

Kaminski v Omrani & Taub, P.C.

2008 NY Slip Op 30878(U)

March 24, 2008

Supreme Court, New York County

Docket Number: 0601642/2007

Judge: Barbara Kapnick

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

PRESENT: BARBARA R. KAPNICK
Justice

PART 12

Index Number : 601642/2007

KAMINSKI, ROBERT

vs

OMRANI & TAUB, PC

Sequence Number : 003

DISMISS COMPLAINT

INDEX NO. 601642/07

MOTION DATE _____

MOTION SEQ. NO. 003

MOTION CAL. NO. _____

his 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

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED

MAR 27 2008

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/24/08



BARBARA R. KAPNICK J.S.C.

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):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

-----X
ROBERT KAMINSKI, PLLC. and ROBERT
KAMINSKI,

Plaintiffs,

DECISION/ORDER
Index No. 601642/07
Motion Seq. No. 003

-against-

OMRANI & TAUB, P.C., AFSHIN OMRANI
and MICHAEL TAUB,

Defendants.

-----X
BARBARA R. KAPNICK, J.:

FILED
MAR 27 2008
NEW YORK
COUNTY CLERK'S OFFICE

In this action, plaintiffs Robert Kaminski, PLLC. and Robert Kaminski seek to recover compensatory and punitive damages against defendants Omrani & Taub, P.C., Afshin Omrani and Michael Taub for breach of contract including breach of duty of good faith and fair dealing, 'tortious interference with a settlement', abuse of process and deceit and dishonesty in violation of Judiciary Law § 487.

There is no dispute that plaintiff Robert Kaminski, who was employed as an associate at the defendant law firm from approximately January 2003 through January 2005, and the defendants entered into a "Referral" agreement dated January 28, 2005 with respect to a medical malpractice action entitled, Vitebskiy v. Shin, et al., which was pending in Supreme Court, Kings County, under Index No. 32885/03.

The agreement sent by Alex A. Omrani, Esq. and acknowledged and agreed to by plaintiff, provides as follows:

We are writing in regard to my referral of the claims of Marat Vitbskiy and Svetlana Vitebskiy to your office. It is our understanding that you will have primary responsibility for preparing and trying the case. We will be available for consultation with the client and with you concerning the claim. It is our understanding that you will provide our firm with copies of all pertinent motions, pleadings, and documents so that we may monitor the client's case.

As we agreed, in consideration for said referral and services, we will receive 33 1/3% of legal fees recovered in the above-referenced case. It is further acknowledged that Ella Royzman is entitled to receive 25 % of legal fees recovered in said case.

Plaintiff Kaminski claims that defendants breached the agreement by failing to provide any assistance with respect to the underlying matter and that they deceived him by assuring him that they would share responsibility for handling the case.

Defendants moved by Order to Show Cause signed on February 26, 2007 in the Kings County action for an order, inter alia, declaring that the firm was entitled to an attorney's lien. The Vitebskiy matter settled on or about March 26, 2007 prior to jury selection for \$1.3 million. The Order to Show Cause was granted on March 30, 2007 to the extent of referring the legal fees dispute to a JHO for resolution. Plaintiff then moved by Order to Show Cause for an

order, inter alia, vacating the March 30, 2007 decision and limiting the defendant firm to a quantum meruit recovery for any legal work¹ it had actually performed.

Nonetheless, a hearing was scheduled before JHO Joseph Lodato on June 19, 2007, at which time an agreement was placed on the record.

Plaintiff now claims that "[d]efendants engaged in further wrongful contact by attempting to corrupt a fee hearing proceeding in the underlying action by hiring an attorney with an inappropriate relationship with the presiding Judicial Hearing Officer", i.e., Hon. Joseph Lodato, with whom defendant's counsel allegedly had a prior "professional relationship". Plaintiff alleges that he "was then left with no choice but to make a reservation of rights on the issue of breach of contract and withdraw his motion for the fee hearing."

Plaintiff dictated the following stipulation on the record on June 19, 2007 before JHO Lodato:

We have agreed to the release of the one third of the legal fees to each of our respective offices.

I wanted to emphasize for the record that my agreement to this distribution is solely for purposes of expediency and no way should it be construed as a consent or a concession to the issue of whether the Offices of Omrani

and Taub honored the fee sharing agreement that we entered into initially.

That said, my office's order to show cause returnable originally on 6/15 of '07 is hereby withdrawn.

Defendant Taub stated on the record that the terms of the stipulation as defined by plaintiff were essentially correct, but that he neither agreed or disagreed with plaintiff's motivation for agreeing to the terms.

Mr. Taub further stated,

It's my understanding that all motions and cross-motions, if any, are withdrawn with respect to the apportionment of legal fees between the law firms Robert Kaminsky PLLC, [sic] Ella Royzman, PLLC and Omrani & Taub, PC are hereby withdrawn on consent with prejudice against renewing in this or any other forum and resolved as Mr. Kaminsky [sic] stated.

Plaintiff did not respond favorably or negatively on the record to this provision.

The legal fees were thereafter distributed between the prior referring attorney (Ella Royzman), plaintiff and the defendants, in accordance with the terms of the referral agreement. Plaintiff contends that defendants thereby defrauded him out of over \$90,000.00 in legal fees.

Defendants now move for an order: (i) pursuant to CPLR § 3211(a) dismissing all causes of action against them; (ii) converting said dismissal to one for summary judgment pursuant to CPLR § 3211(c); (iii) awarding the defendants costs in connection with this motion; and (iv) sanctioning the plaintiffs and awarding the defendants a monetary punitive award for frivolous conduct.

Defendants argue that this action should be dismissed based upon the documentary evidence (i.e., the agreement between the parties) and under the doctrine of res judicata based on the terms of the stipulation which were dictated on the record before JHO Lodato on June 19, 2007.

Defendants further argue that plaintiffs' Complaint fails to state a cause of action upon which relief can be granted, or, at most, states a claim for breach of contract for which punitive damages would not be warranted.

Plaintiff Kaminski argues in opposition that defendants are not entitled to receive a percentage of the fee greater than their proportionate share of legal services. He further argues that the doctrine of res judicata does not apply because he never agreed on the record that the withdrawal of his Order to Show Cause was 'with

prejudice', and thus, reserved his right to pursue his claims in another forum.

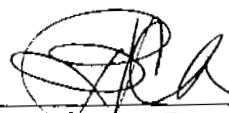
Based on the papers submitted and the oral argument held on the record on January 23, 2008, this Court finds that plaintiff did not specifically reserve his right to pursue these claims in an alternative forum, and is, therefore, barred from re-litigating the issues which were the subject of the settlement agreement placed on the record before JHO Lodato on June 19, 2007.

Accordingly, defendants' motion is granted. The Clerk may enter judgment dismissing plaintiffs' Complaint with prejudice, together with \$500.00 in costs to be paid by plaintiffs to the defendants within 20 days of entry of the Judgment.

That portion of defendants' motion seeking sanctions and punitive awards is denied in the discretion of this Court.

This constitutes the decision and order of the Court.

Dated: March 24, 2008


Barbara R. Kapnick
J.S.C.

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NEW YORK
COUNTY CLERKS OFFICE

BARBARA R. KAPNICK
J.S.C.