

**Lynch v Incorporated Vil. of Northport**

2007 NY Slip Op 30765(U)

April 10, 2007

Supreme Court, Suffolk County

Docket Number: 0000992/2006

Judge: Joseph Farneti

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI  
Acting Justice Supreme Court

\_\_\_\_\_  
ANGELA P. LYNCH,

Plaintiff,

-against-

INCORPORATED VILLAGE OF  
NORTHPORT, RONALD F. MEGLIO  
and LINDA A. MEGLIO,

Defendants.  
\_\_\_\_\_

ORIG. RETURN DATE: DECEMBER 5, 2006  
FINAL SUBMISSION DATE: FEBRUARY 1, 2007  
MTN. SEQ. #: 001  
MOTION: MOT ADJ

ORIG. RETURN DATE: DECEMBER 5, 2006  
FINAL SUBMISSION DATE: FEBRUARY 1, 2007  
MTN. SEQ. #: 002  
MOTION: MOT D

**PLAINTIFF'S ATTORNEYS:**  
SPADA, ARDAM, SIBENER & MILLER, P.C.  
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NORTHPORT'S ATTORNEYS:**  
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& BELITSIS  
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**DEFENDANTS RONALD & LINDA  
MEGLIO'S ATTORNEY:**  
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516-741-2121

Upon the following papers numbered 1 to 8 read on these motions: \_\_\_\_\_  
FOR SUMMARY JUDGMENT AND TO WITHDRAW AS COUNSEL \_\_\_\_\_.

Notice of Motion and supporting papers 1-3; Memorandum of Law 4; Order to Show  
Cause and supporting papers 5-7; Answering Affidavits and supporting papers 8; it is,

**ORDERED** that this motion by defendant, INCORPORATED  
VILLAGE OF NORTHPORT, for an Order, pursuant to CPLR 3211 and/or 3212,  
dismissing plaintiff's complaint in its entirety, along with all cross-claims, on the

grounds that it did not receive prior written notice of the alleged defect in violation of General Municipal Law § 50-e and Village Law § 6-628, is hereby adjourned to **May 17, 2007** for submission, in light of plaintiff's counsel's application to be relieved; it is further

**ORDERED** that this motion by SPADA, ARDAM, SIBENER & MILLER, P.C. ("SPADA"), attorneys of record for plaintiff, ANGELA P. LYNCH, for an Order, pursuant to CPLR 321(b), relieving the SPADA firm as attorneys of record for plaintiff, is hereby **GRANTED**, without opposition; it is further

**ORDERED** that the branch of SPADA's application for the imposition of a charging lien and a retaining lien is hereby **DENIED**, without prejudice to renew upon proper papers; it is further

**ORDERED** that the stay imposed by the *ex parte* Order dated November 20, 2006 (Werner, J.), is hereby lifted. The compliance conference currently scheduled for April 26, 2007 is hereby adjourned to **June 28, 2007, at 9:30 a.m., Part 37, Arthur Cromarty Court Complex, 210 Center Drive, Riverhead**, given the Court's rulings herein.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff in a fall which occurred on a public sidewalk located within defendant INCORPORATED VILLAGE OF NORTHPORT, which sidewalk is alleged to abut the land owned by defendants RONALD F. MEGLIO and LINDA A. MEGLIO. With respect to the instant applications, the Court will first address the SPADA firm's motion to be relieved as attorneys of record for plaintiff, ANGELA P. LYNCH, and will then address defendant INCORPORATED VILLAGE OF NORTHPORT's motion to dismiss.

The SPADA firm, by DAVID M. ARDAM, ESQ., seeks to be relieved as attorneys of record for plaintiff ANGELA P. LYNCH, alleging that plaintiff was represented by another member of the firm, PAUL S. SIBENER, ESQ., in an unrelated action in which plaintiff alleged that MR. SIBENER physically abused her during her deposition in that matter on September 8, 2006. Thereafter, MR. SIBENER moved to be relieved as counsel for plaintiff in that matter, which application was granted by Order dated October 25, 2006 (Murphy, J.). MR. ARDAM now alleges that he conveyed to plaintiff in a telephone conversation in September of 2006 that his firm could no longer represent plaintiff in the instant

matter, as there exists a conflict of interest between plaintiff and the firm. MR. ARDAM further alleges that during the same telephone conversation, it was agreed that plaintiff would retain new counsel and notify the SPADA firm so that an “orderly” transition of her files to incoming counsel could be effectuated. MR. ARDAM contends that since that telephone conversation, he has had no further communication with plaintiff and there has been no contact from any new attorneys representing plaintiff in this action. As defendant INCORPORATED VILLAGE OF NORTHPORT has now made a motion to dismiss, MR. ARDAM submits that his firm cannot wait until plaintiff secures new counsel before seeking to be relieved. In view of the foregoing, the SPADA firm’s application to be relieved as attorneys of record for plaintiff ANGELA P. LYNCH is granted.

The SPADA firm also seeks the imposition of a charging lien upon plaintiff’s ultimate recovery, if any, and a retaining lien upon plaintiff’s files until counsel is reimbursed in the amount of \$539.50, representing costs and disbursements incurred to date. The Court of Appeals has stated that because a cause of action is a species of property, an attorney acquires a “vested property interest” in the cause of action at the signing of the retainer agreement and thus a “title to ‘property and rights to property’ ”; a charging lien does not merely give an attorney an enforceable right against the property of another, it gives the attorney an equitable ownership interest in the client’s cause of action (*LMWT Realty Corp. v Davis Agency*, 85 NY2d 462 [1995], quoting *In re City of New York*, 5 NY2d 300 [1959]; see Judiciary Law § 475; *Estate of Dresner v State*, 242 AD2d 627 [1997]). The client’s property right in her own cause of action is what remains after transfer to the attorney of the agreed-upon share upon the signing of the retainer agreement (*LMWT Realty Corp. v Davis Agency*, 85 NY2d 462, *supra*, *In re City of New York*, 5 NY2d 300, *supra*; *Estate of Dresner v State*, 242 AD2d 627, *supra*).

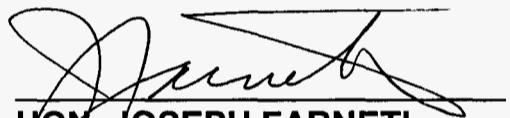
While the SPADA firm may be entitled to a charging lien for the reasonable value of services rendered prior to being relieved (see Judiciary Law § 475; *Smerda v City of New York*, 7 AD3d 511 [2004]; *Artache v Goldin*, 173 AD2d 667 [1991]; *Lai Ling Cheng v Modansky Leasing Co.*, 73 NY2d 454 [1989]; *Luciano v Trabucco*, 159 AD2d 695 [1990]), and/or a retaining lien upon plaintiff’s files, implicit in the analysis is the existence of a signed retainer agreement between attorney and client. In the instant application, MR. ARDAM referred to the terms of a retainer agreement between his firm and plaintiff, but failed to annex a copy of the retainer agreement to the moving papers. Therefore, on this record, the Court cannot fix the charging lien or retaining lien sought by counsel.

Accordingly, this branch of the SPADA firm's application is denied without prejudice to renew upon proper papers.

With respect to the application of defendant INCORPORATED VILLAGE OF NORTHPORT, seeking an Order, pursuant to CPLR 3211 and/or 3212, dismissing plaintiff's complaint in its entirety, along with all cross-claims, on the grounds that it did not receive prior written notice of the alleged defect in violation of General Municipal Law § 50-e and Village Law § 6-628, this application is adjourned to **May 17, 2007** for submission, in order to afford plaintiff the opportunity to retain substitute counsel and to submit opposition papers to defendant's motion, if so advised. Defendant's motion shall be submitted on May 17, 2007, regardless of whether plaintiff has retained substitute counsel by that date. Any further adjournments shall only be on consent of the parties and with the permission of the Court.

The foregoing constitutes the decision and Order of the Court.

Dated: April 10, 2007

  
HON. JOSEPH FARNETI  
Acting Justice Supreme Court