

**Samuel v Weininger**

2007 NY Slip Op 30518(U)

April 2, 2007

Supreme Court, New York County

Docket Number: 0114483/2005

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

Steven B. Samuel and Samuel & Ott,  
Plaintiffs,

Index No.: 114483/05

- v -

Motion Date: 10/31/06

William Weininger, Druckman & Sinel, LLP,  
and Elliot Sinel,

Motion Seq. No.: 003

Motion Cal. No.: \_\_\_\_\_

Defendants.

The following papers, numbered 1 to 1-350 were read on this motion and cross-motion for summary judgment \_\_\_\_\_

Notice of Motion -Affidavits -Exhibits \_\_\_\_\_

Notice of Cross-Motion- Answering Affidavits - Exhibits \_\_\_\_\_

Replying Affidavits - Exhibits \_\_\_\_\_

Sur-Replying Affirmation \_\_\_\_\_

PAPERS NUMBERED

1-100

101-315

316-340

341-350

**FILED**  
APR 04 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Cross-Motion:  Yes  No

Upon the foregoing papers, defendants' motion for summary judgment and plaintiffs' cross-motion to strike defendants' answer, for summary judgment and to transfer this action to Justice Karen S. Smith must be DENIED.

Plaintiff law firm Samuel & Ott (hereinafter "the Samuel firm"), and one of its partners commenced this action against defendant law firm Druckman & Sinel, LLP ["the Sinel firm"], and one of its partners, as well as against one of the Samuel's firm's former partners for a judgment declaring its rights under a letter agreement dated January 16, 2002 between the Samuel firm's predecessor [Samuel and Weininger, LLP,] and the Sinel firm. In that agreement, the Samuel firm agreed that the Sinel firm "will be compensated at the rate of one-third of the entire legal fee recovered for our participation in [Nedyenia Hernandez, as parent and legal guardian of Sade Green v

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):

Bellevue Hospital], upon its conclusion by settlement, verdict or otherwise.”

CPLR 3212(b) provides “Supporting proof: grounds: relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions.”

Defendants’ papers are woefully incomplete since they fail to attach any of the pleadings thereto. In addition, the papers refer to other exhibits of which no copy is attached. For example, absent is “Exhibit J”, purportedly a letter from Steven Samuel wherein he admits that defendant firm performed necessary work on the case for Nedyhia Hernandez and her daughter Sade Green, the plaintiffs in the underlying malpractice action. Also mislabeled and out of sequence are: (1) the affidavit of attorney Korek, of Gersowitz Libo &Korek, which defendants papers refer to as “Exhibit A” but which follows “Exhibit H”, and is labeled “Exhibit B” (making it the second “Exhibit B” attached to defendants’ papers); (2) the affidavit of Michael Furling, which is out of sequence and also labeled a second “Exhibit C”, (3) “Exhibit D” and “Exhibit E”, the latter of which is apparently a copy of the original Verified Complaint and Answer, which are also given duplicate exhibit identifiers. Finally; defendants annex a document labeled “Release” signed by Brian A. Raphan, P.C., setting forth \$900,000 in consideration, which appears completely unrelated to the action at bar.

While the complete pleadings, including the Amended Verified Complaint and Amended Verified Answer, are contained in plaintiffs’ cross-motion, plaintiffs’ papers also fail to append a copy of a record to which they refer and also annex an incomplete record. The “Stipulation of Discontinuance of Cross Claims as to Defendant Weininger Only” does not include the signature of plaintiffs’ counsel, although the document states

that “all parties consent”.

More significantly, plaintiffs are not entitled to summary judgment declaring their rights under the letter agreement of January 16, 2002, as their papers refer to a retainer agreement between Nedyhia Hernandez and the Samuel firm, but append no copy in their papers. Certainly, the plaintiffs would have had to “show compliance with the requirements for filing a retainer statement and recite the number assigned by the Office of Court Administration”, as part of their compromise petition submitted to Judge Smith pursuant to 22 NYCRR § 202.67 and 22 NYCRR § 603.7. Among the issues such an omission raises is whether pursuant to DR 2-107(a)(2) the Samuel and Sinel firms had joint responsibility for representing Hernandez and her daughter under the Retainer Agreement dated October 13, 2000 between Hernandez and the Sinel firm, the only retainer agreement in the record now before this court.

As for plaintiffs’ cross-motion to have this action transferred to Justice Karen Smith, plaintiffs cite to no court rule or CPLR provision that supports such relief. Finally, plaintiffs’ argument that defendants answer should be stricken for their failure to comply with the discovery deadline is unpersuasive. The compliance conference that would have resolved those issues was adjourned in light of defendants’ motion for summary judgment served on August 21, 2006, which stayed discovery pursuant to CPLR 3214(b).

Accordingly, it is hereby

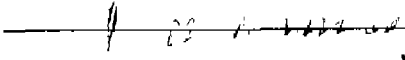
ORDERED that defendants’ motion for summary judgment and plaintiffs’ cross-motion for summary judgment, to strike defendants’ Answer, and to transfer this action are DENIED; and it is further

ORDERED that the parties shall appear for a Compliance Conference on Tuesday, May 1, 2007, 11:00 AM in IAS Part 15, Room 1254, 111 Centre Street, New York, New York.

This is the decision and order of the court.

Dated: April 2, 2007

ENTER:

  
DEDRA A. LAMAS J.S.C.  
J.S.C.

**FILED**  
APR 04 2007  
NEW YORK  
COUNTY CLERK'S OFFICE