

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE LAWRENCE V. CULLEN IA Part 6  
Justice

DETRIA LEGG and OMARI LEGG-WASHINGTON, x Index  
Number 22379 2006  
Plaintiff(s), Motion  
Date January 23, 2007  
- against -  
MEIR MOZA, Motion  
Cal. Number 26  
Defendant(s).  
x Motion Sequence No.: 3

The following papers numbered 1 to 5 read on this motion by defendant dismissing the plaintiffs' complaint pursuant to CPLR 3211(a)(1), (7), and (8).

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1
Memorandum of Law.....	2
Answering Affidavits - Exhibits.....	3
Memorandum of Law.....	4
Reply Affidavits .....	5

Upon the foregoing papers it is ordered that the motion by defendant dismissing the complaint is granted.

This action arises out of the legal representation defendant Meir Moza provided the plaintiff Omari Legg-Washington following plaintiff's arrest in Queens County on June 12, 2004.

On June 13, 2004, the Office of the District Attorney, Queens County, filed misdemeanor charges in the Criminal Court of the City of New York, County of Queens, against plaintiff Legg-Washington for the crime of Assault in the Third Degree and related charges.

According to the Criminal Court complaint, Mr. Legg-Washington was initially arrested because he "punched the complainant (Jermaine Bethea) in the face multiple times, and also kicked him, causing swelling redness, and substantial pain." While Legg-Washington was being fingerprinted for that arrest, he "punched the deponent (Police Officer Stephen M. Anderson of the 113<sup>th</sup> Precinct) in the chest."

On June 14, 2004, Mr. Legg-Washington's mother, Detria Legg, retained the services of Mr. Moza to defend her son in the criminal matter. At that time, Ms. Legg signed a written retainer agreement

with Mr. Moza. According to the terms of the written retainer agreement, Moza agreed to the representation of Legg-Washington in "120.00 A Misd.", which referred to Penal Law Section 120.00, Assault in the Third Degree, an A Misdemeanor.

According to the affidavit of defendant Meir Moza, submitted in support of the motion, on or about June 21, 2004, Legg-Washington and Moza appeared in Criminal Court on the criminal matter. At that time, Moza was informed that at Legg-Washington's arraignment the Court had ordered that Legg-Washington be evaluated pursuant to Criminal Procedure Law Section 730.30.

On or about July 26, 2004, Moza appeared again for Legg-Washington in Criminal Court. At that time, the Court was informed that Legg-Washington, after being evaluated by two psychiatrists, was found not fit to proceed to trial pursuant to Criminal Procedure Law §730.30. According to the psychiatric reports, both psychiatrists found Legg-Washington to be a paranoid schizophrenic, a condition plaintiffs were aware Legg-Washington suffered from since October 2000. Moza discussed these psychiatric findings with the plaintiffs. After discussing these findings, and advising the plaintiffs of the available options, Legg-Washington, through Moza, moved to confirm these findings in open court. The Court (Paynter, J.) explained to Legg-Washington that moving to confirm would require that he be remanded to a psychiatric care center until the time he was no longer a menace to himself or society, and that he would have to undergo psychiatric treatment as a result of being found unfit under C.P.L. §730.30. Legg-Washington acknowledged to the Court that he understood the consequences of moving to confirm and reiterated that it was his intention to confirm the findings. He was then remanded to the custody of Creedmore Psychiatric Center, where he continued his psychiatric care until approximately January 30, 2006.

Plaintiffs commenced the instant action by filing a summons and complaint on October 12, 2006, predicated upon Moza's representation of Legg-Washington arising out of his June 12, 2004 arrest and subsequent criminal action. In their complaint, plaintiffs allege that Legg-Washington was falsely arrested; that Moza "was hired to investigate all claims of inappropriateness" arising out of Legg-Washington's arrest; that Moza was to continue his services, to file a Notice of Claim, and to seek damages on behalf of Legg-Washington as a result of his "extended detainment," as well as the injuries he allegedly suffered by other patients at Creedmore Psychiatric Center.

In opposition to the motion, plaintiffs have submitted an unsworn statement purporting to be an affidavit, and a memorandum of law. In their papers, plaintiffs concede that Moza was retained to represent Legg-Washington on the criminal action, that no other retainers exist, and that Mr. Moza "opposed other legal representation of General Law 50-e."

Initially, the Court notes that plaintiff Detria Legg had no attorney-client relationship with Mr. Moza that arose out of the criminal proceedings involving her son. Mr. Moza represented Legg-Washington only and, per the terms of the retainer agreement, that representation only pertained to Legg-Washington's criminal matter. After the court-appointed psychiatrists deemed Legg-Washington unfit to stand trial, all issues surrounding those findings were discussed with both Legg-Washington and his mother, and the decision was made to confirm those findings. The plaintiffs have not alleged that Mr. Moza was negligent in connection with that decision, or that the outcome of the criminal matter would have been different but for the negligence of Mr. Moza.

Defendant made a prima facie showing of entitlement to judgment as a matter of law (see generally Alvarez v Prospect Hosp., 68 N.Y.2d 320)., In opposition, the plaintiffs failed to raise a triable issue of fact as to whether defendant had an attorney-client relationship with either plaintiff at the time that the alleged malpractice occurred. Although "an attorney-client relationship may exist in the absence of a retainer or fee" (Gardner v Jacon, 148 A.D.2d 794, 795, 538 N.Y.S.2d 377), a plaintiff's unilateral belief does not confer upon him [or her] the status of client...Rather, to establish an attorney-client relationship there must be an explicit undertaking to perform a specific task" (Volpe v Canfield, 237 A.D.2d 282, 283, 654 N.Y.S.2d 160 [internal citation omitted]). In determining the existence of an attorney-client relationship a court must look to the actions of the parties to ascertain the existence of such a relationship "Wei Cheng Chang v Pi, 288 AD.2d 378,380, 733 N.Y.S.2d 471; see McLenithan v McLenithan,273 A.D.2d 757, 758-759, 710 N.Y.S.2d 674)". (Tropp v Lumer, 23AD3d 550[2005]). Plaintiffs presented no evidence that Moza was retained to investigate or prosecute any civil claims arising out of Legg-Washington's arrest.

A criminal defense attorney's duty of representation in a trial court ends upon the termination of the action (see, N.Y. App. Div. 2<sup>nd</sup> Dept., N.Y. Comp. Codes R and Regs. 22, §671.2(a)). Since there was no evidence of an explicit undertaking that Moza would perform any other task in addition to his representation of Legg-Washington in the criminal action brought against him, Moza's representation ended when that criminal court complaint was dismissed.

Based on the foregoing, defendant's motion is granted and plaintiffs' complaint is dismissed.

Dated: March 8, 2007

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LAWRENCE V. CULLEN, J.S.C.