (Compare Carinucci v Pepsico, Inc., 236 AD2d 499 [2d Dept 1997], with New Jersey Mfrs. Ins. Co. v Steckert, 264 AD2d 314 [1<sup>st</sup> Dept 1999] [mistaken payments]. See also Matter of O'Connor's Estate, 21 AD2d 333 [2d Dept 1964].) The court is unpersuaded that enforcement of New Jersey Law would violate public policy under the circumstances of this case in which a New Jersey resident was paid workers' compensation benefits in New Jersey.

As to the statute of limitations issue, plaintiff argues that the action is timely under both New York and New Jersey law. Defendant Faber correctly contends, and the court finds, that the statute of limitations is procedural and thus governed by the law of New York. It is settled that "statutes of limitations are considered 'procedural' because they are deemed 'as pertaining to the remedy rather than the right.'" (Portfolio Recovery Assocs., LLC v King, 14 NY3d 410, 415-416 [2010], quoting Tanges v Heidelberg N. Am., 93 NY2d 48, 53 [1999].)

Defendant Faber also argues that because the action accrued outside of New York, New York's "borrowing statute," CPLR 202, applies to bar the action. CPLR 202 provides that "[a]n action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply." It is settled that "[w]hen a nonresident sues on a cause of action accruing outside New York, CPLR 202 requires the cause

[\* 4]

of action to be timely under the limitation periods of both New York and the jurisdiction where the cause of action accrued. If the claimed injury is an economic one, the cause of action typically accrues where the plaintiff resides and sustains the economic impact of the loss.” (Portfolio Recovery Assocs., 14 NY3d at 416 [internal quotation marks and citations omitted]. See also Global Fin. Corp. v Triarc Corp., 93 NY2d 525 [1999].)

There is no dispute that plaintiff is a resident of New Jersey, and that the statute of limitations for the instant action is shorter in New Jersey (2 years), than in New York (3 years). Whether New Jersey or New York Law is applied, the action is timely.

In arguing that the action is time barred under New Jersey Law, Faber mistakenly relies upon Glass v Spaits (221 NJ Super 643 [1987].) As held in the interim order, this case is not “dispositive, as its holding is that a carrier’s subrogation action accrues at the time claimant sustained injuries, rather than at the time the carrier made payment to the claimant.” (See Interim Order at 2.) Glass does not address the issue of when the cause of action for enforcement of a lien on the proceeds of such a malpractice action accrues. The parties have not cited, and the court’s research has not located, New Jersey authority on the accrual of this cause of action. In similar circumstances, however, New York courts have held that a claim on a lien accrues at the time of payment of a settlement or judgment of the underlying action. (See e.g. Aetna Life & Cas. Co. v Nelson, 67 NY2d 169, 173 [1986] [finding an action by an insurer for foreclosure of a lien for no-fault benefits accrues when the claimant has actually received payment of the judgment].)

Here, plaintiff commenced the instant action slightly more than three months after the settlement of the underlying malpractice action. The action is accordingly timely whether

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brought under the two year New Jersey statute of limitations or the three year New York statute of limitations.

Finally, although the court finds that plaintiff is entitled to enforce its workers' compensation lien against the recovery in the malpractice action, plaintiff has not demonstrated the extent to which it is entitled to recovery and, in particular, has not addressed whether the claimant's attorney is entitled to payment on his own lien. (See e.g., Morrone v Thuring, 334 NJ Super 456, 466 [Sup Ct Bergen County 2000].)

It is accordingly hereby ORDERED that plaintiff's motion and defendant's cross-motion for summary judgment are denied; and it is further

ORDERED that by separate order of the same date, the instant action is transferred to the Civil Court pursuant to CPLR 325(d) and New York City Civ Ct Act § 202.

This constitutes the decision and order of the court.

Dated: New York, New York  
November 22, 2010

  
\_\_\_\_\_  
MARCY FRIEDMAN, J.S.C.

**FILED**  
NOV 30 2010  
NEW YORK  
COUNTY CLERK'S OFFICE