

Gorayeb & Assoc., P.C. v Toledo
2018 NY Slip Op 31153(U)
June 6, 2018
Supreme Court, New York County
Docket Number: 656590/2017
Judge: Barry Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. BARRY R. OSTRAGERPART 61*Justice*

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GORAYEB & ASSOCIATES, P.C. and CHRISTOPHER J.
GORAYEB,INDEX NO. 656590/2017

Plaintiffs,

MOTION DATE 3/16/2018

- v -

MOTION SEQ. NO. 001

JORGE TOLEDO,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 10, 11, 12, 13, 14
were read on this application to/for Judgment - Default

OSTRAGER, BARRY R., J.S.C.:

Before the Court is a motion by plaintiffs for a default judgment against defendant Jorge Toledo pursuant to CPLR §3215(f) on liability and damages, or in the alternative for a default judgement as to liability and an inquest on damages, and for a permanent injunction enjoining defendant Jorge Toledo from future violations of New York Judiciary Law §479 and New York General Business law §349. The motion is granted in part and denied in part based on the papers submitted and defendant's default for the reasons set forth below.

According to the affidavit of Christopher J. Gorayeb (NYSCEF Doc. No. 12), plaintiff Gorayeb & Associates, P.C. is a law firm that specializes in the representation of persons who have suffered personal injuries, many of whom are "unsophisticated legal consumers and immigrants to the United States." Plaintiff Christopher Gorayeb is an attorney and the sole

shareholder of the firm. Gorayeb claims that defendant Jorge Toledo, who is not an attorney, has “repeatedly contacted and solicited clients of Gorayeb in an attempt to wrongfully cause them to terminate their relationship with Gorayeb and to retain specific other counsel, Zaremba & Brown,” and that one client did, in fact, change counsel at Toledo’s urging. Gorayeb also claims that Toledo defamed him to cause clients to discharge Gorayeb and hire Zaremba.

In addition to his own affidavit, Gorayeb has provided an affidavit from his investigator Francisco Payano, a former police officer and present employee of Gorayeb (NYSCEF Doc. No. 11). Posing as a Gorayeb client, Payano met with Toledo on June 9, 2017, recorded their conversation in Spanish, and then arranged to have the tape translated into English by a certified interpreter. In the conversation, recited in the affidavit, Toledo repeatedly accuses Gorayeb of stealing from the Gorayeb firm’s clients and specifically recommends that Payano discharge Gorayeb and retain the Zaremba firm. Payano attaches to his affidavit a copy of the Zaremba business card that Payano purportedly gave him during the conversation.

Based on these allegations, Gorayeb seeks damages and injunctive relief. In the moving papers, Gorayeb has established service on Toledo and Toledo’s default. The alleged facts have been presented in evidentiary form via affidavits from individuals with personal knowledge as required by CPLR § 3215. The Court now turns to the six causes of action in the Complaint.

Plaintiff Gorayeb law firm is entitled to a judgment of liability on the first cause of action for tortious interference with prospective economic relations based on proof that defendant intentionally interfered with the law firm’s business relations with clients by persuading some clients to discharge Gorayeb and retain Zaremba, causing financial injury to Gorayeb. The law firm’s request for judgment on the second cause of action for tortious interference with contract is denied. An essential element is the defendant’s intentional procuring of a breach of a contract

between Gorayeb and a third party, that contract being the retainer agreement between Gorayeb and the client. *White Plains Coat & Apron Co. Inc. v Cintas*, 8 NY3d 422, 425-26 (2007).

However, as a party always has a right to discharge his counsel, the client's decision to change counsel does not constitute a breach of contract.

Plaintiff law firm is granted a judgment of liability on the third cause of action for unfair competition based on the showing that Toledo acted in bad faith, calling Gorayeb a thief, to wrongfully solicit Gorayeb clients to change counsel. Relief is denied as to the fourth cause of action for violation of General Business Law § 349. That statute renders unlawful "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state." Plaintiff has failed to establish that Toledo was acting in the conduct of any business so as to satisfy the statute. The Court cannot infer from Toledo's presentation of Zaremba's business card that he was an authorized agent for Zaremba's business

Relief is granted in favor of both plaintiffs on the fifth cause of action to the extent it seeks to permanently enjoin Toledo from conduct that violates Judiciary Law §479. That statute states that: "It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services, or to make it a business so to solicit or procure such business, retainers or agreements." Plaintiffs adequately established that Toledo was soliciting legal business in violation of law. To the extent injunctive relief is also sought based on GBL §349, that request is denied for the reasons stated above. Plaintiffs have also demonstrated a claim for defamation entitling them to judgment on the sixth cause of action.

While plaintiffs have succeeded in establishing liability on several claims, damages have not been established. Therefore, an inquest on damages is required. Accordingly, it is hereby

ORDERED that plaintiffs' motion is granted to the extent of awarding plaintiff a judgment on liability in favor of Gorayeb & Associates, P.C. against Jorge Toledo on the first and third causes of action and is denied as to the second and fourth causes of action; and it is further

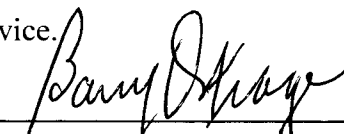
ORDERED that plaintiffs' motion is granted to the extent of awarding plaintiffs a judgment on liability in favor of Gorayeb & Associates, P.C. and Christopher J. Gorayeb against Jorge Toledo on the sixth cause of action; and it is further

ORDERED that plaintiffs' motion is granted to the extent of granting plaintiffs a permanent injunction in favor of Gorayeb & Associates, P.C. and Christopher J. Gorayeb against Jorge Toledo on the fifth cause of action to the extent of enjoining Toledo from engaging in conduct that violates Judiciary Law §479 by soliciting legal business from Gorayeb clients, but is denied insofar as it seeks injunctive relief pursuant to GBL §349; and it is further

ORDERED that the matter is scheduled for an inquest on damages in Room 232 at 60 Centre Street, New York, NY on Friday, June 29, 2018 at 10:00 a.m., and plaintiffs' counsel is directed to serve defendant with a copy of this decision by mail, with an additional copy mailed to defendant c/o Zaremba & Brown, and to efile proof of service.

6/6/2018

DATE


 BARRY R. OSTRAGER, J.S.C.
BARRY R. OSTRAGER
JSC

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CASE DISPOSED
 GRANTED
 SETTLE ORDER
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DENIED

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NON-FINAL DISPOSITION
 GRANTED IN PART
 SUBMIT ORDER
 FIDUCIARY APPOINTMENT

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OTHER

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REFERENCE