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

PRESENT: LOUIS B. YORK J.S.C Justice

PART 2

Scavola

- v -

Padelo

INDEX NO. 113781/09

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this 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

FILED
SEP 08 2010
NEW YORK
COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

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

Dated: 9/2/10

LOUIS B. YORK J.S.C.

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/JUDG. ☐ SETTLE ORDER /JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

Index No: 113781/2009

SCAROLA ELLIS, LLP,

Plaintiff,

-against-

ELAN PADEH

Defendant

LOUIS B. YORK, J.:

Plaintiff, Scarola Ellis LLP, moves under CPLR 3212(e) for partial summary judgment on its second (*quantum meruit*) and fourth causes of action (unjust enrichment) for legal services. Defendant claims Plaintiff is not entitled to these equitable remedies and counterclaims because the Scarola firm coerced him into signing a retainer agreement. Plaintiff's motion also seeks to dismiss the Defendant's counterclaims, contending that they do not state a cause of action.

Elan Padeh retained George Zelma to represent him in an employment action against his former employer, the Corcoran Group. Approximately one year later Mr. Zelma, the attorney of record, signed a contingency agreement with Mr. Scarola's firm to act as trial counsel. On February 1, 2006 the Plaintiff sent the Defendant a separate retainer agreement which Mr. Padeh signed in August. A year later Mr. Padeh and The Developer's Group (TDG), a company owned by Mr. Padeh, reached a settlement with the Corcoran Group. Mr. Padeh excluded Mr. Scarola's firm from participating in these negotiations.

CPLR 3212(e)

CPLR 3212 (e) allows for partial summary judgment to be "granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just." However, under CPLR 3212 (b) summary judgment is denied "if any party shall show facts sufficient to require a trial of any issue of fact." Plaintiff asks for partial summary judgment to be granted on two equitable theories *quantum meruit* and unjust enrichment.

The Plaintiff is not entitled to *quantum meruit* when there is a "valid and enforceable written" agreement between the parties. (See *Parker Realty Group, Inc. v Petigny*, 68 A.D.3d 571, 572; 891 N.Y.S.2d 360, 361 (1st Dep't. 2009)). Mr. Scarola asserts his firm provided Plaintiff with 2,400 hours of legal services worth approximately $800,000. The firm invested this time in anticipation of a multi-million dollar settlement. Mr. Scarola asserts his firm was denied equitable reimbursement for services rendered because it only received contingency fees based on the final settlement amount of $200,000.

The Defendant argues that as a matter of law the written retainer agreements with Mr. Zelma and Mr. Padeh cover all of the work the Plaintiff performed. The first contract, which was written by Mr. Scarola and emailed to Mr. Zelma, only contained provisions for services provided on a contingency basis. The second contract, between Mr. Scarola and Mr. Padeh, described the contingency arrangements and contained a schedule for computing fees for hourly work outside the scope of the contingent fee.

These contracts clearly stated how the Plaintiff was to be paid for his services.

To recover under a theory of unjust enrichment the Plaintiff must establish (1) he performed "the services in good faith, (2) the defendant accepted those services, (3) he expected compensation for rendering the services and (4) he is requesting the "reasonable value of the services." (See *Joan Hansen & Co. v. Everlast World's Boxing Headquarters Corp.*, 296 A.D.2d 103, 744 N.Y.S.2d 384, (1st Dep't. 2002))

Plaintiff argues the Defendant was unjustly enriched when he settled for a lower monetary amount than the case merited. The Plaintiff asserts the Defendant settled for the lower amount because he received valuable non-monetary consideration which included (1) dropping a perjury investigation into his company's affairs; (2) potentially harsh sanctions against both the Defendant and TDG; and (3) additional legal fees which could have amounted to $1,000,000.

Defendant alleges he was forced to settle for a lesser amount because of the Plaintiff's behavior. He asserts that during deposition the Plaintiff abused and insulted principals who worked for the Corcoran Group thereby causing settlement talks to break down. Mr. Padeh asserts that Plaintiff's actions substantially increased his legal feels.

The Plaintiff did not participate in either the settlement negotiations or the TDG litigation. The Plaintiff's argument that the Defendant was unjustly enriched by this agreement is plainly wrong. It is a fact, however, that Mr. Padeh settled for a dramatically smaller monetary award than either he or the Plaintiff anticipated in return for other benefits.

CPLR 3211(a)(7)

The Plaintiff argues Mr. Padeh's counterclaim should be denied as a matter of law. When determining to grant a motion for failure to state a cause of action, the "court should accept as true the facts alleged in the complaint, accord plaintiff the benefit of every possible inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (citations omitted)" *Frank v. DaimlerChrysler Corp.* 292 A.D.2d 118; 121 741 N.Y.S.2d 9, 12; (1st Dep't. 2002)

To prove duress, Defendant must show that there was "both a wrongful threat which precluded the exercise of free will." *In the Matter of Kenneth S. Guatemalan* 222 A.D.2d 255; 257 634 N.Y.S.2d 702; 704 (1st Dep't 1995). After the duress ends, the agreement "must be promptly disaffirmed or otherwise be deemed to have been ratified (Citations omitted)." *Id.* Mr. Padeh asserts Mr. Scarola badgered him to sign the retainer for six months. He signed the agreement only after Plaintiff threatened to abandon the case on the eve of trial. *Immediately* after signing the contract, however, the Defendant instructed Mr. Zelma to restart negotiations and close the case as soon as possible. He told both Mr. Zelma and the Plaintiff that Mr. Scarola's firm was not to do additional work on the case. On several occasions he had private conversations with Mr. Scarola in which he told the Plaintiff to cease all activity concerning the case. The Defendant believes the Scarola firm did not perform any work on the case after he signed the retainer agreement.

The Defendant alleges he was coerced into signing the agreement because he feared going to trial. When the case did not go to trial, Mr. Padeh immediately told the

Plaintiff to stop working on the case and instructed Mr. Zelma to negotiate a settlement soon as possible. Thus the Defendant has set forth a cognizable claim for duress.

Accordingly it is

ORDERED that plaintiff's branch of its motion for partial summary judgment is denied; and it is further

ORDERED that the branch of the Plaintiffs motion to dismiss the counterclaim is denied.

Dated: September 2, 2010

Enter:

Louis B. York, J.S.C.