

**Associated Food Stores, Inc. v 2927 Eighth Ave.
Corp.**

2010 NY Slip Op 31916(U)

June 29, 2010

Supreme Court, New York County

Docket Number: 603268/2009

Judge: Debra A. James

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PART 59

PRESENT: DEBRA A. JAMES

Associated Food Stores, Inc., Associated Food Stores, LLC, Associated Group Grocers and AFS Capital, LLC, Plaintiffs, - v - 2927 Eighth Avenue Corp. a/k/a 2927 Eighth Avenue Corp., Elvio Taveras and 2927 Food Corp., Defendants.

Index No.: 603268/2009 Motion Date: 06/22/10 Motion Seq. No.: 002 Motion Cal. No.:

The following papers, numbered 1 to 3 were read on this show cause order to be relieved as counsel.

FILED

JUL 14 2010 PAPERS NUMBERED

Notice of Motion/Order to Show Cause -Affidavits -Exhibits 1 Answering Affidavits - Exhibits Replying Affidavits - Exhibits

COUNTY CLERK'S OFFICE NEW YORK

Cross-Motion: Yes No

Janese N. Thompson, Thompson Law Group, P.C. moves to be relieved as counsel for the plaintiff. She seeks a retaining lien for fees for legal services and disbursements against the case file of plaintiff.

Plaintiff submits opposition papers to attorney Thompson's motion for the same relief in Tavares v General Trading Co., Inc. (New York County Supreme Court Index No. 104260/06). The court takes judicial notice of that opposition and considers it in opposition to the motion in the action at bar. In such papers, plaintiff requests that the court deny attorney Thompson's application. He also opposes the retaining lien, and asserts

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Check One : FINAL DISPOSITION NON-FINAL DISPOSITION

that he has overpaid attorney Thompson, having already remitted almost \$60,000 to attorney Thompson.

It is certain that attorney Thompson and plaintiff have irreconcilable and irreparable differences that have destroyed their ability to continue their attorney-client relationship. Attorney Thompson has set forth grounds that warrant relieving her pursuant to CPLR § 321(b).

As attorney Thompson seeks to be discharged before the completion of her services,

FILED
JUL 14 2010
COUNTY CLERK'S OFFICE
NEW YORK

the amount of the attorney's compensation must be determined on a quantum meruit basis (citations omitted). ...an attorney's rendition of services and expenditure of disbursements on behalf of plaintiff entitles her to a common-law retaining lien on her client's file. A retaining lien remains in force until the client's account is paid in full and is dependent only upon the attorney's continued possession of papers irrespective of the outcome of the litigation involved (citation omitted). Consequently, "where a client requests that papers in the possession of his former attorney be returned to him, and the attorney asserts a claim for compensation for services rendered, the attorney is entitled to a determination fixing the value of his services, and the amount so fixed must be paid or otherwise secured to the attorney before any such turnover may be enforced".

Theroux v Theroux, 145 AD2d 625, 626 (2d Dept 1989).

The amount of the retaining lien is contested and attorney Thompson must come forward with invoices, receipts, hourly time charge accounts, records of payments made by plaintiff to attorney Thompson to date, and other evidence of the value of her services and the outstanding bills, if any. Likewise, plaintiff

has the right to offer evidence of payments he has made to attorney Thompson and any other relevant evidence.

As to plaintiff's complaints about the legal services rendered by attorney Thompson, such evidence is relevant to the question of the value of attorney Thompson's services. However, to the extent that plaintiff seeks to enlarge the record with respect to matters previously before this court and/or the Appellate Division, such argument is not pertinent to the question of attorney Thompson's motion to be relieved or to fix a retaining lien.

To determine the amount of the retaining lien, if any, the court shall refer the parties to a special referee to hear and report.

Therefore, it is

ORDERED that attorney Janese Thompson's motion to be relieved as counsel to plaintiff Elvio Taveras is GRANTED pursuant to CPLR 321(b) and attorney Janese Thompson is relieved effective upon service of a copy of this order with notice of entry on plaintiff at his last known address and upon the other parties; and it is further

ORDERED that the issue of whether attorney Janese Thompson is entitled to a charging lien on plaintiff's file and, and if so in what amount, is hereby referred to a Special Referee to hear and report pursuant to CPLR §4212 with recommendations, except

that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR §4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforesaid issue; and it is further

ORDERED that this proceeding is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403 or receipt of the determination of the Special Referee or the designated referee; and it is further

ORDERED that within 30 days of the receipt of the determination of the Special Referee or the designated referee and the payment or securing of the amount of any determination by plaintiff, attorney Janese Thompson shall turn over the entire file to plaintiff;

ORDERED that within 60 days from the date of this Order the attorney Thompson shall cause a copy of this order with notice of entry to be served on the Clerk of the Judicial Support Office (Room 311, 60 Centre Street) to arrange a date for the reference to a Special Referee; and it is further

ORDERED that the retaining lien application shall be dismissed as abandoned if neither party complies with the immediately preceding paragraph.

This is the decision and order of the court.

Dated: June 29, 2010

ENTER:

Debra A. James
HON. DEBRA A. JAMES J.S.C.

FILED
JUL 14 2010
COUNTY CLERK'S OFFICE
NEW YORK