

Holosko v Fairway E. 86th St. LLC
2016 NY Slip Op 32213(U)
October 27, 2016
Supreme Court, New York County
Docket Number: 152831/2014
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

KARINA HOLOSKO,

Plaintiff,

- v -

FAIRWAY EAST 86TH STREET LLC, FAIRWAY GROUP HOLDINGS CORP., and FAIRWAY GROUP CENTRAL SERVICES, INC.,

Defendants.

Index No.: 152831/2014

Motion Date: 09/16/2016

Motion Seq. No.: 004

Motion Cal. No.: OSC

The following papers, numbered 1 to 3 and 1 to 2 were read on this OSC of plaintiff's former counsel to direct defendants and their counsel to pay costs and disbursements and charging lien and OSC to enforce hold harmless provisions of release to defendants and their agents from plaintiff .

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

<u>PAPERS NUMBERED</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that the motion of the former lawyer of plaintiff for an order directing defendants to pay the charging lien in the amount of the costs and disbursements and the reasonable value of legal fees for services rendered by such counsel to plaintiff in the underlying action (motion sequence number 004) and the motion of the defendants and their attorneys to enforce the release, including the hold harmless clause of such release that plaintiff gave to defendants and their agents (motion sequence number 003) shall be granted to the extent that defendants shall pay the amount of the charging

Check One: **FINAL DISPOSITION** **NON-FINAL DISPOSITION**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

lien and plaintiff shall reimburse defendants for any such payments, and the question of the amount of costs and disbursements paid and reasonable value of legal services rendered by movant shall be referred to a Special Referee to hear and determine.

Movant law firm Asta and Associates, P.C. is correct that pursuant to Judiciary Law § 475 and by Order dated June 24, 2015 of this court that relieved movant as plaintiff's counsel, movant maintained a charging lien on any recovery received by plaintiff now pro se for costs and disbursements and legal fees, in the amount of the costs and disbursements paid and the reasonable value of the services rendered by movant to plaintiff.

Movant is also correct that " a defendant's payment of settlement proceeds, while on notice of a charging lien, is made at a defendant's peril" (Schneider, Kleinick, Weitz, Damashek & Shoot v City of New York, 302 AD2d 183 [1st Dept 2002]), and that notwithstanding that defendants settled such claim by remitting payment directly to plaintiff pro se, defendants remain liable for the amount of the charging lien. However, the court can find no authority for the proposition that the attorneys for the defendants are likewise responsible for paying the charging lien. Schneider stands only for the proposition that movant's cause of action is not limited to an action against subsequent counsel who were paid the entirety of their contingency fee under their retainer by defendant City, but that the charging lien runs with the settlement proceeds to the extent that defendants wrongfully paid such proceeds over to the plaintiff and current counsel in that action, without satisfying the prior counsel's charging lien. Nor can the court find authority for the proposition that

3]

movant is entitled to the amount of the contingency fee set forth in its retainer agreement with plaintiff. Rather, movant is entitled to costs and disbursements it paid and the reasonable value of the legal services it rendered to plaintiff in the underlying action, which must be determined at an evidentiary hearing. Schneider, Kleinick, supra, at 186.

Such hearing shall take place subject to the lifting of the automatic stay of bankruptcy in favor of the defendants, who have filed a petition of bankruptcy (U.S. Bankr Ct, SDNY, Case No. 16-11241).

Finally, the court must enforce the hold harmless clause of the release that plaintiff pro se does not dispute that she executed before a notary public. As she is thereby bound (see Citidress II v 207 Second Avenue Realty Corp., 21 AD3d 774 [1st Dept. 2005]), plaintiff must reimburse defendants for any and all amounts that defendants pay in satisfaction of the charging lien on the recovery she obtained in the action.

Therefore, based on the foregoing, it is

ORDERED that the issue of the amount of charging lien, which is the reasonable value of the legal services rendered and the amount of costs and disbursements paid by Asta & Associates, P.C. in the underlying action, is hereby referred to a Special Referee to hear and determine pursuant to §4301, and the Special Referee shall determine the aforesaid issue; and it is further

ORDERED that within thirty days of entry of this order movant shall serve a copy of this order with notice of entry on plaintiff and defense counsel and file proof of service on the Special Referee Clerk in the Motion Support Office (Room 119M, 60 Centre Street), who is directed to place this matter on the

calendar of the Special Referee's Part for the earliest convenient date and to notify the parties thereof;

ORDERED that the referee shall file his or her decision within thirty (30) days after the cause or matter is finally submitted pursuant to CPLR §4319, and defendants shall remit payment thereof in accordance with the CPLR; and it is further

ORDERED that within 60 days of presentation to plaintiff by defendants of proof of payment of the charging lien as set forth in the decision of the Special Referee, plaintiff shall reimburse defendants in accordance with the release that she executed before a notary public on July 30, 2015.

This is the decision and order of the court.

Dated: October 27, 2016

ENTER:

Debra A. James
J.S.C.

DEBRA A. JAMES