Gonzalez v Kornfeld
2016 NY Slip Op 30479(U)
March 23, 2016
Peekskill City Court, Westchester County
Docket Number: SC-636-15
Judge: Reginald J. Johnson
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PEEKSKILL CITY COURT
COUNTY OF WESTCHESTER: STATE OF NEW YORK
----------x
MARIA GONZALES,

DECISION & ORDER

Plaintiff,

--against--

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LEON KORNFELD,

Defendant.
----------x

REGINALD J. JOHNSON, J.

In this small claims action, the Plaintiff, Maria Gonzales, seeks the return of a deposit she gave to the Defendant, Leon Kornfeld, Esq., for legal services regarding her fiancé's immigration matter. Defendant countered that he is entitled to keep the deposit for services rendered. After the parties were unable to mediate or settle this case, this matter proceeded to a bench trial.

For the reasons that follow, judgment for Plaintiff in the sum of $400.00 plus costs.

In deciding this matter, the Court considered the testimony of the Plaintiff and Defendant and the following exhibits marked in evidence:

Plaintiff's Exh. 1 (1 page) receipt # 787722 from Defendant for $600.00.

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Trial

At trial, the Plaintiff testified that in the morning of November 25, 2015, the Immigration Naturalization Service (I.N.S.) arrived at her apartment and took her fiancé into custody. Plaintiff said that she panicked and then went to the Peekskill Police Department for information but she was told by an officer that they had no information, but that she should contact the Westchester County Department of Correction in Valhalla, New York ("the Jail").

Plaintiff went to the Jail but her fiancée was not there; thereafter, she sought the services of the Defendant. Plaintiff said she went to Defendant's office later that afternoon and sought his assistance in locating and helping her fiancé. Plaintiff said Defendant's fee was $1500.00 but she only had $600.00, which was her rent money. Plaintiff said Defendant took a partial deposit of $600.00, gave her a receipt (Plt's Exh. 1), and told her to return the following day with the remainder of his fee and then he would begin work. Plaintiff said that the only document she received was a receipt for her $600.00 deposit[1] and that she did not sign any other papers.

Plaintiff said she returned the following morning and informed the Defendant that she could not obtain the remaining balance; she said she

[1] The receipt is difficult to decipher due various amounts noted therein and then crossed out as well as changed dates and indecipherable words in the memo portion of the receipt.

then requested the return of her deposit but that the Defendant refused to refund the deposit because he claimed that he had done work on behalf of the Plaintiff's fiancé.

On cross examination, the Plaintiff testified that she was present when the Defendant made a call to the Orange County Department of Correction in Orange County, New York, verifying that her fiancé was incarcerated there. Plaintiff conceded that she was not married but only engaged to her fiancé. Plaintiff further testified that she went to the Defendant's office on November 25th and 26th, not the 27th.

The Defendant testified that he did not provide the Plaintiff with a retainer agreement but that his agreed upon fee would be $1500.00 for finding and assisting Plaintiff's fiancé with his immigration issue. Further, Defendant stated that on November 27, 2015 he spoke with an immigration official (Mr. Rodriquez) and discussed what would be needed to stay deportation proceedings against the Plaintiff's fiancé. Defendant conceded that he did not provide the Plaintiff with any information regarding his discussion with Mr. Rodriquez.

Discussion

It has been held that the Small Claims Part of a City Court is commanded to "do substantial justice between the parties according to the rules of substantive law." Williams v Roper, 269 A.D.2d 125, 126,

703 N.Y.S.2d 77, 79 (1st Dept 2000); UCCA §1804; see also, Milsner v. McGahon, 20 Misc.3d 127(A), 2008 WL 2522307 (App. Term. 9th & 10th Judicial Districts); Basler v. M&S Masonry & Construction, Inc., 21 Misc.3d 137(A), 2008 WL 4916105 (App. Term, 9th & 10th Judicial Districts).

At a bench trial, the Court is empowered to make credibility determinations regarding the testimony of the parties and the evidence proffered by them. L'Esprance v. L'Esprance, 243 AD2d 446, 663 NYS2d 95 (2d Dept. 1997). The reason for this is that the trial court sitting as the trier of fact had the opportunity to hear and observe the demeanor of the witnesses while they were testifying as well as to weigh the evidence proffered by them. QPII-35-12 99th Street, LLC v. Batista, 33 Misc.3d 25, 932 N.Y.S.2d 301 (Sup. Ct. App. Term 2d Dept., 2011).

In New York, an attorney who undertakes to represent a client and enters into an agreement for, charges, or collects any fee from the client must provide the client with a letter of engagement before or within a reasonable time after commencing the representation. See, 22 N.Y.C.R.R. §1215.1(a). In fact, where there is a significant change in the fee or the scope of services to be provided, an updated letter of engagement must be provided. Id. Letters of engagement must address the following matters: 1) an explanation of the scope of the legal services to be provided; 2) an explanation of the attorney's fees to be charged; and 3)

where applicable, notification to the client of the right to arbitrate fee disputes in accordance with the New York State Fee Dispute Resolution Program. See, 22 N.Y.C.R.R. §1215.1(b).

New York permits an attorney to provide his client with a retainer agreement instead of a letter of engagement provided the retainer agreement is signed by the client before or within a reasonable time after commencing the representation and provided the retainer agreement addresses the matters required in a letter of engagement. See, 22 N.Y.C.R.R. §1215.1(b).

An attorney need not provide his client with a letter of engagement or retainer letter in the following cases:

(a) representation of a client where the fee is expected to be less than $3,000.00;

(b) representation where the attorney's services are of the same general kind as previously rendered to and paid for by the client; or

(c) representation where the attorney is admitted to practice in another jurisdiction and maintains no office in New York, or where no material portion of the services are to be rendered in New York.

See, 22 N.Y.C.R.R. §1215.2.

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Generally, a retainer agreement for professional legal employment between an attorney and a client may encompass such terms as they may agree to and will be enforced so long as the terms are fair and reasonable. See, Rodkinson v. Haecker, 248 N.Y. 480, 162 N.E. 493 (1928); Greenberg v. Jerome H. Remick & Co., 230 N.Y. 70, 129 N.E.211 (1920); York v. York, 57 A.D.3d 982, 870 N.Y.S.2d 462 (2d Dept. 2008). Seth Rubenstein, P.C. v. Ganea, 41 A.D.3d 54, 833 N.Y.S2d 566 (2d Dept. 2007).

Where an attorney renders legal services to a client without an express agreement as to compensation, but the attendant factual circumstances support an implied promise to pay for such services, the attorney may recover on a quantum meruit basis for the reasonable value of the services so rendered. Matter of Estate of Kleefeld, 168 A.D.2d 242, 562 N.Y.S.2d 124 (1st Dept. 1990); Aiello v Adar, 193 Misc.2d 649, 750 N.Y.S.2d 457 (Sup Ct Bronx County, 2002); Armienti & Brooks, P.C. v. Acceleration Nat. Ins. Co., 274 A.D.2d 319, 710 N.Y.2d 74 (1st Dept. 2000); Peter A. Dankin, P.C. v. North Shore Partnership, 255 A.D.2d 207, 680 N.Y.S.2d 91 (1st Dept. 1998); Utility Audit Group v. Apple Mac & R Corp., 59 A.D.3d 707, 874 N.Y.S.2d 525 (2d Dept. 2009).

In order for an attorney to recover in quantum meruit for the reasonable value of the services so rendered, the attorney has the burden of establishing performance, the work or services in question, the value

thereof, and the nexus between the performance of the services and the liability to pay therefor. See, Sand v. Lammers, 150 A.D.2d 355, 540 N.Y.S.2d 876 (2d Dept. 1989); Barry Mallin & Associates, P.C. v. Nash Metalware Co., Inc., 18 Misc.3d 890, 849 N.Y.S.2d 752 (N.Y. City Civ. Ct. 2008).

In determining the amount of compensation an attorney is entitled to recover under a quantum meruit (Latin meaning "as much as he deserved") basis, some of the following factors may be considered: 1) the nature and complexity of the litigation (DeGregorio v. Bender, 52 A.D.3d 645 [2d Dept. 2008]); 2) the time required for the work performed (Larkin v. Present Co., 152 A.D.2d 1005, 544 N.Y.S.2d 696 (4th Dept. 1989); 3) the time actually spent on the case (M. Sobol, Inc. v. Wykagyl Pharmacy, 282 A.D.2d 438, 723 N.Y.2d 88 (2d Dept. 2001); 4) the novelty of the questions involved (Washington Federal Sav. and Loan Ass'n v. Village Mall Townhouses, Inc., 90 Misc.2d 227, 394 N.Y.S.2d 772 (Sup Ct, Queens County 1977); 5) the amount of money involved in the case or the value of the property or rights in controversy (Dillon v. Dean, 256 A.D.2d 436, 682 N.Y.S.2d 78 (2d Dept. 1998); 6) the degree or the amount of responsibility assumed by the attorney [(Dillon v. Dean, supra; Golden v. Aldell Realty Corp., (Sup Ct., Queens County 1947)]; 7) the financial condition of the client (Theroux v. Theroux, 145 A.D.2d 625, 536 N.Y.S.2d 151 (2d Dept. 1988); 8) the results accomplished by

the attorney—specifically, the benefit inuring to the client as a result of the attorney's services [(DeGregorio v. Bender, 52 A.D.3d 645, 860 N.Y.S.2d 193 (2d Dept. 2008); Gross v. Moore, 14 A.D. 353, 43 N.Y.S 945 (1st Dept. 1897); and 9) the amounts customarily charged or allowed for similar services in the same locality [(DeGregorio v. Bender, supra; Meyer, Suozzi, English & Klein, P.C. v. Alvin & Richman, P.C., 196 Misc.2d 159, 763 N.Y.S.2d 898 (Dist. Ct. 2003)].

In the case at bar, the Plaintiff sought and obtained the services of the Defendant. Since the agreed upon fee between the parties for the Defendant's services was $1500.00, a letter of engagement or retainer agreement was not required. See, 22 N.Y.C.R.R §1215.2. In fact, even if the Defendant was required but failed to provide the Plaintiff with a letter of engagement or retainer agreement, said failure would not bar Defendant's claim to an account stated. See, Thelen LLP v. Omni Contracting Co., Inc., 79 A.D.3d 605, 914 N.Y.S.2d 119 (1st Dept. 2010).

The Plaintiff stated that the Defendant told her that he would not begin work on her case until she returned with the remaining balance of his fee.[2] Plaintiff testified that she returned to the Defendant's office the following morning and requested a refund of her deposit because she could not obtain the remaining balance. The Defendant stated that he had done work already and that she was not entitled to the $600.00 deposit.

[2] Both parties testified that the Plaintiff gave Defendant a $600.00 deposit leaving a remaining balance of

Plaintiff conceded that she was present when the Defendant made a telephone inquiry regarding the whereabouts of her fiancé.

The Defendant stated that he spoke with Mr. Rodriquez from I.N.S. and that he advised the Defendant regarding the documentation required to stay the deportation proceedings of the Plaintiff's fiancé. Defendant stated that he never advised the Plaintiff of his interaction with Mr. Rodriquez and that he never provided her with any documentation of his interaction with Mr. Rodriquez.

The dispositive question for the Court is whether the Defendant informed the Plaintiff that he would not begin work on her case until she gave him the remaining balance. In the Court's view, the Defendant would not be entitled to any money if he told the Plaintiff that he would not begin until she paid him the remaining balance. However, the Plaintiff did testify that she was present when the Defendant made a telephone inquiry regarding her fiancé. In other words, Plaintiff had first- hand knowledge that the Defendant had commenced work on her case.

Assuming the Defendant made a telephone inquiry with I.N.S. regarding the Plaintiff's fiancé, it bears repeating that no documentation was presented to the Plaintiff regarding this communication and she was never informed by the Plaintiff that he communicated with I.N.S.

$900.00.

regarding her fiancé. The sum total of work performed by the Defendant consisted mainly of two telephone calls-one to the Orange County Jail and one to the I.N.S. regarding Plaintiff's fiancé.

In the Court's view, the time actually spent by Defendant in this matter (approximately 1 ½ hrs); the degree of responsibility assumed by the Defendant in this matter (none); the benefits inuring to the Defendant as a result of the Defendant's services (not substantial); the financial condition of the Plaintiff (the $600.00 deposit was part of her rent money); and the amounts customarily charged or allowed for similar services in the City of Peekskill (similar services in this locality for 1 ½ hrs of telephone work under the circumstances presented would range from $50.00-75.00 per hr.)[3] dictate that the Plaintiff is entitled to a money judgment in the sum of $400.00. See, M. Sobol, Inc. v. Wykagyl Pharmacy, supra; Dillon v. Dean, supra; Golden v. Aldell Realty Corp., supra; DeGregorio v. Bender, supra; Theroux v. Theroux, supra; Meyer, Suozzi, English & Klein, P.C. v. Alvin & Richman, P.C.,

Based on the aforesaid and, in the interest of substantial justice in accordance with the rules and principles of substantive law, the Plaintiff is entitled to a money judgment in the sum of $400.00 plus costs.

Ordered, that the Plaintiff is entitled to a money judgment in the sum of $400.00 plus costs.

[3] The Court notes that the Defendant charged a flat fee for his services to the Plaintiff. Further, the Court

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This constitutes the decision and order of the Court.

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Hon. Reginald J. Johnson
City Court Judge

Dated: Peekskill, NY
March 23, 2016

Order entered in accordance with the foregoing on this ____ day of March, 2016.

_____

Concetta Cardinale
Chief Clerk

To: Maria Gonzalez
290 Sherman Ave
Peekskill, New York 10566

Leon Kornfeld, Esq.
1011 Park Street
Peekskill, New York 10566

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deems the Defendant's services prior to termination more investigatory than legal.