Russo, Karl, Widmaier & Cordano PLLC v Piro
2014 NY Slip Op 30505(U)
February 24, 2014
Supreme Court, Suffolk County
Docket Number: 13-19943
Judge: Peter H. Mayer

[* 1]

SHORT FORM ORDER

INDEX No. 13-19943

COPY

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

PRESENT:

Hon. PETER H. MAYER
Justice of the Supreme Court

MOTION DATE 10-3-13 (001 & 003)
MOTION DATE 10-15-13 (002)
ADJ. DATE 10-15-13
Mot. Seq. # 001 - MotD
002 - XMD
003 - XMG

RUSSO, KARL, WIDMAIER & CORDANO PLLC, CHARLES CALOGERO RUSSO, ESQ., KURT PAUL WIDMAIER, ESQ. and TRAVELERS INSURANCE COMPANY,

Plaintiffs,

- against -

WAYNE PIRO, THE LAW OFFICES OF OLGA J. RODRIGUEZ and JOANNE BONACASA,

Defendants.

RIVKIN RADLER LLP
Attorney for Plaintiffs
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Patchogue, New York 11772

Upon the reading and filing of the following papers in this matter: (1) Notice of Motion/Order to Show Cause by the plaintiffs, dated August 30, 2013, and supporting papers 1 - 8; (2) Notice of Cross Motion by the defendant Joanne Bonacasa, dated September 24, 2013, and supporting papers 9 -24; (3) Notice of Cross Motion by the defendant Law Offices of Olga J. Rodriguez, dated September 25, 2013, and supporting papers 35 - 48; (4) Affirmation in Opposition by the defendant Law Offices of Olga J. Rodriguez, dated October 7, 2013, and supporting papers 25 - 31; (5) Affirmation in Opposition by the defendant Wayne Piro, dated October 8, 2013, and supporting papers 32 - 34; (6) Affirmation in Opposition by the defendant Joanne Bonacasa, dated September 30, 2013, and supporting papers 49 - 63; (7) Reply Affirmation by the defendant Law Offices of Olga J. Rodriguez, dated October 1, 2013, and supporting papers 64 - 65; (8) Reply Affirmation by the defendant Wayne Piro, dated October 8, 2013, and supporting papers 66 - 68; (9) Reply Affirmation by the plaintiffs, dated October 11, 2013, and supporting papers 69 - 70: (~~and after hearing counsels' oral arguments in support of and opposed to the motion~~); and now

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, the motion is decided as follows: it is

ORDERED that this motion by the plaintiffs for an order pursuant to CPLR 1006 (f) discharging them from liability to the defendants and directing the deposit of certain monies into Court is granted to the extent that the plaintiffs shall be discharged from liability to the defendants upon 1) the release of $30,000 and its delivery to the defendant The Law Offices of Olga J. Rodriguez, and 2) the payment into Court of $35,000 and the filing of proof thereof; and it is further

ORDERED that, upon completion of the Court's directives and the plaintiffs' discharge, further proceedings in this action, if any, shall proceed between the defendants/claimants without the plaintiffs' participation; and it is further

ORDERED that this cross motion by the defendant Joanne Bonacasa for an order pursuant to CPLR 3212 granting summary judgment denying the plaintiffs' motion and directing that the monies held by the plaintiffs be released to her is denied; and it is further

ORDERED that this cross motion by the defendant The Law Offices of Olga J. Rodriguez for an order pursuant to Judiciary Law § 475 directing that the sum of $30,000 held by the plaintiffs be released to it and dismissing the cross claims against it contained in the answer of the defendant Joanne Bonacasa is granted; and it is further

ORDERED that counsel for the plaintiffs shall serve a copy of this order with notice of entry upon the defendants; and it is further

ORDERED that counsel for the defendant Joanne Bonacasa is directed to move for an order directing that this action be jointly tried with the action entitled *Joanne Bonacasa v Wayne Piro*, Supreme Court, Suffolk County, Index No. 05-28486 in the event that the default judgment against the defendant in said action is vacated by the Court.

The plaintiffs commenced this "action of interpleader" (CPLR 1006) to determine who is entitled to the proceeds resulting from the settlement of an action entitled *Wayne Piro v Russo, Karl, Widmaier& Cordano, PLLC*, Supreme Court, Suffolk County, Index No. 10-03424 (Piro action). The plaintiff Travelers Insurance Company (Travelers) is obligated to indemnify the remaining plaintiffs herein in connection with the settlement of the Piro action in accordance with a policy of insurance, subject to a $5,000 deductible. The stipulation of settlement provides for the payment of $65,000 to Piro. Prior to the payment of the settlement proceeds to Piro, the attorney for the defendant Joanne Bonacasa (Bonacasa) served the plaintiffs with a restraining notice and information subpoena on or about June 28, 2013. It is undisputed that Bonacasa has obtained a default judgment against the defendant Wayne Piro (Piro) in an action entitled *Joanne Bonacasa v Wayne Piro*, Supreme Court, Suffolk County, Index No. 05-28486 (Bonacasa action). The judgment in favor of Bonacasa is in the amount of $50,000, together with interest from December 23, 2005, and allegedly in a total amount greater than the $65,000 due to Piro under the settlement. By e-mail dated June 28, 2013, the attorney representing Piro in the Piro action, the defendant The Law Offices of Olga J. Rodriguez (Rodriguez), informed the attorney for the plaintiffs that the restraining notice was not validly obtained and requested payment of the settlement proceeds. On July 3, 2013, Rodriguez faxed a letter to the attorney for Bonacasa that it retains a charging lien of $30,000 against the settlement proceeds.

The plaintiffs commenced this action by filing of a summons and complaint on July 29, 2013. In their complaint, the plaintiffs allege that they are "disinterested stakeholders who may be exposed to double liability as the result of conflicting, competing and/or adverse claims to certain proceeds ..." The plaintiffs now move pursuant to CPLR 1006 (f), for an order discharging them from liability to the defendants herein and directing the deposit of the settlement proceeds of $65,000 into the Court.

An interpleader action is designed to protect an entity from multiple liability when faced with two or more claims which are related in such a way that recovery on one claim should exclude or limit recovery on the other (*see* ***Isacowitz v Isacowitz***, 17 Misc 2d 29, 185 NYS2d 58 [Sup Ct, Queens County 1959], *revd on other grounds*, 8 AD2d 837, 190 NYS2d 405 [1959]; ***Leventhal v Roslyn Manor, Inc.***, 142 NYS2d 478 [Sup Ct, Nassau County 1955]; *see eg.* ***American Intern. Life Assur. Co. of N.Y. v Ansel***, 273 AD2d 421, 709 NYS2d 621 [2d Dept 2000]). That is, where the same thing, debt or duty is claimed by more than one person (***Matter of Estate of Harris***, 8 Misc 2d 541, 167 NYS2d 106 [Sur Ct, Kings County 1957]). Generally, the remedy of interpleader is only available to a stakeholder (***Bankers Trust Co. v Hogan***, 196 AD2d 469, 601 NYS2d 298 [1st Dept 1993]; ***Nathan v Bernstein***, 252 AD 497, 299 NYS 733 [1st Dept 1937]; ***Brown v Arbogast & Bastian Co.***, 162 AD 603, 147 NYS 998 [1st Dept 1914]; *cf.* ***Birnbaum v Marine Midland Bank***, 96 AD2d 776, 465 NYS2d 725 [1 Dept 1983] [Bank not entitled to interpleader relief because not a mere stakeholder as it was charged with conversion]). "A stakeholder is a person who is or may be exposed to multiple liability as the result of adverse claims. A claimant is a person who has made or may be expected to make such a claim" (CPLR 1006 [a]).

In its verified answer dated August 12, 2013, Rodriguez denies knowledge and information as to whether the plaintiffs are "disinterested stakeholders" in this matter. In its cross motion (discussed below), Rodriguez does not contend that the plaintiffs do not qualify as stakeholders in this action, nor does it allege any facts regarding the plaintiffs' actions which would support a determination that the plaintiffs are not entitled to the remedy of interpleader. Instead, the only relief that Rodriguez seeks against the plaintiffs in its cross motion is the release of the $30,000 it claims it is entitled to as legal fees in the Piro action. Similarly, in her answer dated September 10, 2013, Bonacasa denies knowledge and information as to whether the plaintiffs are "disinterested stakeholders" in this matter. In her cross motion (also discussed below), Bonacasa does not contend that the plaintiffs do not qualify as stakeholders in this action, nor does she allege any facts regarding the plaintiffs' actions which would support a determination that the plaintiffs are not entitled to the remedy of interpleader. Instead, the only relief that Bonacasa seeks against the plaintiffs in her cross motion is a release of the $65,000 currently held by the plaintiffs. In addition, both cross motions exclusively consist of contentions that the respective party is entitled to the monies held by the plaintiffs, or a portion thereof, and various allegations as to the reasons why the other is not entitled to the funds.

In an affidavit dated October 8, 2013, Piro swears, among other things, that he does not dispute the legal fee due to Rodriguez, and that he would like the amount of $30,000 paid to Rodriguez and the balance of $35,000 to be paid into Court until such time as a decision is rendered regarding his request in the Bonacasa action to vacate the default judgment against him. Piro is self-represented and he has not formally served an answer to the plaintiff's complaint. It is determined that the subject affidavit is deemed Piro's answer herein, and that Piro has not raised any issue regarding the plaintiffs' status as

stakeholders herein.

Here, the plaintiffs are entitled to the remedy of interpleader as they have demonstrated that they are disinterested stakeholders with no interest in the subject funds, and no claimant has raised an issue of their independent liability (*see* ***Mahon, Mahon, Kerins & O'Brien, LLC v Moskoff***, 85 AD3d 738, 926 NYS2d 540 [2d Dept 2011]; ***Sun Life Ins. & Annuity Co. of N.Y. v Braslow***, 38 AD3d 529, 831 NYS2d 497 [2d Dept 2007]). In addition, the plaintiffs are entitled to be discharged from all further liability upon their compliance with the Court's directives herein, while the action between the claimants proceeds without their participation (CPLR 1006 [f]; ***Credito Italiano, N.Y. Branch v Cellulose Converting Equips.***, 173 AD2d 350, 569 NYS2d 720 [1st Dept 1991]; *see generally* ***Bank of N.Y. v Norilsk Nickel***, 26 AD3d 201, 810 NYS2d 32 [1st Dept 2006]; ***David Day Realty v Stein***, 178 AD2d 374, 578 NYS2d 140 [1st Dept 1991]; ***Matter of Wolfe***, 47 Misc 2d 124, 262 NYS2d 5 [Sup Ct, New York County 1965]). Thus, the relief to be granted to the plaintiffs in this action and a determination of the competing claims amongst the defendants herein are before the Court, and require a review of the above-referenced cross motions for summary judgment.

Bonacasa now cross-moves for summary judgment seeking an order directing that the monies held by the plaintiffs be "surrendered" to her on the grounds that Rodriguez's claim has no value and/or is not legitimate, and that her judgment against Piro dated June 27, 2013 exceeds the $65,000 held by the plaintiffs. In support of her cross motion, Bonacasa submits, among other things, the pleadings herein, the complaint in the Piro action, a copy of the pleadings in the Bonacasa action and the resulting default judgment, and a copy of Rodriguez's written retainer agreement and billing statements in the Piro action. The gravamen of Bonacasa's contention is that Rodriguez is attempting to "collect on a questionable, if not unenforceable charging lien." In support of that proposition, Bonacasa contends that said charging lien is not enforceable because Rodriguez failed to file "the retainer agreement" entered into with Piro pursuant to 22 NYCRR 691.20, and that the written retainer agreement between Rodriguez and Piro lacks a statement that Piro is entitled to arbitrate any fee dispute between them, a breakdown of how fees will be computed, and an "acknowledged copy of the client's rights and responsibilities." In addition, Bonacasa contends that Rodriguez's legal fee is excessive rendering the claim for fees a nullity.

It is determined that Bonacasa's contention that Rodriguez was obligated to file its retainer agreement and/or a retainer statement in the Piro action is without merit. The obligation of an attorney to file a "retainer statement" arises pursuant to 22 NYCRR 691.20 (a) (1) which provides, in pertinent part:

> Every attorney who, in connection with any action or claim for damages for personal injury or for property damages, or for death or loss of services resulting from personal injuries, due to negligence or any type of malpractice ... accepts a retainer ... shall ... sign personally and file with the Office of Court Administration of the State of New York a written statement of such retainer or agreement of compensation ...

The complaint in the Piro action sets forth an action for legal malpractice based on the defendants alleged failures to properly advise Piro regarding, among other things, certain estate planning

issues. It has been held that an attorney representing a client in a legal malpractice action regarding estate issues is not required to file a retainer statement because the matter does not involve an "action or claim for damages for personal injury or for property damages, or for death or loss of services resulting from personal injuries" (***Matter of Seigel***, 300 AD2d 668, 754 NYS2d 300 [2d Dept 2002]).

Bonacasa's contention that Rodriguez's retainer agreement violates Part 137 of the Rules of Chief Administrator because it lacked the requisite statement advising Piro that he had a right to arbitrate fee disputes also is without merit. The written retainer agreement between Rodriguez and Piro contains the statement "It is understood that in the event of any dispute over legal fees, the client has the right to arbitrate any dispute ..." Part 137 does not include a requirement that a written retainer contain a specific statement regarding a client's right to arbitration absent consent in advance by the client or the attorney and client. However, pursuant to 22 NYCRR 1215.1 (b) (2), a written retainer agreement "shall provide that the client may have a right to arbitrate fee disputes under Part 137 of the Rules of the Chief Administrator." Bonacasa does not submit an authority for her contention that the retainer agreement, as written, violates the rules. Instead, it appears that her contention is that the statement is not present in the retainer agreement. Regardless, considering that attorneys have express obligations to inform a client of the process involved in arbitrating a fee dispute pursuant to 22 NYCRR 137.6, it is determined that the statement in the subject retainer agreement is sufficient.

In addition, Bonacasa's contention that Rodriguez failed to obtain an "acknowledged copy of the client's rights and responsibilities" is without merit. An attorney must obtain a signed acknowledgment from a client that he or she received a "statement of client's rights and responsibilities" in matrimonial actions only (22 NYCRR Part 1400).

Bonacasa's final two contentions are that the subject retainer agreement failed to inform Piro how fees would be computed and provided for an excessive fee of 40 percent of any recovery in the Piro action. Bonacasa cites 22 NYCRR 691.20 and the disciplinary rules that govern attorney conduct as authority for these propositions. Turning to Bonacasa's contention that the retainer agreement does not adequately inform Piro how fees would be computed, it is determined that the claim is without merit. The obligation of an attorney to inform a client how legal fees will be computed is set forth in the Rules of Professional Conduct, Rule 1.5 (c)[1], which provides in pertinent part:

> Promptly after a lawyer has been employed in a contingent fee matter, the lawyer shall provide the client with a writing stating the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or, if not prohibited by statute or court rule, after the contingent fee is calculated. The writing must clearly notify the client of any expenses for which the client will be liable regardless of whether the client is the prevailing party.

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[1] The Rules of Professional Conduct were adopted on January 7, 2009, effective April 1, 2009.

Here, 22 NYCRR 691.20 is not applicable, and the retainer adequately set forth how legal fees would be computed as follows:

> I understand and agree that the fee payable to my attorney shall be forty (40%) percent of the net amount recovered, which is the total dollar amount obtained through settlement or trial, including taxable costs (court fees) assessed and excluding all disbursements incurred. I further understand that I will pay for all out-of pocket expenses, which will be billed to me from time to time during the course of this litigation. Such out-of -pocket expenses shall include such items as medical records and reports, court filing fees, deposition transcripts, fees to expert witnesses and doctors for testifying at my trial.
>
> In the event there is no money received in this case, I understand that there will be no attorneys' fee payable to my attorneys. However, I will be responsible for repaying to my attorneys the total amount of any disbursements which may have been advanced by them on my behalf during the course of this case. I also will be responsible for any costs assessed against me by the court.
>
> It is understood that this retainer agreement does not include or apply to post-judgment proceedings, interim or final appeals.

Finally, Bonacasa's contention that the 40 percent legal fee set forth in the retainer is excessive is without merit. The Rules of Professional Conduct, Rule 1.5 (a), provides that a "lawyer shall not make an agreement for, charge, or collect an excessive or illegal fee or expense. A fee is excessive when, after a review of the facts, a reasonable lawyer would be left with a definite and firm conviction that the fee is excessive." The rule then sets forth a number of factors to be considered in determining whether a fee is excessive. Here, the sole basis for Bonacasa's contention that the subject legal fee is excessive is that it violates the fee schedule set forth in 22 NYCRR 691.20, which is not applicable to the type of legal matter for which Rodriguez was retained. New York courts have upheld agreements awarding attorneys as much as fifty percent of their clients' recoveries (*see* ***Beadwear, Inc. v Media Brands, LLC***, 2001 WL 1622207 [SD NY 2001]; ***Sea Isle Foods v State of New York***, 40 Misc 2d 872, 244 NYS2d 613 [Ct Cl, 1963]). In addition, Bonacasa does not submit any evidence regarding the factors to be considered in determining whether a legal fee is excessive.

Accordingly, Bonacasa's motion for summary judgment is denied.

Rodriguez now cross-moves for an order directing the plaintiffs to release its legal fee of $30,000, and dismissing Bonacasa's cross claims. In support of its cross motion, Rodriguez submits, among other things, the pleadings herein, its written retainer agreement and billing statements in the Piro action, a copy of a Court order in the Bonacasa action, and a "settlement" signed by Piro regarding Rodriguez's legal fee. It is undisputed that Rodriguez was retained by Piro on January 10, 2010, that Rodriguez commenced the Piro action on February 1, 2010, that Rodriguez represented Piro throughout

the litigation, and that Rodriguez claims a charging lien based on its procuring a settlement in the amount of $65,000.

It is well settled that a charging lien for legal fees attaches automatically upon commencement of the client's action (Judiciary Law 475; ***Resnick v Resnick***, 24 AD3d 238, 806 NYS2d 200 [1st Dept 2005]; ***Matter of Dresner v State of New York***, 242 AD2d 627, 662 NYS2d 780 [2d Dept 1997]; ***Rotker v Rotker***, 195 Misc 2d 768, 761 NYS2d 787 [Sup Ct, Westchester County 2003]; *see also* ***Matter of Cohen v Grainger, Tesoriero & Bell***, 81 NY2d 655, 602 NYS2d 788 [1993]). An attorney's charging lien is vested equitable ownership interest in client's cause of action and maintains superiority over anyone claiming through the client (***LMWT Realty Corp. v Davis Agency Inc.***, 85 NY2d 462, 626 NYS2d 39 [1995]; *see also* ***Banque Indosuez v Sopwith Holdings Corp.***, 98 NY2d 34, 745 NYS2d 754 [2002]; ***O'Connor v Spencer (1977) Inv. Ltd. Partnership***, 8 Misc 3d 658, 798 NYS2d 888 [Sup Ct, Queens County 2005]). The right to assert such a lien is based upon the equitable doctrine that an attorney should be paid out of the proceeds of the judgment procured by the attorney (***Theroux v Theroux***, 145 AD2d 625, 536 NYS2d 151 [2d Dept 1988]; *see* ***LMWT Realty Corp. v Davis Agency***, *supra*; ***Kaplan v Reuss***, 113 AD2d 184, 495 NYS2d 404 [2d Dept 1985], *affd* 68 NY2d 693, 506 NYS2d 304 [1986]).

The statute codifying the law regarding charging liens, Judiciary Law 475, provides, in relevant part, "[f]rom the commencement of an action ... the attorney who appears for a party has a lien upon his client's cause of action, claim or counterclaim, which attaches to a ... determination, decision, judgment or final order in his client's favor, and the proceeds thereof in whatever hands they may come." Thus, a charging lien affects only the proceeds obtained in a particular litigation and may be enforced only to obtain the reasonable value of legal services and disbursements in connection with that litigation (***Kaplan v Reuss***, *id.*; *see* ***Natole v Natole***, 295 AD2d 706, 708, 744 NYS2d 227 [3d Dept 2002]; ***Butler, Fitzgerald & Potter v Gelmin***, 235 AD2d 218, 651 NYS2d 525 [1st Dept 1997]; ***Surdam v Marine Midland Bank***, 198 AD2d 578, 603 NYS2d 233 [3d Dept 1993]). It has been held that the statute is remedial in nature and calls for a liberal construction thereunder (***Herlihy v Phoenix Assur. Co.***, 274 AD 342, 83 NYS2d 707 [3 Dept 1948]).

Here, Rodriguez has established its entitlement to summary judgment regarding its claim to a charging lien and the release of its legal fees in the Piro action.[2] Thus, it is incumbent upon the nonmoving parties to produce evidence in admissible form sufficient to require a trial of the material issues of fact (***Roth v Barreto***, *supra*; ***Rebecchi v Whitmore***, *supra*; ***O'Neill v Fishkill***, *supra*). In opposition to Rodriguez's cross motion, Bonacasa submits the affirmation of her attorney, who reiterates the contentions set forth in her cross motion for summary judgment. As determined above, Bonacasa has failed to raise an issue of fact requiring a trial of Rodriguez's claim for legal fees. As noted above, Piro does not dispute the validity of his retainer agreement with Rodriguez, or the legal fee charged thereunder.

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[2] The record reveals that Rodriguez complied with its obligation to provide Piro with a writing stating the outcome of the matter and showing the remittance to the client and the method of its determination pursuant to the Rules of Professional Conduct, Rule 1.5.

The Court now turns to that branch of Rodriguez's cross motion which seeks to dismiss the cross claims against it contained in Bonacasa's answer pursuant to CPLR 3211 (a). Upon review of the parties' papers, it is determined that they have deliberately charted a summary judgment course by laying bare their proof (*see* ***Rich v Lefkovits***, 56 NY2d 276, 452 NYS2d 1 [1982]; ***Schultz v Estate of Sloan***, 20 AD3d 520, 799 NYS2d 246 [2d Dept 2005]; ***Singer v Boychuk***, 194 AD2d 1049, 599 NYS2d 680 [3d Dept], *lv denied* 82 NY2d 657, 604 NYS2d 556 [1993]). In her first cross claim against Piro and Rodriguez, Bonacasa alleges that Rodriguez's charging lien is "unenforceable" for the reasons set forth in her cross motion. As determined above, Rodriguez is entitled to summary judgment regarding those issues.

In her second cross claim against Piro and Rodriguez (mislabeled as a first cross claim), Bonacasa alleges that Rodriguez failed to settle the Piro action in an amount sufficient to satisfy Piro's obligation to pay her in the Bonacasa action. Bonacasa further alleges that Rodriguez was aware that the errors of the attorneys in the Piro action were the cause of Piro's inability to meet his obligations to Bonacasa. In her affirmation in support of Rodriguez's cross motion, Olga J. Rodriguez swears that Bonacasa is merely a judgment creditor subordinate to the subject charging lien, that Bonacasa and Piro were not united in interest against the attorneys in the Piro action, and that Rodriguez and Piro had no responsibility to secure enough money to cover any possible judgments against Piro. In his affirmation in opposition to the cross motion, Bonacasa's attorney fails to address any of Rodriguez's contentions regarding the merits of the second cross claim. New York Courts have held that the failure to address arguments proffered by a movant or appellant is equivalent to a concession of the issue (*see* ***McNamee Constr. Corp. v City of New Rochelle***, 29 AD3d 544, 817 NYS2d 295 [2d Dept 2006]; ***Welden v Rivera***, 301 AD2d 934, 754 NYS2d 698 (3d Dept 2003]; ***Hajderlli v Wiljohn 59 LLC***, 24 Misc3d 1242A, 2009 NY Slip Op 51849U [Sup Ct, Bronx County 2009]). Accordingly, that branch of Rodriguez's motion which seeks to dismiss Bonacasa's cross claims is granted.

Accordingly, Rodriguez's motion for an order directing the release of $30,000 to it and dismissing the cross claims against it is granted.

The Court directs that the causes of action as to which summary judgment was granted are hereby severed and that the remaining causes of action shall continue (*see* CPLR 3212 [e] [1]). In that light, the issues between the two remaining claimants to the monies to be deposited into Court, the defendants Bonacasa and Piro, will be resolved in the event that the Court in the Bonacasa action declines to vacate the default judgment against Piro. In the event that the Court grants Piro's application to vacate said judgment, the rights of the two claimants is best determined in conjunction with the resolution of the Bonacasa action. The Court has broad discretion in resolving problems in interpleader actions (CPLR 1006 [c]), and is empowered to make such "order as may be just." Accordingly, counsel for the defendant Joanne Bonacasa is directed to move for an order directing that this action be jointly tried with the Bonacasa action in the event that the default judgment against Piro is vacated by the Court in that action.

Dated: 2/24/14

PETER H. MAYER, J.S.C.