

Guo-Bang Chen v Caesar & Napoli, P.C.

2017 NY Slip Op 33133(U)

September 18, 2017

Supreme Court, Queens County

Docket Number: 710872-15

Judge: Leonard Livote

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FILED
SEP 29 2017
COUNTY CLERK
QUEENS COUNTY

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote
Acting Supreme Court Justice

IAS TERM, PART 33

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Guo-Bang Chen,
Plaintiff,

Index No: 710872-15

-- against --

Motion Date: 6/12/17

Caesar and Napoli, P.C., et al,
Defendant(s).

Seq. No: 4

-----X

The following papers numbered 1 to 10 were read on this motion by defendant for an order:

1. pursuant to CPLR §3212 granting summary judgment in favor of defendants, Caesar and Napoli, P.C., James C. Napoli, Esq., Robert Stein, Esq. and Dennis Patrick Ryan Esq., dismissing plaintiffs' complaint on the grounds that there are no triable issues of fact and that this moving defendant is entitled to summary judgement as a matter of law; or in the alternative;
2. ordering a framed-issue hearing to confirm that defendants properly mailed the case rejection letter dated September 24, 2012 and deeming said letter received by plaintiff prior to the expiration of the applicable statute of limitations;
3. upon a finding that the plaintiff was notified that defendants terminated the attorney-client relationship prior to the expiration of the applicable statute of limitations issuing an order pursuant to CPLR §3212 granting summary judgement in favor of defendants, dismissing plaintiff's complaint on the grounds that there are no triable issues of fact and that this moving defendant is entitled to summary judgement as a matter of law.

	PAPERS NUMBERED
Notice of Motion, Affirmation, Affidavits and Exhibits.....	1-4
Answering Affirmations, Affidavits and Exhibits.....	5-7
Reply Affirmations, Affidavits and Exhibits.....	8-10
Other.....	

Upon the foregoing papers, the motion for summary judgment is denied.

Defendants move for summary judgment in this legal

malpractice action.

Summary judgment is a drastic remedy that should only be employed when there is no doubt as to the absence of any triable issues of a material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2nd Dept 2005]). "Issue finding, rather than issue determination is the courts function. If there is any doubt about the existence of a triable issue of fact, or a material issue of fact is arguable, summary judgment should be denied" (*Celardo v Bell*, 222 AD2d 547 [2d Dept 1995]). "In the context of a motion for summary judgment, the court is obliged to draw all reasonable inferences in favor of the non-moving party, and may not pass on issues of credibility" (*Rizzo v Lincoln Diner Corp.*, 215 AD2d 546 [2d Dept 2005]).

The party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of a triable issue of fact (CPLR Section 3212(b); *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Megafu v. Tower Ins. Co. of New York*, 73 A.D.3d 713 [2d Dept 2010]). However, once the moving party has satisfied this obligation, the burden then shifts; "the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action" (*Zuckerman v. City of New York*, *supra*).

In the instant case, Defendants met their initial burden by demonstrating that plaintiff was informed by phone and mail that his case had been rejected. However, plaintiff raised an issue of fact by averring that the phone call was to advise him that his case was proceeding and that he never received any letter to the contrary.

Accordingly, the motion for summary judgment is denied.

The motion for a framed issue hearing is also denied.

This constitutes the Order of the Court.

Dated: September 18, 2017


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Leonard Livote, A.J.S.C.

