

Speransky v Robert Preston Esq. & Partners

2013 NY Slip Op 33536(U)

October 25, 2013

Supreme Court, New York County

Docket Number: 400589/2013

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: _____
Justice

PART 46

HELEN SPERANSKY

INDEX NO. 400589/2013

-v-

MOTION DATE _____

ROBERT PRESTON ESQ. & PARTNERS

MOTION SEQ. NO. _____

The following papers, numbered 1 to 4, were read on this motion to/for vacate a lien

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~~:

The court denies plaintiff's motion to vacate a charging lien filed by defendant and also denies defendant's cross-motion for summary judgment and for sanctions, pursuant to the accompanying decision. C.P.L.R. § 3212(b); N.Y. Jud. Law § 475; 22 N.Y.C.R.R. § 130-1.1.

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

FILED

NOV 18 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/25/13

Lucy Billings, J.S.C.

LUCY BILLINGS

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 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 46

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HELEN SPERANSKY,

Index No. 400589/2013

Plaintiff

- against -

DECISION AND ORDER

ROBERT PRESTON ESQ. & PARTNERS,

FILED

Defendant

NOV 18 2013

-----x

LUCY BILLINGS, J.S.C.:

COUNTY CLERK'S OFFICE
NEW YORK

Plaintiff moves to vacate a charging lien dated January 30, 2013, filed by defendant, plaintiff's former attorney in her husband's divorce action, against her potential recovery in that action through equitable distribution or otherwise. N.Y. Jud. Law § 475. Although defendant law firm's answer does not include a counterclaim, defendant nonetheless moves for summary judgment awarding the amount of the lien, \$69,033.47, to defendant, as well as fees incurred in opposing plaintiff's motion, as sanctions against plaintiff for a frivolous motion. C.P.L.R. § 3212(b); 22 N.Y.C.R.R. § 130-1.1.

The parties agree regarding most of the payments plaintiff has made to defendant, including \$25,000.00 as a retainer fee in 2007, \$25,000.00 paid by plaintiff's husband to her attorney in 2010, and \$100,000.00 released to defendant from an escrow account in the divorce action in late 2011. Plaintiff claims another \$25,000.00 payment on her behalf in 2008, of which defendant admits only \$15,000.00.

Regarding the outstanding fees claimed by defendant via the charging lien, plaintiff claims she never received any bill from defendant after January 2012 until she received defendant's current cross-motion, so her first opportunity to object to the bills was in opposition to the cross-motion. RPI Professional Alternatives, Inc. v. Citigroup Global Mkts. Inc., 61 A.D.3d 618, 619 (1st Dep't 2009); Herrick, Feinstein LLP v. Stamm, 297 A.D.2d 477, 478 (1st Dep't 2002). See Risk Mgm't Planning Group, Inc. v. Cabrini Medical Ctr., 63 A.D.3d 421 (1st Dep't 2009); RPI Professional Alternatives, Inc. v. Citigroup Global Mkts. Inc., 61 A.D.3d 618, 619 (1st Dep't 2009); Graubard Miller v. Nadler, 60 A.D.3d 499 (1st Dep't 2009); Rothstein & Hoffman Elec. Serv., Inc. v. Gong Park Realty Corp., 37 A.D.3d 206, 207 (1st Dep't 2007). First, plaintiff objects to charges for services by defendant's associate, Judith Ackerman, to whom plaintiff previously expressed an objection, which defendant did not attempt to accommodate as provided in the parties' retainer agreement. Second, plaintiff objects to defendant's noncompliance with an oral agreement (a) to deduct \$30,000.00 due to an acknowledged omission in presenting plaintiff's evidence and (b) to refrain from charging interest. Third, plaintiff objects to charges for services after the court relieved defendant from representing plaintiff and defendant knew she had retained a new attorney.

Resolution of the issues presented by the current motions is premature. Overlapping issues regarding the distribution of the

funds remaining in the escrow account are pending in the divorce action. The court in that action may distribute all or part of these funds to defendant and, in that decision, determine the merits of the fees defendant claims and the objections plaintiff poses.

Consequently, the court denies plaintiff's motion, without prejudice to a future motion to vacate all or part of defendant's charging lien based on the court's determination in the divorce action that defendant is not entitled to all or part of the fees claimed via the lien. Insofar as that court does not determine the claims in this action, the denial of plaintiff's current motion is also without prejudice to those claims at a trial of this action or upon a future motion for summary judgment vacating all or part of the lien based on the objections she has posed in opposition to defendant's cross-motion for summary judgment.

The court denies defendant's cross-motion for summary judgment because it seeks relief beyond the scope of the pleadings and because plaintiff raises factual questions regarding defendant's entitlement to the full amount of the charging lien. C.P.L.R. § 3212(b). In light of the potential merit to plaintiff's claims that the lien at least be reduced and the lack of merit to defendant's cross-motion, the court also denies defendant's cross-motion for sanctions. 22 N.Y.C.R.R. § 130-1.1; Komolov v. Segal, 96 A.D.3d 513, 514 (1st Dep't 2012); Parkchester S. Condominium Inc. v. Hernandez, 71 A.D.3d 503, 504 (1st Dep't 2010); Peach Parking Corp. v. 346 W. 40th St., LLC, 52

A.D.3d 260, 261 (1st Dep't 2008); Parametric Capital Mgt., LLC v. Lacher, 26 A.D.3d 175 (1st Dep't 2006).

DATED: October 25, 2013

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

FILED

NOV 18 2013

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NEW YORK