

<b>Sivin-Tobin Assoc., LLC v Akin Gump Strauss Hauer &amp; Feld LLP</b>
2006 NY Slip Op 30722(U)
September 28, 2006
Supreme Court, New York County
Docket Number: 107123/06
Judge: Jane S. Solomon
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

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

JANE S. SALOMON

PART 55

Index Number : 107123/2006  
SIVIN-TOBIN ASSOCIATES LLC.  
vs  
AKIN GUMP STRAUSS HAUER &  
Sequence Number : 001  
DISMISS ACTION

INDEX NO. \_\_\_\_\_  
MOTION DATE 9/18/06  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
1-3
4-5

Cross-Motion:  Yes;  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

N.B. -- preliminary conference is scheduled for Nov. 13, 2006 at noon.

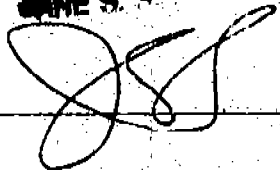
MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

OCT 04 2006

NEW YORK COUNTY CLERK'S OFFICE

Dated: 9/20/06

JANE S. SALOMON  
  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

9

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 55

-----X  
SIVIN-TOBIN ASSOCIATES, LLC,

Plaintiff,

-against-

INDEX NO. 107126/06

DECISION and ORDER

AKIN GUMP STRAUSS HAUER & FELD LLP,

Defendant.

-----X  
JANE S. SOLOMON, J.

In this breach of contract action, defendant Akin Gump Strauss Hauer & Feld LLP ("Defendant") moves to dismiss the complaint of plaintiff Sivin-Tobin Associates, LLC ("Plaintiff"). For the reasons described herein, the motion is denied.

Plaintiff is a legal recruitment firm, forwarding attorney candidate resumes and materials to law firms and other legal employers, and engaging in negotiation and other liaison activities between hiring firms and candidates. Plaintiff receives compensation only from hiring firms and does not collect fees from the attorney candidates it places.

**FILED**

Defendant is one of the world's largest law firms, with a diverse practice and over 900 attorneys and <sup>and</sup> ~~and~~ <sup>in</sup> fifteen cities worldwide. Plaintiff alleges that it has submitted the information about at least ten partner and seventy associate candidates to Defendant since 1996. Although Defendant may have

OCT 04 2006  
NEW YORK  
COUNTY CLERK'S OFFICE

interviewed some of these candidates, until the lawyer at issue here, it never previously hired anyone for whom Plaintiff sent information.

Plaintiff claims that on or about December 19, 2005, it sent materials regarding Mr. Chang-Joo Kim, a partner-level attorney, to Defendant. After Defendant hired Mr. Kim as a partner, Plaintiff requested its fee for Mr. Kim's placement, but Defendant made no response. Defendant alleges that it hired Mr. Kim through another legal recruiting firm that it has paid, and that it does not owe Plaintiff a fee. In this action Plaintiff sues Defendant alleging breach of contract, unjust enrichment and quantum meruit.

Defendant moves under Civil Practice Law and Rules §§ 3211(a)(1) and (7), to dismiss each cause of action for failure to state a claim and based on a defense founded on documentary evidence.

A motion to dismiss under CPLR § 3211(a)(1) on the ground that the action is barred by documentary evidence may be appropriately granted only where the documentary evidence utterly refutes Plaintiff's factual allegations, conclusively establishing a defense as a matter of law. Goshen v. Mutual Life Ins. Co of New York, 98 NY2d 314 (2002). In support of its motion, Defendant has submitted photocopies of an invoice dated

April 18, 2006 from another legal recruitment firm and its check dated May 5, 2006, for payment of the same. While these documents show that Defendant paid another firm, they do not refute Plaintiff's factual allegations conclusively. Accordingly, the motion to dismiss under CPLR § 3211(a)(1) is denied.

Under CPLR § 3211(a)(7), a court is concerned with whether the pleading states a cause of action rather than an ultimate determination of the facts. Stukuls v. State, 42 NY2d 272 (1977). The "motion must be denied if from the pleading's four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." Sheila C. v. Povich, 11 AD3d 120 (2004). A court may also look to supporting papers, including affidavits, submitted in opposition to the motion to dismiss. Wohlgemuth v. Lang Constr., LLC 18 AD3d 650 (2005). Reasonable inferences must be resolved in the plaintiff's favor. Gorelik v. Mount Sinai Hosp. Ctr., 19 AD3d 319 (2005).

Plaintiff's first cause of action alleges breach of contract. Plaintiff alleges that Defendant received and accepted Mr. Kim's resume and other materials from Plaintiff, along with Plaintiff's written placement terms and conditions. Plaintiff also alleges a course of conduct between the parties by which

Plaintiff submitted numerous resumes to Defendant. This sufficiently pleads the existence of an implied-in-fact agreement between the parties for Mr. Kim's placement. The complaint also alleges that Defendant did not pay Plaintiff based on this agreement, sufficiently pleading breach of contract.

Plaintiff's second and third causes of action plead, respectively, unjust enrichment and quantum meruit. To establish a claim for unjust enrichment or quantum meruit, a party must show "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services." Joan Hansen & Co. V. Everlast World's Boxing Headquarters Corp., 296 AD2d 103 (2002); Freedman v. Pearlman, 271 AD2d 301 (2000).

Plaintiff's complaint alleges (1) it evaluated Mr. Kim's candidacy in good faith based on Defendant's interest and that it forwarded Mr. Kim's materials to Defendant; (2) Defendant accepted Plaintiff's services through interviewing and hiring Mr. Kim; (3) Plaintiff expected to be paid by Defendant for such services; and (4) Plaintiff's written placement terms and conditions state the reasonable value of the services rendered. Thus, the complaint sufficiently alleges claims for both unjust enrichment and quantum meruit.

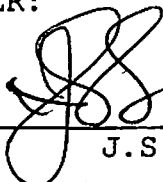
Accordingly, it hereby is

ORDERED that the motion to dismiss Plaintiff's  
complaint is denied; and it further is

ORDERED that counsel shall appear for a preliminary  
conference in Part 55 on November 13, 2006 at noon.

Dated: September 28, 2006

ENTER:


---

 J.S.C.  
 JANE S. SOLOMON

**FILED**  
 OCT 04 2006  
 NEW YORK  
 COUNTY CLERK'S OFFICE