

**Legal Capital Corp. v Rolnik**

2013 NY Slip Op 32589(U)

October 9, 2013

Supreme Court, New York County

Docket Number: 651706/2012

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN
I.S.C. Justice

PART

Index Number : 651706/2012
LEGAL CAPITAL CORP.
vs
ROLNIK, ESQ., MARK D
Sequence Number : 002
SUMMARY JUDGEMENT

INDEX NO.

MOTION DATE

MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

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

Dated: 10/9/13

CYNTHIA S. KERN, J.S.C.
J.S.C.

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
LEGAL CAPITAL CORP.,

Plaintiff,

-against-

Index No.: 651706/2012

**DECISION/ORDER**

MARK D. ROLNIK, ESQ., NORRIS SINGLETARY  
and ESTATE OF ANTHONY SMITH,

Defendants.

-----X  
**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>      </u>
Exhibits.....	<u>3</u>

Plaintiff commenced the instant action to recover pre-settlement funds allegedly advanced to defendants Norris Singletary (“Singletary”) and Anthony Smith (“Smith”). Plaintiff now moves pursuant to CPLR § 3212 for an order granting summary judgment against defendants in a sum certain, or in the alternative, an order directing defendant Mark D. Rolnik, Esq. (“Rolnik”) to deposit the funds pertaining to the settlement of defendants’ personal injury actions into court. While defendant moves for summary judgment against all defendants, this court will only address the motion as to defendants Singletary and Rolnik as, recognized by plaintiff in its reply papers, Smith is deceased and plaintiff has failed to identify an executor of his estate upon which

it can bring suit. For the reasons set forth below, plaintiff's motion for summary judgment is granted.

The undisputed facts are as follows. Plaintiff is a Manhattan-based corporation that provides pre-settlement funding to claimants in need of financial assistance during the course of their litigation. In consideration for the plaintiff's money advances, the claimant must repay the principal plus a fixed rate of interest upon receiving his or her settlement. In effect, the plaintiff secures a lien on a portion of the claimant's settlement proceeds.

Rolnik is an attorney who represented Singletary in an underlying personal injury action. Singletary requested and received pre-settlement litigation funding from plaintiff on multiple occasions in the total amount of \$10,500. In order to receive these funds, Singletary entered into agreements with plaintiff wherein plaintiff acquired a lien against Singletary's settlement funds in the amount of \$26,250, which Singletary agreed to immediately disperse to plaintiff upon settlement of his case. The agreements also provided for liquidated damages in the sum of twice the amounts due under the agreements in the event of a breach. Included with the agreements was a "Client's Letter of Instruction" that was provided to Rolnik wherein he agreed to "to pay all funds due [plaintiff] at the close of the case, before final distribution to the client." It is undisputed that Singletary's underlying personal injury case was settled for \$100,000 and Rolnik received the settlement money on or about November 9, 2010.

On or about May 15, 2012, plaintiff commenced the instant action to recover the funds it is allegedly owed pursuant to the agreements as it has not received any payment from Singletary or Rolnik to date. Plaintiff now moves for summary judgment on the ground that it is undisputed that Singletary and Rolnik have breached their obligations to plaintiff by failing to turn-over to

plaintiff its share of the settlement proceeds from the underlying personal injury action.

Singletary and Rolnik oppose plaintiff's motion on the ground that the agreements are usurious on their face.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). However, "mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment. *Id.* Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Id.*

In the present case, as an initial matter, plaintiff has established its *prima facie* right to judgment as a matter of law against Rolnik as it has demonstrated that Rolnik has failed to honor his obligation to pay plaintiff its share of the settlement proceeds. Pursuant to the Client's Letter of Instruction, Rolnik agreed to pay plaintiff all funds owed to it at the close of Singletary's case. Rolnik does not dispute that it received the settlement funds from Singletary's case on or about November 29, 2010 and that he has failed to make payment to plaintiff. Accordingly, Rolnik is in breach of its obligation to pay plaintiff its share of the settlement proceeds upon the close of the case and plaintiff is entitled to judgment against Rolnik in the amount of \$26,250.

Additionally, plaintiff has established its *prima facie* right to judgment as a matter of law against Singletary to pay liquidated damages in twice the amount due as it has demonstrated that

there has been a breach of the agreements as plaintiff has failed to immediately receive the funds due to it at the close of Singletary's case. Paragraph 12 of the agreements explicitly provides that: "In the event that [Singletary] terminates or otherwise breaches the covenants, conditions or terms of this Agreement, [Singletary] shall pay liquidated damages to [plaintiff] in the amount of two times the total amount due as set forth in section two." Here, Singletary has breached the agreement by failing to direct payment to plaintiff upon the settlement of his case. Accordingly, pursuant to paragraph 12, plaintiff is entitled to liquidated damages in the amount of two times the total amount due, which in this case would equal \$52,500.

In response, Singletary and Rolnik have failed to present admissible evidence raising a triable issue of fact and their argument that the agreements are usurious on their face is without merit. As an initial matter, the self-serving and conclusory affidavit of their attorney Barry W. Woolfson is insufficient to defeat summary judgment as Mr. Woolfson has no personal knowledge of the facts constituting plaintiff's claim. Additionally, notwithstanding this fact, Mr. Woolfson fails to even refute the material facts of this case—i.e. Singletary and Rolnik entered into the agreements with plaintiff, Singletary's case has settled and Rolnik has failed to disburse the funds due to plaintiff from the settlement proceeds. Additionally, to the extent that Mr. Woolfson argues in his opposition papers that the agreements are usurious on their face and in violation of the provisions of the Banking and General Obligations Laws, such contention is without merit as he fails to cite any specific law or authority that the agreements are purportedly in violation of. Instead, Mr. Woolfson only makes a conclusory statement of law, which is insufficient to defeat summary judgment.

Additionally, to the extent that defendants argue that plaintiff's motion should be denied

