

**Worth, Longworth, Bamundo & London, LLP v  
Bamundo**

2008 NY Slip Op 32871(U)

October 14, 2008

Supreme Court, New York County

Docket Number: 10913707

Judge: Doris Ling-Cohan

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PRESENT: **JUSTICE DORIS LING-COHAN**

PART 36

*Justice*

*Worth, Longworth, Bamundo + London, LLP, Stuart London, and Stephen Worth,*

INDEX NO. 109137/07

MOTION DATE \_\_\_\_\_

- v -

*Steven Bamundo, and Bamundo, Zwal + Schermerhorn, LLP*

MOTION SEQ. NO. 001

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 ...

PAPERS NUMBERED	
_____	<u>1, 2</u>
_____	<u>3</u>
_____	<u>4</u>

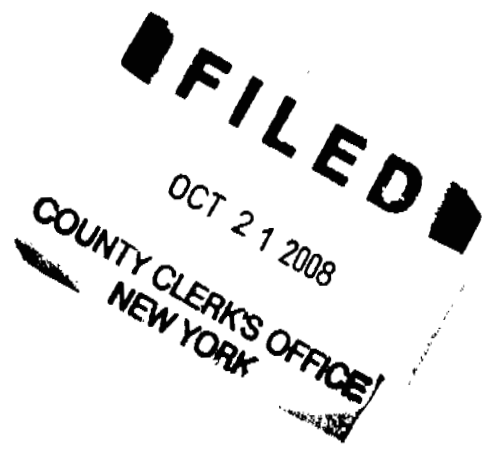
Answering Affidavits -- Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *is disposed of in accordance with the attached memorandum decision.*

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



Dated: 10/14/08

*[Signature]*  
J.S.C.

**JUSTICE DORIS LING-COHAN**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

WORTH, LONGWORTH, BAMUNDO & LONDON,  
LLP, STUART LONDON, and STEPHEN WORTH,  
Plaintiffs,

DECISION/ORDER

- against -

STEVEN BAMUNDO, and BAMUNDO, ZWAL &  
SCHERMERHORN, LLP.,  
Defendants.

INDEX NO. 10913707  
MOTION DATE  
MOTION SEQ. NO. 001

**FILED**  
OCT 21 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

The issue before the court is whether retainer and closing statements filed with the Office of Court Administration ("OCA") may be disclosed in a suit between attorneys of a partnership. According to the complaint, in or about April 1998, plaintiffs Stuart London ("London") and Stephen Worth ("Worth") entered into an agreement with defendant Steven Bamundo ("Bamundo") to form a limited liability partnership law firm, under the name of Worth, Longworth, Bamundo & London, LLP ("the Partnership" or "law firm"). (Bernstein Affirmation; Exhibit C, Complaint at ¶7). Pursuant to the partnership agreement, defendant Bamundo would receive 75% of the net fee income from personal injury cases and plaintiffs London and Worth would receive 25% of the net fee income from any personal injury cases exceeding \$25,000. (*Id.* at ¶8).

Plaintiffs maintain that, in June 2001, a personal injury client named Robert Kramer ("Kramer"), who allegedly suffered severe injuries, sought representation from the Partnership. According to plaintiffs, defendant Bamundo, realizing that Kramer's case would lead to a substantial recovery and legal fees, hid the existence of the Kramer case from his partners and assumed sole control of that case and all pending personal injury cases. (*Id.* at ¶¶10-11). Bamundo allegedly formed new law firms such as Bamundo, Zwal & Schermerhorn, LLP, to which he allegedly transferred plaintiff Partnership's personal injury cases, clients and revenue. (*Id.* at ¶12). Bamundo ultimately settled the Kramer case for \$1.2 million and, according to plaintiffs, failed to provide the Partnership with its percentage of the proceeds as provided in the Partnership agreement. (*Id.* at ¶¶15-16). Plaintiff Partnership ceased to function as a partnership on October 14, 2003. (Bernstein Affirmation at ¶12).

Plaintiffs learned of defendants' allegedly false and fraudulent behavior in or about May 2007 and commenced this action asserting the following causes of actions: (a) fraud; (b) breach of fiduciary duty; (c) conversion; (d) accounting; and (e) unjust enrichment.

Before this court is plaintiffs' motion to compel defendants to produce all of the documents requested in plaintiffs' notice of discovery and inspection dated April 25, 2008. Specifically, plaintiffs seek: (1) with respect to the Kramer case, the retainer statement filed with the Office of Court Administration ("OCA"), the closing statement filed with the OCA and the written retainer agreement entered into with Kramer; (2) all retainer statements filed by either defendant with the OCA on any date prior to October 14, 2003; (3) all retainer agreements with clients and closing statements for any case in which a retainer statement was filed by either defendant with the OCA, on any date prior to October 14, 2003; and (4) all case files in defendants' possession for cases that were filed in court by either defendant prior to October 14, 2003. In seeking such discovery, plaintiffs argue that it is material and necessary to this case, as defendant Bamundo was to be accountable to his fellow partners for all personal injury cases taken through the date of his resignation from the Partnership. According to plaintiffs, there is no way to identify the clients diverted and to determine the amount of fees that are owed to the Partnership, without the production of the above requested case files and closing statements.

In opposition, defendants do not dispute the allegations of the complaint; rather, defendants merely maintain that the discovery sought by plaintiffs "blithely cuts deep into the center of another firm's law practice and the attorney-client privilege". [¶4, Breakstone Affirmation in Opposition]. Moreover, with respect to the request for retainer and closing statements, defendants assert that the documents are privileged pursuant to Rule 603.7(c)(1) of the New York Rules of Court.

CPLR §3101(a) provides for "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." "[P]retrial disclosure extends *not only* to proof that is admissible *but also* to matters that *may lead* to the disclosure of admissible proof". *In re New York County DES Litigation*, 171 AD2d 119, 123 (1<sup>st</sup> Dept 1991) (emphasis supplied). Additionally, the test for CPLR §3101 (a) is "usefulness and reason", and

that disclosure will be permitted where the information sought concerns the controversy in issue and will assist in the preparation for trial. *Id.*; see also *Williams Real Estate, Co. v. Viking Penguin, Inc.*, 216 AD2d 27, 28 (1<sup>st</sup> Dept 1995); *Conway v. Bayley Seton Hosp.*, 104 AD2d 1018, 1019 (2<sup>nd</sup> Dept 1984). The majority of the discovery sought by plaintiffs falls within the standard articulated in CPLR §3101(a) and the relevant case law.

The remaining issue is whether the documents requested are privileged. A review of the relevant case law reveals that the discovery sought by plaintiffs is not subject to an attorney-client privilege as argued by defendants; such privilege does not attach to retainer and closing statements, which are not considered to be confidential communications, as such documents are not directly related to legal advice which may have been given. See *Priest v. Hennessy*, 51 NY2d 62, 69 (1980); *Oppenheimer v. Oscar Shoes, Inc.*, 111 AD2d 28, 29 (1<sup>st</sup> Dept 1985). In fact, in *Margolin v. Grossman*, (254 AD2d 158 [1<sup>st</sup> Dept 1998]), the court specifically held that “[a]ttorneys’ fee arrangements and bills are not within the scope of the attorney-client privilege”, and therefore were found to be subject to discovery, in an action commenced by an attorney against other attorneys to recover fees claimed owed in connection with lawsuits in which plaintiff attorney acted “of counsel” to defendants.

Moreover, defendants’ argument that the documentary discovery sought by plaintiffs is shielded by Rule 603.7(c)(1) of the Rules of the Appellate Division, First Department is also without merit. Such rule provides as follows:

“[a]ll statements of retainer or closing statements filed shall be deemed to be confidential and the information therein contained shall not be divulged or made available for inspection or examination to any person other than the client of the attorney filing said statements except upon written order of the presiding justice of the Appellate Division”.

The rule does not, however, provide that retainer and closing statements are privileged between an attorney and a client, as argued by defendants. Rule 603.7(c)(1) merely indicates that the retainer and closing statements filed with the OCA shall be confidential and not subject to inspection by anyone other than the client of the attorney filing the documents, but makes no mention as to disclosure by the filing law firm. See *In re Nassau County Grand Jury Subpoena Duces Tecum v. Sptizer*, 1 Misc 3d 902(A), affirmed 7 AD3d 802, affirmed 4 NY3d 665 (2005)(“this rule, however, speaks to the non-disclosure of such statements by the [OCA], not

the disclosure by the filing law firms”)<sup>1</sup>. Presumably, however, since defendant Bamundo was part of plaintiff law firm at the time of the filing of the relevant retainers and closing statements, plaintiff law firm would undoubtedly be listed on the form as the “attorney filing said statement”, or, at the very least, the law firm representing the subject client. The court notes that even if plaintiff law firm’s name was not listed on the subject retainer and closing statements, arguably, it should have been, since, it is not disputed in the within papers that Bamundo was a member of plaintiff law firm at the time of the subject filings.

Moreover, here, plaintiffs are not seeking documents from the OCA, which arguably could assert that the subject documents are “confidential” as per the rule; rather, plaintiffs seek copies of documents in defendants’ possession and which, at the time of their filing, were part of plaintiff law firm’s files, and therefore should have been accessible to plaintiffs. The discovery at issue arises in a suit between attorneys of a former partnership, in which plaintiff partnership is claiming that it should have been listed on the subject filings as the attorney of record, given the terms of the partnership agreement. In this partnership dispute, where defendant Bamundo is in sole possession of the partnership’s prior files and documents contained therein, and where such files were presumably previously shared or at least accessible by the partnership’s attorneys until Bamundo left the firm and this dispute arose, plaintiffs are entitled to these documents. It is noted that in the within papers, defendant Bamundo does not dispute that he was a member of plaintiff law firm at the time of the subject filings. Additionally, defendants have failed to cite to any case in which Rule 603.7 has been applied to preclude discovery of retainer and closing statements sought in the context of a fee dispute between counsel.

Further, defendants’ argument that “[i]f, after trial, plaintiffs are successful in their claim of partnership and/or partnership advantage, the amount of the *Kramer* settlement deals only with damages and can be dealt with at that time” (¶11, Affirmation in Opposition) is an admission that the discovery at issue is relevant to the issue of damages in this case. Reserving discovery to a later stage of the case is contrary to the discovery rules of this state. As stated above, the test as to whether documents are discoverable is whether they are material and necessary to the case. See CPLR §3101. Discovery is not to be completed piecemeal, as defendants suggest, and certainly not during the course of a trial, after a determination on liability. It is clearly not practical to

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<sup>1</sup> It is noted that in such case, the court rejected the argument that opening and closing statements filed with the OCA were confidential and not subject to disclosure pursuant to 22 NYCRR 691.20 (c), applicable in the Second Department; such rule is comparable to Rule 603.7(c), applicable in the First Department, which was asserted by defendants in this case as a basis for withholding retainer and closing statements.

resume discovery, after liability is established, while the case is on the trial calendar, and/or in the midst of a trial, as defendants suggest. The rules regarding discovery in this state are plainly contrary to defendants' proposed method of practice.

Thus, based upon the above, it is

ORDERED that, *within 20 days of service of a copy of this order with notice of entry*, defendants shall supply to plaintiffs, as to to plaintiffs' notice for discovery and inspection dated April 25, 2008, the following: (1) with respect to Robert Kramer and the case captioned *Kramer v. City of New York*, the retainer statement filed with the OCA, the closing statement filed with the OCA and the written retainer agreement entered into with Kramer; (2) all retainer statements filed by either defendant with the OCA on any date prior to October 14, 2003; and (3) all retainer agreements with clients and closing statements for any case in which a retainer statement was filed by either defendant with the OCA, on any date prior to October 14, 2003.

It is further

ORDERED that the portion of plaintiffs' motion which seeks to compel defendants to respond to demand number four (4) of plaintiffs' notice for discovery and inspection dated April 25, 2008, which seeks all case files in either defendants' possession for cases that were filed in court by either defendant prior to October 14, 2003, is denied; such discovery is deemed overbroad and, at this juncture, have not been established to be material and necessary to this case<sup>2</sup>; it is further

ORDERED that all parties shall **appear for deposition on or before December 5, 2008**; it is further

ORDERED that the **discovery conference scheduled for Friday, October 10, 2008 is adjourned to December 12, 2008, at 10:30 a.m., Room 428, 60 Centre Street, New York, NY**; it is further

ORDERED that *within 20 days of entry of this order*, plaintiffs shall serve a copy of this order upon all parties with notice of entry.

Dated: 10/14/08

**FILED**  
OCT 21 2008

*[Signature]*  
Doris Ling-Cohan, JSC

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if Appropriate:  DO NOT POST

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Discovery Motions\Compel\worth.bamundo.wpd

<sup>2</sup> As plaintiff will have been provided with the filed retainer agreements, this additional requested discovery is overbroad. This denial, however, is without prejudice to plaintiffs' right to establish the relevance of such information, if appropriate, after receipt of the above ordered discovery from defendants. The court notes that plaintiffs seek all case files, when it appears that only the filing of personal injury cases is in dispute.