

**Joseph v Delorenz**

2007 NY Slip Op 33385(U)

October 11, 2007

Supreme Court, Nassau County

Docket Number: 7028-99/

Judge: Antonio I. Brandveen

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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

Present: ANTONIO I. BRANDVEEN  
J. S. C.

PERRY JOSEPH and LEA JOSEPH,

Plaintiffs,

- against -

ROBERT DELORENZ,

Defendant.

TRIAL / IAS PART 32  
NASSAU COUNTY

Index No. 27028/99

Motion Sequence No. 005

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits .....	<u>1</u>
Answering Affidavits .....	<u>2</u>
Replying Affidavits .....	_____
Briefs: Plaintiff's / Petitioner's .....	_____
Defendant's / Respondent's .....	_____

The defendant moves for an order pursuant to CPLR 5021 (a) (3) directing the Clerk to enter a satisfaction on the docket of the judgment upon deposit with the Clerk the sum of money which satisfies the judgment against the defendant in favor of the plaintiffs entered on December 24, 2003. The plaintiffs partially oppose this motion only to the extent the plaintiffs' attorney seeks office expenses and a one third contingency fee of the total judgment with interest after expenses to be paid to the plaintiffs' law firm before the defense attorney deposits the sum of money with the Clerk to satisfy the judgment pursuant to 1200.46 f-1 of the Disciplinary Rules of the Code of Professional

Responsibility and 22 NYCRR § 691.20 (d) (2).

The defense attorney states, in a supporting affirmation of good faith dated July 26, 2007, the trial on the issue of damages in the underlying action commenced on June 11, 2003, before this Court, and on June 20, 2003, the jury returned a verdict for the plaintiffs in the amount of \$12,150.00, and judgment was subsequently entered. The defense attorney states the plaintiffs have failed to comply with the defendant's request to furnish a general release and satisfaction of judgment after the defense counsel has made numerous requests plaintiffs' counsel. The defense attorney asserts sending a letter dated May 17, 2007 in an attempt to pay the funds either to the plaintiffs' attorney or to the plaintiffs directly in exchange for a general release and satisfaction of judgment, but the plaintiffs have not responded to the defendant's requests to pay the judgment in exchange for a satisfaction.

The defense attorney provides, in detail, in a supporting affirmation dated July 26, 2007, factual and procedural background of this matter. The defense attorney avers the defendant should be allowed pursuant to CPLR 5021 (a) (3) to deposit the sum with the court in exchange for a court issued satisfaction.

The plaintiffs' attorney states, in a supporting affirmation dated August 14, 2007, the plaintiffs partially oppose this motion only to the extent the plaintiffs' attorney seeks office expenses and a one third contingency fee of the total judgment with interest after expenses to be paid to the plaintiffs' law firm before the defense attorney deposits the

sum of money with the Clerk to satisfy the judgment pursuant to 1200.46 f-1 of the Disciplinary Rules of the Code of Professional Responsibility and 22 NYCRR § 691.20 (d) (2). The plaintiffs' attorney states the plaintiffs do not refute any of the litigation history contained in the defense motion papers, and only opposes this motion because the plaintiffs' attorneys are entitled under the Disciplinary Rules of the Code of Professional Responsibility and the New York State Rules of Court to be paid the legal fee as agreed to by the plaintiffs in their retainer agreement with the plaintiffs' law firm. The plaintiffs' attorney contends, since it is undisputed the plaintiffs' law firm performed legal services for the plaintiffs in the underlying action to a successful conclusion, the plaintiffs' law firm is entitled to its fee under the retainer agreement. The plaintiffs' attorney avers the plaintiffs' law firm was not able to contact the plaintiffs since September 2005, when the plaintiffs informed the plaintiffs' law firm they were appealing the judgment *pro se*. The plaintiffs' attorney points out that appeal was dismissed, and subsequently the plaintiffs' law firm received the instant motion, and notified the plaintiff Perry Joseph who told the plaintiffs' law firm he was still planning to appeal the matter, but after being advised it was dismissed, the plaintiff Perry Joseph said he was unaware of that fact. The plaintiffs' attorney claims the plaintiffs' law firm offered to help the plaintiff Perry Joseph collect the judgment, but he did not request their help to obtain the money by preparing releases and other closing documents. The plaintiffs' attorney contends 22 NYCRR § 691.20 (d) (2) applies with regard to the collection of attorneys' fees on this judgment because it is

part of a regulatory scheme for the collection and protection of plaintiffs' recoveries and attorneys' fees by counsel serving on contingent retainers. The plaintiffs' attorney points out the December 24, 2003 judgment was for \$14,428.81 plus \$3.00 per day interest, and since December 24, 2003, another 1,335 days as of August 14, 2007 have passed equaling \$4,005.00 in additional interest for a total of \$18,433.81. The plaintiffs' attorney also notes the expenses totaled \$9,779.28 reducing that from the total judgment with interest leaves \$8,654.53 for distribution according to the retainer agreement; one third of that total is \$2,884.84 for the plaintiffs attorneys' fees, so the plaintiffs' law firm should get two checks for \$9,779.28 for expenses, and \$2,884.84 for the attorneys' fees leaving \$5,769.69 to be deposited in the Court pursuant to this motion.

CPLR 5021 (a) (3) provides:

The clerk of the court in which the judgment was entered or, in the case of a judgment of a court other than the supreme, county or a family court which has been docketed by the clerk of the county in which it was entered, such county clerk, shall make an entry of the satisfaction or partial satisfaction on the docket of the judgment upon: the deposit with the clerk of a sum of money which satisfies or partially satisfies the judgment pursuant to an order of the court, made upon motion with such notice to other persons as the court may require, permitting such deposit; such an order shall not be made unless the court is satisfied that there are no outstanding executions on which sheriff's fees have not been paid.

This Court has reviewed and carefully considered all of the parties' submissions with respect to this instant motion. CPLR 5021 (a) (3) allows "a voluntary payment of the judgment usually results in the filing of a satisfaction-piece in the appropriate clerk's office, which then requires that an entry of the satisfaction be made on the docket of the

judgment” (Siegel, NY Prac § 425, at 723 [4th ed.]). The defendant here has satisfied the Court there are no outstanding executions on the judgment on which a sheriff's fee may be due (*see*, Siegel, NY Prac § 425, at 723 [4th ed.], *supra* ). The deposit into court under this provision stops the running of interest, and the defendant has demonstrated good reason for the request to use this process, to wit the defense counsel tendered the judgment, as a condition precedent to the deposit of the money into court to the plaintiffs' counsel, but that tender was rejected. (*see*, Siegel, NY Prac § 425, at 723[4th ed.], *supra* ; *Meilak v. Atlantic Cement Co.*, 30 AD2d 254, 291 NYS2d 639 [3d Dept., 1968]). The plaintiffs agreed money should be deposited as allowed by CPLR 5021 (a) (3).

The plaintiffs' assertions with respect to 1200.46 f-1 of the Disciplinary Rules of the Code of Professional Responsibility and 22 NYCRR § 691.20 (d) (2) are inapposite regarding this motion. Moreover, on the service of papers, CPLR 321 provides:

An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.

“CPLR 2103 provides: “Except where otherwise prescribed by law or order of court, papers to be served upon a party in a pending action shall be served upon the party's attorney. Where the same attorney appears for two or more parties, only one copy need be served upon the attorney.”

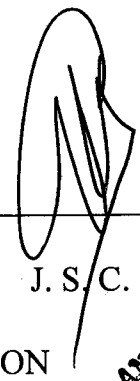
Accordingly, the motion is granted under CPLR 5021 (a) (3) directing the Clerk to

enter a satisfaction on the docket of the judgment upon deposit with the Clerk the sum of money which satisfies the judgment against the defendant in favor of the plaintiffs entered on December 24, 2003.

So ordered.

Dated: **October 11, 2007**

ENTER:



J. S. C.

FINAL DISPOSITION XXX

NON FINAL DISPOSITION

BOB. ANTONIO I. BRANDVEEN

**ENTERED**  
OCT 18 2007

NASSAU COUNTY  
COUNTY CLERK'S OFFICE