

**Pusey Law Group PLLC v Cilmi & Assocs. PLLC**

2014 NY Slip Op 33579(U)

September 15, 2014

Supreme Court, New York County

Docket Number: 110628/11

Judge: Donna M. Mills

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This opinion is uncorrected and not selected for official publication.

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9/19/14  
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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

THE PUSEY LAW GROUP PLLC and NOAH L. PUSEY,

INDEX NO. 110628/11

Plaintiffs,

MOTION DATE \_\_\_\_\_

-v-

MOTION SEQ. No. 002

CILMI & ASSOCIATES PLLC and JOHN M. CILMI,

MOTION CAL No. \_\_\_\_\_

Defendants.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for \_\_\_\_\_.

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

PAPERS NUMBERED 1-3

Answering Affidavits- Exhibits \_\_\_\_\_

45

Replying Affidavits \_\_\_\_\_

CROSS-MOTION:  YES  NO

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

DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM

DECISION AND ORDER.

**FILED**

SEP 19 2014

Dated:

9/15/14

COUNTY CLERK'S OFFICE  
NEW YORK

Donna M. Mills  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

**DONNA M. MILLS, J.S.C.**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 58**

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**THE PUSEY LAW GROUP PLLC, and  
NOAH L. PUSEY,**

**Plaintiffs,**

**- against -**

**CILMI & ASSOCIATES PLLC, and JOHN M.  
CILMI,**

**Defendants.**

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**DONNA M. MILLS, J.:**

In this breach of contract action, defendants Cilmi & Associates PLLC ("C&A"), and John M. Cilmi move for partial summary judgment dismissing all causes of action in plaintiffs' Verified Complaint as against John M. Cilmi only. Plaintiffs, The Pusey Law Group PLLC and Noah L. Pusey, ("PLG") oppose the motion and cross move for an order striking defendants' Answer on the grounds defendants have willfully failed to answer plaintiffs' discovery demands. PLG also seeks sanctions and attorneys' fees based upon defendants' failure to respond to its discovery demands.

This is an action arising from collection efforts by PLG for amounts due and outstanding from defendants. It is undisputed that plaintiff Noah L. Pusey was an associate at defendant C&A from January 2003 until early February 2011 when his association with the firm ended. From February 2011 through in or about September 2011, plaintiffs acted "of counsel" to C&A. Plaintiffs commenced this action alleging that they are due monies from C&A and Mr. Cilmi, pursuant to their "of counsel" agreement.

PLG's Complaint alleges the following three alternative causes of action against both C&A and Mr. Cilmi: (a) breach of contract; (b) quantum meruit; and ( c ) account stated. Defendants maintain that the Complaint does not allege any cognizable legal or

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**DECISION/ORDER**

factual basis to hold Mr. Cilmi liable under any of those three causes of action

CPLR § 3212(b) requires that for a court to grant summary judgment, the court must determine if the movant's papers justify holding, as a matter of law, "that the cause of action or defense has no merit." It is well settled that the remedy of summary judgment, although a drastic one, is appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact (*Vamattam v Thomas*, 205 AD2d 615 [2nd Dept 1994]). It is incumbent upon the moving party to make a prima facie showing based on sufficient evidence to warrant the court to find movant's entitlement to judgment as a matter of law (CPLR § 3212 [b]). Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Summary judgment should be denied when, based upon the evidence presented, there is any significant doubt as to the existence of a triable issue of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]). When there is no genuine issue to be resolved at trial, the case should be summarily decided (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]).

In support of its motion for partial summary judgment, the defendants submit documentary evidence, and an affidavit from Mr. Cilmi to establish that plaintiffs contracted only with C&A, and that Mr. Cilmi is a member of C&A, a limited liability company. A member of a limited liability company may not be held personally liable on contracts entered into by his or her company, provided he or she did not purport to bind himself or herself individually under such contracts ( *cf. Gordon v. Teramo & Co.*, 308

*AD2d 432, 433 [2d Dept 2003]; Rothstein v. Equity Ventures, 299 A.D.2d 472, 474 [2d Dept 2002]; Kopec v. Hempstead Gardens, 264 AD2d 714, 715–716 [2d Dept 1999].*

On his motion for summary judgment, Mr. Cilmi established his prima facie entitlement to judgment as a matter of law by demonstrating that he did not purport to bind himself individually under the contract ( *see Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986]).

In opposition the plaintiff failed to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. For the aforementioned reasons, Mr. Cilmi is also entitled to summary judgment with respect to the account stated cause of action.

Mr. Cilmi is also entitled to summary judgment on the quantum meruit claim, because in order to establish a quantum meruit claim, plaintiff must show “the performance of services in good faith, acceptance of the services by the person to whom they are rendered, an expectation of compensation therefor, and the reasonable value of the services” (*Freedman v Pearlman*, 271 AD2d 301, 304 [2000]). Here, there is no evidence that the services performed by plaintiffs were requested to be performed on Mr. Cilmi’s individual behalf.

Plaintiffs cross move for sanctions against the defendant, and to strike the defendants' Answer on the grounds defendants have willfully failed to answer plaintiffs' discovery demands. It is undisputed that C&A has not complied with previous court discovery orders. As such, the cross motion to strike will be granted to the limited extent that the defendant will be directed to comply with the April 25, 2014 Compliance Conference Order.

The Rules of the Chief Administrator of the Courts grant the court discretion to

impose financial sanctions and/or costs on a party or the party's attorney for engaging in frivolous conduct (22 NYCRR 130.1.1[a], [c][2] ). At this time, the Court will exercise its discretion and not award sanctions, but will grant leave to renew in the event defendant fails to comply with this Order.

Accordingly, it is

ORDERED that the defendant John M. Cilmi's motion for partial summary judgment is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant, as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and is further

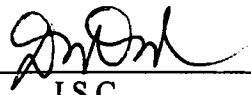
ORDERED that counsel for defendants shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the Trial Support Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that the plaintiffs' cross motion to strike the defendants' answer is granted to the limited extent of directing the defendant to comply with the April 25, 2014 Compliance Conference Order within 14 days of receiving a copy of this Order with Notice of Entry. Failure of the defendant to comply with this Order may result in its answer being stricken; and it is further

ORDERED that the plaintiffs' cross motion for sanctions is denied at this time with leave to renew.

Dated: 9 / 15 / 14

ENTER:



J.S.C.

**DONNA M. MILLS, J.S.C.**

**FILED**

SEP 19 2014

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