SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK **PART** IAS MOTION 38EFM

Justice

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LAW OFFICE OF WALLACE NEEL, P.C.,

Plaintiff,

- v -

DARREN PAUL and EVAN VOGEL

Defendants.

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INDEX NO. 654214/2018

MOTION DATE 4/4/2019

MOTION SEQ. NO. 001 & 002

DECISION AND ORDER

LOUIS L. NOCK, J.

Upon e-filed documents numbered 1-50, and after oral argument, plaintiff's motions to dismiss affirmative defenses and counterclaims (seq. no. 001) and for summary judgment on its claim for account stated (seq. no. 002) are decided in accord with the following memorandum.

Background:

Plaintiff law firm sues two of its clients for legal fees alleged to have been earned in the course of representation in two actions and invoiced at a total of $92,069.55. Defendants paid down that invoiced amount to the extent of $26,853.61. The action, therefore, seeks the remaining balance of $65, 215.94. The complaint asserts several causes of action; the first of which, for account stated.

Two separate retainer agreements relating to plaintiff's representation of defendants in the two actions are addressed to the defendants, individually; and expressly indicate that the defendants, individually, and to the exclusion of any business entity they may be affiliated with, are the clients and responsible parties under the retainer agreements (*see*, NYSCEF Doc. Nos. 15 & 16). There is no dispute in this case that defendants each signed the retainer agreements. The signature lines identify them individually by name – not as officers of any entity.

Defendants caused payments to be made on the legal bills, aggregating $26,853.61 in payments toward those bills. No objection was ever interposed by the defendants to the bills, of which the last one was issued January 20, 2017 (NYSCEF Doc. No. 13). They simply ceased further payment. This action, therefore, ensued.

Despite the fact that defendants never objected to the invoices, and despite the fact that they partially paid those invoices, defendants interposed an answer and counterclaim to the complaint nearly two years after the last invoice – in October 2018 – purporting to take issue with the validity of the legal bills, and asserting, without any modicum of factual detail, that they were overcharged and that plaintiff law firm engaged in malpractice. However, apart from those conclusory assertions found in the answer and counterclaim, nothing whatsoever can be found in the defendants' opposition affidavits in this motion practice that discusses, let alone elaborates on, any asserted deficiencies in the legal representation furnished and billed for.

Discussion:

The receipt and retention of an invoice stating amounts due, without objection from the recipient within any reasonable period of time, gives rise to an actionable right by the issuer of the invoice to enforce payment of such amounts as accounts stated (*e.g., Morrison Cohen Singer & Weinstein, L.L.P. v Ackerman*, 280 AD2d 355 [1st Dept 2001], *Moses & Singer L.L.P. v S&S Machinery Corp.*, 251 AD2d 271 [1st Dept], *lv dismissed* 92 NY2d 1024 [1998]).

Defendants' opposition affidavits say absolutely nothing about being overcharged or about any sort of deficiency in the quality of plaintiff law firm's representation. Instead, they purport to assert that they did not realize that they – and not their affiliated companies – were the clients/obligors under the two separate retainer agreements that they concededly signed. Defendants cannot avoid the plain import of their executed contracts to pay plaintiff, through the

simple expedient of purporting not to have read or not to have understood the plain language of their contracts (*see, e.g., Humble Oil & Refining Co. v Jaybert Esso Service Station, Inc.*, 30 AD2d 952 [1st Dept 1968]). The first retainer agreement addresses the defendants individually; defines defendants as the clients, to the express exclusion of any other person or business entity; and is signed by the defendants individually (*see*, NYSCEF Doc. No. 15). The second retainer agreement shares the exact same characteristics (*see*, NYSCEF Doc. No. 16). And, both retainer agreements contain express acknowledgments printed directly above defendants' signatures to the effect that they have read the agreements and consent to their terms (*see*, NYSCEF Doc. Nos. 15 & 16).

Defendants take pains to assert that the partial payments they caused to be made on the accounts stated, were made out of corporate accounts. But how they effected the partial payments is immaterial to the dispositive facts that they, alone, were obligated under the retainer agreements; they, alone, signed the agreements; and they never objected to the legal bills (until they answered the complaint nearly two years after issuance of the last bill).

Plaintiff, having met its summary judgment burden to set forth a *prima facie* evidentiary showing in support of its cause of action for account stated; and defendants having failed to sustain their now-shifted burden to proffer an evidentiary showing of any genuine issue of material fact with regard to such claim: plaintiff's motion for summary judgment on its cause of action for account stated (motion seq. no. 002) is granted (*e.g., Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v City of N.Y.*, 49 NY2d 557 [1980]).

Plaintiff requests accrued interest on the judgment amount of $65,215.94 from February 20, 2017, which is 30 days after the date of its last invoice issued to defendants. The court finds such assessment appropriate in accord with CPLR 5001 (b), permitting assessment of interest

from "a single reasonable intermediate date." The court considers the latest invoice payment date as falling within that measure for interest accrual purposes.

As for plaintiff's motion to dismiss affirmative defenses (seq. no. 001), the foregoing disposition regarding motion sequence no. 002 is applicable to same. The first affirmative defense alleges that defendants are not personally responsible for making payments in connection with legal services performed under the two retainer agreements they both signed in their clearly individual capacities. That position has been discredited, as treated hereinabove. The second affirmative defense alleges, in conclusory fashion, that the legal services were inadequate. However, no detail is furnished in said regard, also as pointed out hereinabove.

As for the branch of plaintiff's motion to dismiss counterclaims, no detail is provided as to conclusory allegations about being overcharged or about any defect in the legal services rendered, as similarly discussed hereinabove. As with defendants' opposition papers to motion sequence no. 002, defendants' opposition papers to motion seq. no. 001 contain no factual detail, at all, of any deficiency in the legal representation rendered to them by the plaintiff law firm. In both sets of oppositions, defendants go no further than trying to distance themselves from the retainer agreements that they indisputably, and concededly, executed. Moreover, as found in the discussion hereinabove, no objection was made to the legal bills, constituting accounts stated.

Consequently, by virtue of the reasoning set forth hereinabove in disposition of motion sequence no. 002, plaintiff's motion to dismiss affirmative defenses and counterclaims (motion seq. no. 001) is similarly granted.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment on its claim for account stated (seq. no. 002) is granted and, accordingly, it is further

ORDERED that plaintiff shall have judgment against defendants, jointly and severally, in the principal sum of $65,215.94, plus interest accrued thereon from February 20, 2017, to the date of satisfaction of judgment, plus costs and disbursements, and that plaintiff have execution therefor; and it is further

ORDERED that plaintiff's motion to dismiss affirmative defenses and counterclaims (seq. no. 001) is granted and, accordingly, they are dismissed.

This shall constitute the decision and order of the court.

ENTER:

Louis L. Nock

4/4/2019
DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE