

Cohen Tauber Spievack & Wagner P.C. v Armstrong Capital, LLC
2015 NY Slip Op 30121(U)
January 20, 2015
Supreme Court, New York County
Docket Number: 152531/2014
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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COHEN TAUBER SPIEVACK & WAGNER P.C.,

Plaintiff,

-against-

ARMSTRONG CAPITAL, LLC,
and BENJAMIN RINGEL, an individual,

Defendants.
-----X

DECISION AND
ORDER

Index No. 152531/2014

HON. ANIL C. SINGH, J.

In this action for unpaid legal fees, plaintiff moves for an order for partial summary judgment pursuant to CPLR §3212.¹ We assume the parties familiarity with the facts which we reference only as necessary to explain our decision.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case.” (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]).

Timeliness of Motion

The CPLR states, “[a]ny party may move for summary judgment in any action, after issue has been joined.” (CPLR §6 3212). Here issue was joined when defendants filed their Answer on June 26, 2014. Contrary to the defendants’ contention, plaintiff’s motion for summary judgment is not premature. (Friedlander Org., LLC v Ayorinde, 94 AD3d 693, 694 [2d Dept

¹ While plaintiff’s Notice Motion refers to a motion for default judgment pursuant to CPLR §3215, all of plaintiff’s substantive arguments are in support of partial summary judgment. Furthermore, plaintiff acknowledges this “advertent mistake” in their reply papers and thus the Court will treat this motion as one for partial summary judgment.

2012]). Defendants have failed to demonstrate that discovery may lead to relevant evidence or that the facts essential to oppose the motion were exclusively within the knowledge and control of the plaintiff (Id.). As such, the motion is timely.

Legal Services Provider

Plaintiff's second cause of action is for an account stated for which they now seek judgment. Defendants' argument that no money is owed to plaintiff is belied by the unambiguous terms of the Retainer Agreement that defendant(s) retained plaintiff law firm. Defendants argue that plaintiff had an arrangement with employed attorney, Daniel Mann Esq., that he would receive all of the billing which he logged on clients which he brought to the firm, such as defendants (see Mann Aff at ¶ 3). Defendants reason that since Daniel Mann Esq. is not seeking payment, then none are owed. However, defendant(s) signed the retainer agreement hiring *plaintiff* for their legal services thus payment is due to plaintiff. Any arrangement between Daniel Mann and his employer are outside the scope of plaintiff's claim for an account stated against their client.

Defendants Objection to the Invoices

For an account stated, a plaintiff must show that their client received, retained without objection, and partially paid invoices without protest (Scheichet & Davis, P.C. v Nohavicka, 93 AD3d 478, 478 [1st Dept 2012]). Defendants aver that plaintiff cannot establish a prima facie case since defendant Ringel made several complaints to Daniel J. Mann Esq. regarding the firm's predatory billing practices. Daniel Mann's affirmation states, "[i]t is my recollection that as a general matter Mr. Ringel protested invoices that were sent to him by [plaintiff] CTSW during my time there but I don't recall if he protested every invoice." (See Mann Aff at ¶8).

Defendants, however, fail to proffer any documentary evidence in support of this claim. It is well

settled that “[d]efendant's oral and undocumented objections to the remaining bills do not suffice to create triable issues as to the remaining amount owed.” (Fross, Zelnick, Lehrman & Zissu, P.C. v Geer, 120 AD3d 1157 [1st Dept 2014]). Furthermore, defendant Ringel claims to have specifically disputed a \$25,000 bill for contract review however, documentary evidence indicates that defendant Ringel attempted to make a payment on that bill which was ultimately returned for insufficient funds (see Ringel Aff at 13; Hoermann Aff at ¶4). Accordingly, defendants’ claims of objection do not give rise to an objectionable issue of fact (see Lapidus & Assoc., LLP v Elizabeth St., Inc., 92 AD3d 405, 405 [1st Dept 2012]).

Defendant Ringel's Personal Liability

While officers or agents of a corporation are generally not liable on its contracts if they do not purport to bind themselves individually, they will be held personally liable if the terms are clear and unambiguous that the officer or agent is personally bound (PNC Capital Recovery v Mechanical Parking Sys., Inc., 283 AD2d 268, 270 [1st Dept 2001]). The retainer agreement at issue dated July 23, 2008 is addressed to “Mr. Benjamin Ringel c/o Armstrong Capital.” At the end of the agreement defendant Ringel’s signature is found below a line that states “accepted and agreed” and is above a preprinted line that states, “Benjamin Ringel.” It is not clear and explicit that defendant would be held personally liable since the agreement is addressed in “c/o Armstrong Capital, LLC” and the header on the second page indicates the document is titled “Armstrong Capital, LLC.” Genuine issue of material fact as to whether defendant Ringel signed the retainer agreement in his individual or corporate capacity precludes summary judgment as it pertains to defendant Ringel. (Herman v Ness Apparel Co., Inc., 305 AD2d 217 [1st Dept 2003]) (finding the same).

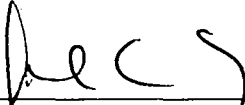
Amount Owed

Plaintiff proffers over a dozen invoices in support of their account stated claim. While the majority of the invoices are addressed to "Armstrong Capital LLC, Attn: Mr. Benjamin Ringel." A few of these invoices are addressed to other entities that plaintiff conclusory claims were all controlled by defendant Ringel. Liability can only be granted as to the invoices that are addressed to "Armstrong Capital LLC, Attn: Mr. Benjamin Ringel." An issue of fact exists as to the corporate structure of these other third party entities. As such, partial summary judgment may be granted only on the invoices addressed to "Armstrong Capital LLC, Attn: Mr. Benjamin Ringel."

The motion for partial summary judgment is granted in favor of plaintiff and against defendant on the second cause of action in accordance with the decision herein. The action shall continue as to the first and third causes of action. Counsel are directed to appear for a preliminary conference in Room 320, on March 18, 2015, at 9:30 AM.

Settle Judgment

Date: January 20, 2015
New York, New York



Anil C. Singh