

**Law Offs. of Paul A. Chin, P.C. v Seth A. Harris,
PLLC**

2016 NY Slip Op 33234(U)

December 12, 2016

Supreme Court, New York County

Docket Number: Index No. 652109/2016

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: ENGORON
Justice

PART 37

Index Number : 652109/2016
LAW OFFICES OF PAUL A. CHIN
vs
SETH A. HARRIS, PLLC DBA
Sequence Number : 001
SUMMARY JUDGMENT

INDEX NO. 652109/16
MOTION DATE 7/12/16
MOTION SEQ. NO. 001

The following papers, numbered 1 to 4, were read on this motion to/for summary judgment

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1, 2
Answering Affidavits — Exhibits _____ No(s). 3
Replying Affidavits _____ No(s). 4

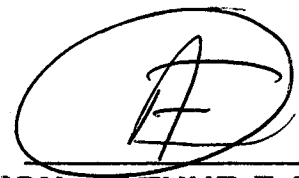
Upon the foregoing papers, it is ordered that this motion is

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

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

Dated: 12/12/16



_____, J.S.C.
HON. ARTHUR F. ENGORON

- 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 37

-----X
LAW OFFICES OF PAUL A. CHIN, P.C.,

Plaintiff,

- against -

SETH A. HARRIS, PLLC, d/b/a BURNS & HARRIS,

Defendant.
-----X

Index Number: 652109/2016

Sequence Number: 001

Decision and Order

Arthur F. Engoron, Justice

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1-4, were used on this motion by plaintiff, and cross-motion by defendant, for summary judgment:

Papers Numbered:

Moving Papers	1
Cross-Moving Papers	2
Reply Papers	3
Sur-Reply Papers	4

Upon the foregoing papers, the motion is granted in part and denied in part and the cross-motion is denied in full.

Preliminary Statement

This unfortunate, and unfortunately all-too-typical, case arises out of a squabble between attorneys over “filthy lucre.” One would have hoped that members of a profession, as we like to think of ourselves, as opposed to a business, would be able to settle their differences without resort to the very arena in which they practice that profession, with the concomitant waste of time and other resources, and the public spectacle. But be that as it may, the Court will address the instant motion and cross-motion strictly on the (largely or wholly uncontested) facts and law.

Background

On 7/28/15 the parties entered into an employment agreement of sorts (“The Agreement”) (Moving Exhibit A). Pursuant thereto, plaintiff was to work for defendant part-time, for a six-month “trial period,” commencing 8/24/15, for 15-25 hours per week, at the rate of \$100 per hour, up to a maximum of 350 hours; or, “In the event that Office Rent will not be paid by [plaintiff],” \$50 per hour up to a maximum of 350 hours.” Furthermore, at any time during the six months, defendant could “decide to compensate [plaintiff] on [a?] mutually agreeable

contingency fee basis. “The amount of the Contingency Compensation shall be mutually agreed to between the parties ... prior to legal services being rendered on a case in which the Contingency Compensation is applicable.” The parties would have to agree to the Contingency Compensation contingency in writing. (As the Contingency Compensation contingency clearly never came into being, the Court need not describe or discuss it further at this point. Finally, “Provided that [the?] Hourly Rate of \$100 per hour is agreed [to?], plaintiff was to pay defendant \$2,100 per month in rent, to be deducted from amounts due under the agreement.

If this agreement confuses you, welcome to the club, which is probably why this case is in court. For example: Who was empowered to decide whether plaintiff would or would not pay rent (plaintiff itself seems ambivalent)? What would happen if plaintiff worked more than 350 hours? Nonetheless, the parties actions have allowed the Court to dispose of this case.

Plaintiff commenced working for defendant on or about 9/8/15. Plaintiff states that from then through 1/29/16, “the parties’ conduct was consistent with” The Agreement. On or about 10/1/15 plaintiff billed defendant for September work at \$100, less a \$2,100 rent payment. Defendant apparently paid this amount (\$4,148, representing 62.5 hours worked, for \$6,250 [all figures herein are approximate and/or rounded off], less \$2,100 for rent). So far, so good. Indeed, this procedure continued through January work.

Plaintiff says, in effect, that in February 2016 defendant opted to pay plaintiff \$50 and not collect rent. Plaintiff agreed and billed defendant \$50 per hour for work done in February and the first ten days of March. Defendant refused to pay this, on the ground that plaintiff should only have charged \$50, not \$100, per hour in December and January (and, thus, was overpaid \$8,284.80). Defendant claims that in February, 2016 he “advised” plaintiff that defendant overpaid plaintiff (at \$100 an hour) for December and January and that going forward plaintiff should bill at \$50 an hour.

Defendants’ counterclaim alleges that defendant only owed plaintiff \$50 per hour for work done in December 2015 and January 2016.

Instant Motions

Plaintiff now moves for summary judgment as follows: a declaration that The Agreement is a valid and enforceable contract; money damages in the amount of \$8,400 for work done from \$2/1/16 to 3/10/16; on liability only on its claim for unpaid contingency fees; a declaration that plaintiff’s timesheets from 9/8/15 through 1/29/16 constitute an “account stated” that has been fully paid; and dismissal of defendant’s counterclaim.

Discussion

Fortunately, resolution of this case is fairly simple. In the Court’s humble view, it is fair, and should not surprise the parties (although perhaps it will).

First, the parties conduct, rather than their signatures, ratified their compact, i.e, The Agreement was, at least retroactively, a binding contract. Note that defendant accepted its benefits for several months

Second, plaintiff is entitled to keep all the money he received for December and January (\$100 an hour minus \$2,100 rent payments) pursuant to the Voluntary Payment Doctrine. See Samuel v. Time Warner, Inc., 809 NYS2d 408, 418 (Sup. Ct. 2005); see generally, Colin E. Flora, Practitioner's Guide to the Voluntary Payment Doctrine, Southern Illinois University Law Journal, Vol. 37, No. 1, Fall, 2012, http://www.law.siu.edu/_common/documents/law-journal/articles-2012/flora.pdf. Plaintiff is not entitled to relief under an "account stated" theory, which presupposes that money was not paid, not that it was paid.


Third, defendant breached the agreement by failing to pay plaintiff for work done from 2/1/16 through 3/10/16 in the amount of \$8,400 (at \$50 an hour; defendant apparently does not dispute the 168 hours plaintiff claims to have worked).

Fourth, plaintiff is not entitled to any money under the Contingency Compensation clause, because under the clear terms of the agreement it obviously never came into effect.

Conclusion

Thus, the Court hereby declares that the Memorandum (Moving Exhibit A; referred to herein as The Agreement) was a valid and binding contract; plaintiff is entitled to recover from defendant \$8,400 for breach of contract; plaintiff is not entitled to relief pursuant to his claim for contingency fees; plaintiff is not entitled to a declaration that his December and January timesheets constituted an "account stated"; plaintiff is entitled to summary judgment dismissing defendant's counterclaim; and the clerk is hereby directed to enter judgment accordingly.

Dated: December 12, 2016



Arthur F. Engoron, J.S.C.