

**Honzawa v Honzawa**

2004 NY Slip Op 30053(U)

September 27, 2004

Supreme Court, New York County

Docket Number: 0602983/9831

Judge: Charles E. Ramos

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

PRESENT: Ramos  
Justice

PART 3m

Honzawa Mitsuhiko et al

INDEX NO. 602983/98

- v -

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

MOTION SEQ. NO. 021

Honzawa Hirokuni et al

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

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

is decided in accordance with accompanying memorandum decision and order.

**FILED**  
SEP 29 2004  
NEW YORK COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 9/27/04

CHARLES E. RAMOS J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK:COMMERCIAL DIVISION

-----X  
MITSUHIRO HONZAWA, and YUKIKO HONZAWA.,

Plaintiffs,

Index No. 602983/02

- against -

HIROKUNI HONZAWA, YOSHIKO HONZAWA,  
MASAHIRO HONZAWA, YUKIHIRO HONZAWA,  
FRANK WARD, TAKARA INTERNATIONAL, INC.  
HIRO REAL ESTATE COMPANY, HIRO  
ENTERPRISE USA, INC., 655 FIFTH AVENUE  
MANHATTAN CORPORATION, TAKARA  
INDUSTRY CORPORATION,

Defendants.

-----X

**Charles Edward Ramos, J.S.C.:**

In motion sequence 021, plaintiff Mitsuhiro Honzawa, moves for an order directing Robert O. Johnston and Mark G. Westerfield (plaintiffs' counsel) to turn over the balance of the proceeds of a judgment entered in Mr. and Mrs. Honzawa's favor, which is currently being held in escrow.

In the underlying action, plaintiffs filed an action against defendants for malicious prosecution for being falsely accused of embezzling funds from a family business. Plaintiffs were ultimately successful and after a series of appeals, including a denial of *certiorari* by the Supreme Court of the United States, a final judgment of \$23 million was entered and paid in full. The funds were deposited into an escrow account of plaintiffs' counsel.

From the proceeds of the judgment, plaintiffs' counsel paid themselves the agreed upon fee as well as other agreed upon creditors. On June 21, 2004, a partial payment of approximately

\$10 million was made to plaintiffs leaving a balance in the escrow account. Plaintiffs' counsel claim that they cannot release the balance of the escrow account because they have received communications from a Mr. Maruyama, who claims to have a right to the funds in the escrow account. Mr. Maruyama claims to be plaintiffs' attorney in Japan and that he is owed a significant amount of money for his work in this action.

The only question to be answered in this motion is whether plaintiffs' counsel have a right to withhold the funds in the escrow account on the basis of Mr. Maruyama's allegations. Nothing in this decision is intended to comment in any way on the allegations of Mr. Maruyama, or whether money is due and owing to him from the plaintiffs.

This court retains jurisdiction over charging lien's against proceeds in the action. See *Costello v Kiaer*, 278 AD2d 50 (1<sup>st</sup> Dep't 2000). Pursuant to Judiciary Law §475 an attorney who appears for a party has a lien upon the client's cause of action, which attaches to any determination in the client's favor "and the proceed's thereof in whatever hands they may come." See also *Haser v Haser*, 271 AD2d 253 (1<sup>st</sup> Dep't 2000). There is no evidence that Mr. Maruyama was an attorney of record in this action or that he is permitted to practice law in this State. "A lien is granted under Judiciary Law §475 to the attorney of record". *Stinnett v Sears Roebuck & Co.*, 201 AD2d 362 (1<sup>st</sup> Dep't 1994). See also *Rodriguez v City of New York*, 66 NY2d 825 (1985) (the language 'the attorney who appears for a party' held

[\* 4 ]  
to grant a lien to the attorney of record.) Therefore, Mr. Maruyama does not have a right to a charging lien on the proceeds from the action, nor do plaintiff's counsel have a right (or an obligation) to retain the balance of the escrow account on behalf of Mr. Maruyama's alleged owed fees.

Accordingly, it is

ORDERED that the motion is granted and Mr. Johnston and Mr. Westerfield are ordered to turn over to plaintiffs the balance of the proceeds in the escrow account together with the accrued interest thereon.

Dated: September 27, 2004



J.S.C.

**CHARLES E. RAMOS**

Counsel are hereby directed to obtain an accurate copy of this Court's opinion from the record room and not to rely on decisions obtained from the internet which have been altered in the scanning process.

**FILED**

**SEP 29 2004**

NEW YORK  
COUNTY CLERK'S OFFICE