

**Gover v Savyon**

2012 NY Slip Op 30160(U)

January 11, 2012

Sup Ct, Nassau County

Docket Number: 14877-06

Judge: Vito M. DeStefano

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SUPREME COURT - STATE OF NEW YORK

Present:

**HON. VITO M. DESTEFANO,**  
Justice

TRIAL/IAS, PART 19  
NASSAU COUNTY

**MEIR G. GOVER, ESQ.,**

**Decision and Order**

**Plaintiff,**

**MOTION SUBMITTED:  
October 12, 2011  
MOTION SEQUENCE:04  
INDEX NO. 14877-06**

**-against-**

**SHLOMO R. SAVYON,**

**Defendant.**

**The following papers and the attachments and exhibits thereto have been read on this motion:**

Notice of Motion	1
Affidavit in Opposition	2
Reply Affirmation	3

In an action to recover fees for legal services allegedly rendered by the Plaintiff, the Defendant moves for summary judgment pursuant to CPLR 3212 dismissing the complaint based on two of the affirmative defenses set forth in his answer.<sup>1</sup>

<sup>1</sup> The first affirmative defense in the defendant's answer asserts that "Plaintiff's claim for recovery of a judgment arising from legal fees earned is barred and may not be maintained, as the claim arising from his purported practice of law without a New York license, in express violation of Judiciary Law § 478, and 22 NYCRR § 1200.11(a)." The second affirmative defense asserts that "[a]ny agreement between Plaintiff and Savyon for rendition of legal services, as alleged (the existence of which agreement is expressly denied), would be and is, any event invalid pursuant to Judiciary Law § 478 and 22 NYCRR § 1200 et seq. as Plaintiff was and is not licensed to practice law in the State of New York, and such agreement as alleged is void" (Ex. "B" to Motion at ¶¶ 28-29).

In a prior order dated November 17, 2009, the court stated (*Gover v Savyon*, 26 Misc3d 1124(a) [Supreme Court Nassau County 2009], *affd* 81 AD3d 689 [2d Dept 2011]):

[a]s to whether the plaintiff engaged in the practice of law, it is noted that the complaint, which is verified by counsel, is replete with allegations to the effect that plaintiff contracted with “defendants”(sic), a New York resident and a “New York Company,” to provide “legal services” at an agreed-upon rate. It is also repeatedly alleged in the pleading that plaintiff did, in fact, provide “legal services”, and the plaintiff’s claim arises from the failure to pay “legal fees” for the “legal services” rendered. In particular, the complaint states that “the defendants and plaintiff entered into an oral agreement” for “legal services” to be billed at a rate of \$75.00 per hour, and that “plaintiff represented the defendants in these various and sundry matters including but not limited to representation in the sale of Alfa Medical Company, mediation of disputes between two owners of Alfa Medical Company, advising the legality of product placement under the FDA, reviewing contracts, and immigration matters, for nine months and plaintiff has yet to be paid” (Exhibit “A” to the Notice of Motion at ¶ 5).

The entire action, therefore, including each transaction separately listed in the complaint “for a fourth cause of action,” involves a claim for unpaid “legal fees” for “legal services” rendered to a particular client or clients. This conclusion is supported by reference to the invoice sent to the defendant by the plaintiff, which begins: “Re: Legal Fees for the period of 9 months commencing February 2003 ending November 2003, working for you and alfa” (Defendant’s Affidavit in Support at p 16, ¶ 79; Exhibit “X” to the Notice of Motion). *Thus, the fact that the plaintiff engaged in the practice of law is not in dispute. (Emphasis added)*

Accordingly, the only issue to be decided on this motion is from what location such legal services were rendered. Any services that were rendered in New York would constitute a violation of Judiciary Law § 478 for which the Plaintiff cannot recover legal fees.

The legal services at issue are limited to the nine-month time period commencing in February 2003 and ending in November 2003 (Ex. “N” to Motion). At the time legal services were rendered, the Plaintiff was not licensed as an attorney in the United States but had been licensed as an attorney in Israel (Ex. “S” to Motion at pp 10, 12). During that nine-month period, the Plaintiff visited New York on two occasions. With respect to the first visit, the Plaintiff testified at his deposition as follows:

- Q: Where were you located when you performed those services?  
A. (Referring) on February 21?

- Q. Yes.
- A. Mr. Savyon's basement.
- Q. In New York?
- A. In New York.
- Q. What services were you performing for six and a half hours?
- A. I had material I said and read documents.
- Q. Were you performing as a lawyer?
- A. I read - I read documents as a lawyer.
- Q. So you were performing the services that you would normally perform in Israel, yet now you are performing them in New York as a lawyer?
- A. I read legal material in New York on New York soil.
- Q. Were you performing as a lawyer?
- A. I didn't do any performance. I merely read. I didn't advise, I didn't met (sic) with third parties. I didn't met with nobody. But I was approached by Mr. Savyon with vast material to read. I don't remember . . .
- Q. What kind of material?
- A. With whatever papers he presented me.
- Q. Were the services that you were performing the services of an attorney?
- A. Mmm. Good question. I read legal material.
- Q. Were you performing services that you generally perform as an attorney?
- A. No.
- Q. You don't generally perform reading documents as an attorney?
- A. Usually I do. I do more than that.
- Q. That's one of the services that you perform for your clients?
- A. Certainly, every lawyer reads material.
- Q. You weren't reading these as a novel for your own information, you were reading them for a purpose; correct?
- A. And I charge for them.
- Q. What was the service you performed? What were you going to do after you read these materials?
- A. I am - everything had to do with New York I marked with a pencil. Greg, Gregory Bitterman, Esquire, he was Mr. Savyon's New York at first attorney and Savyon told me that he is giving it to him to handle, to Greg Bitterman, Esquire.
- Q. I lost you. Let's go over this again.
- A. Please.
- Q. You sat in the basement and read documents. Correct?
- A. Correct.
- Q. In New York?
- A. In New York.
- Q. And tell me you were performing that service as an attorney, were you not?

A. Yes, sir.

(Ex. "S" to Motion at pp 123-25).

The Plaintiff again conceded that he was in New York reading "legal material", a service for which he sought "to be compensated as a lawyer". Specifically, the Plaintiff testified as follows:

Q. In connection with Alfa, can you tell me what you did on February 21<sup>st</sup>?

A. I can't recall. Probably, listening to Mr. Savyon.

Q. You spent two and a half hours listening to your friend?

A. At least.

Q. On February 21<sup>st</sup>, it appears to me that you spent 2.5 hours plus 2.5 hours plus 1.25 hours. Do you see that?

A. (Referring) yes, sir, that was a short day.

Q. Six and a quarter hours?

A. Short day.

Q. That was only three days before you were to take the Bar exam?

A. Yes, sir.

Q. And you spent six and a quarter hours on these matters?

A. (Referring) sure. Right.

Q. Were those services legal services?

A. I read material and I listened to him.

Q. Were those times spent in the performance of legal services?

\* \* \* \*

Q. Sir, were the six and quarter hours devoted to legal services?

A. Legal material. You can read legal material. You can move to strike.

Q. Do you seek to be compensated as a lawyer for those services?

A. Say again.

Q. Do you seek to be compensated as a lawyer for those services?

A. Yes.

The Plaintiff billed for similar services in March 2003 until he returned to Israel on March 8, 2003 (Ex. "S" to Motion at pp 149, 151, 153):

Q. Can you tell me what services you performed between March 1<sup>st</sup> and March 8<sup>th</sup> in New York for Mr. Savyon?

A. I read material that Mr. Savyon submitted to me.

\* \* \* \*

A. (Referring) 6.75 was already - if in the air, I read material on the plane. I flew

out March 8, 6.75 pertains to over the Atlantic ocean reading.

Q. Are you claiming legal fees for the materials that you were reading?

A. Yes.

The Plaintiff returned to New York on November 4, 2003 (Ex. "S" to Motion at pp 224, 226-27, 231-32). The Plaintiff testified that the work he billed for on November 4 was for reading legal material while he was flying on an airplane en route to New York (Ex. "S" to Motion at pp 224, 226-27, 231-323). However, other days in November of 2003 (November 5, 6, 7, 8, 9, 10, 12, 13, 14) for which Plaintiff billed were admittedly for services rendered when the Plaintiff was physically in New York (Ex. "S" to Motion at pp 243-47). With respect to these November 2003 entries, the Plaintiff testified:

Q. All those services were performed in New York?

A. (Referring) all the hours billed, I billed while being in New York.

Q. Can you tell me what you were doing those days?

A. Just a recollection.

\* \* \* \*

A. We were trying to revive the dead deal. The deal was going sour. It died on us on 11 - on November 18, all together, the deal with C/W died, 11/18 and all these hours, all these days before, the deal was going sour. We were trying to save it.

(Ex. "S" to Motion at p 247).

Following the Plaintiff's deposition, the Defendant brought the instant motion for summary judgment, arguing that the Plaintiff's deposition testimony "now firmly established that the services for which Gover seeks payment were rendered in New York; and that his claim is barred, in its entirety, as a violation of Judiciary Law § 478" (Affirmation in Support at ¶ 7).<sup>2</sup> In support of his motion, the Defendant submitted, *inter alia*, his affidavit and the Plaintiff's deposition testimony. As noted above, the deposition testimony demonstrated that the legal services provided by the Plaintiff from February 21 through March 7 of 2003 and from November 5 through November 18, 2003 were rendered in New York (Ex. "S" to Motion at pp

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<sup>2</sup> The Plaintiff's deposition was conducted on February 1 and 2, 2011, after this court denied defendant's motion to dismiss and after the Second Department affirmed the court's order.

285, 294).<sup>3</sup> In addition to the time periods set forth in the deposition, the defendant's affidavit establishes that the legal services provided by the Plaintiff from January 31, 2003 to March 25, 2003 and from October 30, 2003 to November 30, 2003 were also rendered in New York (Affidavit in Support at ¶¶ 10, 45, 47). Both the deposition as well as the Defendant's affidavit establish, *prima facie*, that Plaintiff was in New York from January 31, 2003 through March 25, 2003 and from October 30, 2003 to November 30, 2003 and, thus, any legal services rendered during those periods were in violation of Judiciary Law § 478.

The Plaintiff does not dispute that he was in New York for a portion of that time as claimed by the Defendant. Specifically, in his affidavit in opposition, the Plaintiff states, "From my records, I extrapolated that my February 2003 trip from Tel Aviv to New York was two weeks long, approximately February 19, 2003 through March 08, 2003, and my second trip from Tel Aviv was from November 04, 2003 to the last day of my work for the Defendants on November 18, 2003. During the first trip I sat for the New York State Bar Examinations February 24 through February 26, 2003. Additionally, I went on a trip to Boston from March 03, 2003 through March 05, 2003" (Affidavit in Opposition at ¶ 37). Given this concession in his affidavit, there is no issue of fact that the Plaintiff was in New York from February 19, 2003 through March 2, 2003, March 6, 2003 through March 7, 2003, and November 5, 2003 through November 18, 2003 and, thus, the legal services rendered during those dates, were in violation of Judiciary Law § 478.

With respect to the Defendant's assertions that the Plaintiff was in New York on additional dates, the Plaintiff's denial of such allegations in his affidavit in opposition creates an issue of fact in regard to those dates. Accordingly, Defendant's motion seeking summary judgment dismissing the Plaintiff's claims for recovery of fees for legal services rendered during the following time periods must be denied: January 31, 2003 to February 18, 2003, March 9, 2003 to March 25, 2003, October 30, 2003 to November 3, 2003, and November 19, 2003 to November 30, 2003.

Contrary to the Defendant's contention, proof that some of the services were rendered in New York does not foreclose the Plaintiff's right to recover legal fees for those services which were rendered in Israel and not in violation of Judiciary Law § 478 (Reply Affirmation at ¶ 8). Generally, where the legal portions of a contract can be severed from the illegal portions of the same contract, the legal portions will be enforceable (*Central New York Telephone & Telegraph Co. v Averill*, 199 NY 128, 140-41 [1910] ["general rule is that where you cannot sever the

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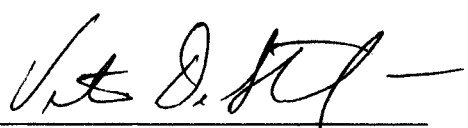
<sup>3</sup> The Plaintiff testified that the services for which he billed on November 4, 2003 and March 8, 2003 were for reading legal material while actually flying on an airplane en route to and from Israel and New York and, thus, were not services rendered in New York.

illegal from the legal part of a covenant, the contract is altogether void; but where you can sever them, whether the illegality be created by statute or by the common law, you can reject the bad part and retain the good . . . . A lawful promise made for a lawful consideration is not invalid by reason only of an unlawful promise made at the same time and for the same consideration . . . . [W]here a deed or other contract contains distinct undertakings, some of which are legal, and some illegal, the former will in certain cases be upheld, though the latter are void. It does not seem necessary to specify numerous other authorities which might be cited to sustain the severance of the illegal part of this contract from the portions which are legal”]; *Manson v Curtis*, 233, NY 313 [1918] [where contract was single and indivisible and illegal part could not be expunged, contract was held to be illegal and void]; *Elm Management Corp. v Sprung*, 33 AD3d 753 [2d Dept 2006] [“As a general rule, the fact that a party has been represented by a person who was not authorized or admitted to practice law under the Judiciary Law - whether a disbarred attorney or a person practicing law without a license - does not create a ‘nullity’ or render all prior proceedings void per se”]).

Based on the foregoing, it is hereby ordered that: the Defendant’s motion for summary judgment on his first and second affirmative defenses is granted to the extent that the Plaintiff’s complaint is dismissed with respect to any claims based on legal services rendered by the Plaintiff from February 19, 2003 through March 2, 2003, March 6, 2003 through March 7, 2003, and November 5, 2003 through November 18, 2003; the motion is, in all other respects, denied.

This constitutes the decision and order of the court.

Dated: January 11, 2012

  
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 Hon. Vito M. DeStefano, J.S.C.

**ENTERED**  
 JAN 13 2012  
 NASSAU COUNTY  
 COUNTY CLERK’S OFFICE