

Sigmond v Cohen

2007 NY Slip Op 32218(U)

July 6, 2007

Supreme Court, New York County

Docket Number: 0110330/2005

Judge: Emily Jane Goodman

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

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

Index Number : 110330/2005
SIGMOND, CAROL A.
vs
COHEN, CHRISTOPHER
Sequence Number : 003
PARTIAL SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

is motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

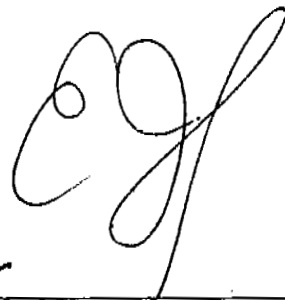
Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is denied as mooted*

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

Dated: 7/6/07


EMILY JANE GOODMAN S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 17

-----X
CAROL A. SIGMOND,

Plaintiff,

-against-

Index No. 110330/05

CHRISTOHER COHEN, individually and as
Executor of the Estate of Alexander
Cohen, C & C VISUAL, LTD., and BRENTWOOD
TELEVISION CORP.,

Defendants.
-----X

EMILY JANE GOODMAN, J.S.C.:

Plaintiff Carol A. Sigmond (Sigmond) moves for partial summary judgment on her cause of action for account stated against Brentwood Television Corp (Brentwood) and for sanctions against Defendant's counsel. The motion is opposed by Brentwood.

Originally, Plaintiff was an attorney employed by a firm which had entered into a contingency agreement with Brentwood, dated April 16, 1999, for representation in the connection with the matter of *Alexander H. Cohen and Brentwood Television Corp. v League of American Theatres and Producers, Inc and American Wing Theatre* (apparently, an arbitration). After Sigmond left that firm, Pollack & Greene, LLP (P & G), she alleges that she was retained by Brentwood to provide legal services regarding that arbitration, concerning ownership and control of certain Tony Award television broadcast tapes. More specifically, in a letter attached as Exhibit D to Plaintiff's moving papers, Sigmond states that after she left P & G on January 15, 2000, she was asked by Eugene Girden, Brentwood's counsel (who was also previously employed at P & G) and Alexander Cohen, Brentwood's

president at that time, to continue working on the arbitration matter. Plaintiff further claims that at that time she and Girden agreed to a rate of \$200.00 per hour. Sigmond attaches as Exhibit C an invoice addressed to Brentwood, dated November 1, 2000, for legal services rendered in connection with her appearance and representation at the arbitration, for the period of January 15, 2000 through October 31, 2000, totaling \$32,800.00. Plaintiff further alleges that from time to time she submitted copies of this invoice for payment to Brentwood and that prior to instituting this action in 2005, Brentwood made no objection to her invoice. In fact, Plaintiff alleges, and Brentwood concedes, that Brentwood paid \$2,000 between November 1, 2000 and July 25, 2005 towards that invoice. Sigmond also alleges, and Brentwood concedes, that an additional amount of \$6,500 was paid after this action was commenced. Sigmond also attaches a letter from Girden to Sigmond, dated July 2, 2002, and countersigned by Christopher Cohen, current president of Brentwood and son of the late Alexander Cohen (the July 2nd Letter). That letter provides, in relevant part:

1. Your invoice for \$32,800 to Brentwood is not being contested.
2. Brentwood has not assigned the copyrights or any other rights in and to its Tony Award properties, it has no intention of doing so at the present time and undertakes to guaranty that it will not do in the future until you are satisfied that your invoice is actually paid . . .

By countersigning this letter, Chris Cohen is committing Brentwood to the above.

Brentwood opposes the motion on the basis that issues of fact exist as to whether any contemporaneous documents confirm the agreement for legal services, whether Sigmond knew that Brentwood had a contingency agreement with P & G, and as to the nature of the relationship between Sigmond and Girden. Further, Brentwood maintains that Sigmond is not entitled to partial summary judgment because she did not disclose to Brentwood her association with Girden. Although Christopher Cohen admits that he countersigned the July 2nd Letter and made payments towards Sigmond's invoice, he maintains that he did so on the advice of Girden, and that would not have done so had he known the prior relationship.

Discussion

A party who receives bills and does not object to them is obliged to pay on the basis of account stated, and partial payment is considered as further evidence of the validity of the account. See e.g. *Ruskin, Moscou, Evans & Faltischek, P.C. v FGH Realty Credit Corp.*, 228 AD2d 294 [1st Dept 1996]). However, an account stated cannot create liability where no liability originally exists, and therefore, assumes the existence of some indebtedness between the parties. See *Martin H. Bauman Assoc., Inc. v H & M Intern. Transp., Inc.*, 171 AD2d 479 [1st Dept 1991]).

Here, Sigmond has met her burden to demonstrate that the elements of account stated claim have been met, and Brentwood has failed to meet its burden to raise a material issue of fact as to

any of those elements. See *Ehrlich, P.C. v Tullo*, 274 AD2d 303 [1st Dept 2000]). No discovery needs to be conducted as to the existence of any contemporaneous documents confirming Brentwood's agreement to pay Sigmond an hourly fee because Sigmond alleges, and Brentwood has produced no evidence to the contrary, that an agreement was made after Sigmond left P & G, with Girden and Alexander Cohen, for her to continue to represent Brentwood. The formation of the attorney client relationship occurred before the written retainer requirements of 22 NYCRR §1215.1 were effective and therefore, no contemporaneous documents are required.¹

¹22 NYCRR §1215.1 provides in pertinent part that
 (a) Effective March 4, 2002, an attorney who undertakes to represent a client and enters into an arrangement for, charges or collects any fee from a client shall provide to the client a written letter of engagement before commencing the representation, or within a reasonable time thereafter:
 (1) if otherwise impracticable; or
 (2) if the scope of services to be provided cannot be determined at the time of the commencement of representation.

For purposes of this rule, where an entity (such as an insurance carrier) engages an attorney to represent a third party, the term *client* shall mean the entity that engages the attorney. Where there is a significant change in the scope of services or the fee to be charged, an updated letter of engagement shall be provided to the client.

(b) The letter of engagement shall address the following matters:

(1) explanation of the scope of the legal services to be provided;
 (2) explanation of attorney's fees to be charged, expenses and billing practices; and (3) where applicable, shall provide that the client may have a right to arbitrate fee disputes under Part 137 of this Title. (c) Instead of providing the client with a written letter of engagement, an attorney may comply with the provisions of subdivision (a) of this section by entering into a signed written retainer agreement with the client, before or within a reasonable time after commencing the representation, provided that the agreement addresses the matters set forth in subdivision (b) of this section.

Brentwood has not explained why further exploration must be made into the nature of the relationship between Sigmond and Girden, and in any event, a fishing expedition is not warranted. Nor does Brentwood explain why Sigmond's knowledge of the 1999 P & G contingency arrangement is relevant if she was retained by Brentwood on an hourly basis for representation in connection with the arbitration subsequent to her departure from P & G.² Brentwood cites no authority for the proposition that Sigmond had a duty to disclose her relationship with Girden (if any), or why that is even relevant. There is no evidence indicating that Girden was not authorized by Brentwood to agree to an hourly rate, even though Brentwood's current president complains that he was misled into signing the July 2nd Letter and making payments to Sigmond. Moreover, to the extent Brentwood believes that it was misled by its own counsel, the issue should be raised with him. Further, the fact that P & G originally entered into a contingency arrangement with Brentwood in 1999, does not preclude a subsequent arrangement with a different attorney, given that clients are always free to hire an attorney of choice.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for partial summary judgment

²There is no support for Brentwood's contention that Girden's work on the arbitration was always done in his capacity as an attorney employed by P & G under the 1999 contingency agreement. Further, the fact that Girden never requested other "qualified" P & G attorneys to assist Brentwood in the arbitration after Sigmond left the firm, is irrelevant given that a client is free to terminate and/or establish relationships with attorneys of their choosing.

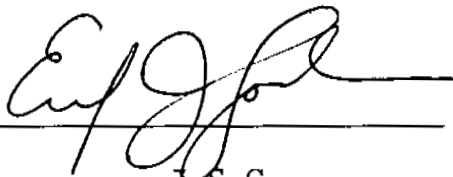
is granted in the amount of \$24,550.00, plus interest from November 1, 2000, and is otherwise denied.

Settle judgment.

This Constitutes the Decision and Order of the Court.

Dated: July 6, 2005

ENTER:



A handwritten signature in black ink, appearing to read 'Emily Jane Goodman', is written over a horizontal line. The signature is cursive and stylized.

J.S.C.

EMILY JANE GOODMAN

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

PRESENT: HON. LELAND DEGRASSE

PART 25

Index Number : 102911/2006

351 ST. NICHOLAS LLC

vs
JONES, JAMES

Sequence Number : 002

RAC

INDEX NO. _____

MOTION DATE JUN 20 2007

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

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

by plaintiff is granted on default to the extent that defendant is ordered to vacate the temporary housing accommodation located at 351 St. Nicholas Avenue, apartment 26 and relocate to his apartment at 351 St. Nicholas Avenue, apartment 52 within five days after service of a copy of the order to be submitted. Submit order.

Dated: July 11, 2007

[351stnicholas102911/06-02]

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

Dated: _____



J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION