

Cohen Goldstein, LLP v Karambelas

2019 NY Slip Op 31675(U)

June 10, 2019

Supreme Court, New York County

Docket Number: 654934/2018

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**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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INDEX NO. 654934/2018

COHEN GOLDSTEIN, LLP,

MOTION DATE 3/14/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

ANDREA KARAMBELAS,

DECISION AND ORDER

Defendant.

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LOUIS L. NOCK, J.

Upon e-filed documents numbered 11 through 44, plaintiff’s motion to dismiss the first, second, and third affirmative defenses, and for summary judgment on its first and fourth causes of action, is decided in accord with the following memorandum.

BACKGROUND

This is an action by a law firm against its former client in a matrimonial case, for outstanding legal fees. Plaintiff law firm, Cohen Goldstein LLP (the “Firm”), represented defendant Andrea Karambelas in defense of a matrimonial proceeding commenced in Suffolk County and transferred to New York County, titled *Kaplan v Karambelas* (Suffolk County Index No. 017391/13; New York County Index No. 401958/13). The Firm was the third firm that had represented Ms. Karambelas in said proceeding. The Firm’s relationship with Ms. Karambelas was by written retainer agreement dated March 18, 2015, as supplemented April 27, 2015. On May 4, 2016, the Firm was substituted by another attorney. As of that time, the Firm claimed an outstanding legal fee and disbursement balance of \$107,941.29.

By order dated September 8, 2016, Hon. Tandra L. Dawson, Supreme Court, New York County, addressed several matters pending at that time in the matrimonial case, including the Firm’s outstanding fees due (NYSCEF Doc. No. 13). That order referred “the issue of counsel

fees/charging lien owed to wife’s former counsel, Glenn Goldstein, Esq.” “to a Special Referee, to hear and report” Ultimately, there was no need for a referee’s report because the Firm and Ms. Karabelas settled the fee matter that was referred to the Special Referee, by stipulation dated September 20, 2016, and endorsed by Hon. Louis Crespo, Special Referee (NYSCEF Doc. No. 14), to whom the reference was assigned. Because there was no referee’s report by virtue of the settlement, there was, in turn, no need to have anyone move to confirm or reject any report in the underlying case (CPLR 4403). There simply was no report to confirm or reject because the parties had settled the matter, as conclusively demonstrated by the Stipulation of Settlement (NYSCEF Doc. No. 14) and the transcript of Special Referee Crespo’s allocution of Ms. Karambelas on September 20, 2016 (NYSCEF Doc. No. 44).

The Stipulation of Settlement provides that the Firm would have a charging lien on all equitable distribution proceeds in the sum of \$90,000, which sum was subject to reduction in the event that the Firm would be able to collect on certain fee awards issued in its favor against the plaintiff-adversary in the matrimonial case. Such reduction actually did ensue, by virtue of the Firm’s collection of \$12,288.87 from said plaintiff-adversary, reducing the lien to \$77,711.13. Plaintiff’s instant motion for summary judgment on its first (breach of contract) and fourth (*quantum meruit*) causes of action seeks precisely said principal amount, plus accrued interest.

DISCUSSION

Motion to Dismiss the First, Second, and Third Affirmative Defenses

First Affirmative Defense:

The first affirmative defense alleges failure to state a claim. The first cause of action alleges the existence of a retainer agreement between the parties requiring payment of fees for services rendered at prescribed rates, plus reimbursement of litigation expenses, as well as a

supplemental retainer agreement requiring Ms. Karabelas to notify the Firm of any objections to legal bills within 30 days. This cause alleges the rendering of billed services, and nonpayment in an amount of \$95,652.42. The court perceives no ground to conclude that a cause of action for breach of contract has not been stated. Accordingly, the defense is dismissed as to the first cause of action for breach of contract.

The second cause of action seeks the same monetary relief as the first, couching the alleged nonpayment as an account stated, due to the alleged retention of bills without objection. The court perceives no pleading defect as to this cause.

The third cause of action seeks the same monetary relief as the first and second, couching the alleged nonpayment as unjust enrichment, due to the alleged retention of bills without objection. The court perceives no pleading defect as to this cause.

The fourth cause of action seeks the same monetary relief as the first, second, and third, couching the alleged nonpayment as a cause of action in *quantum meruit*. Alternative pleading is authorized (CPLR 3002). Therefore, the court perceives no pleading defect as to this cause.

For the foregoing reasons, plaintiff's motion to dismiss the first affirmative defense is granted.

Second and Third Affirmative Defenses:

The second and third affirmative defenses both allege – redundantly or not – a lack of personal jurisdiction over the defendant. But there is absolutely no dispute that Ms. Karambelas is a resident of the State of New York, and a resident of this county (at 1021 Park Avenue, New York, New York [see, NYSCEF Doc. No. 44 (Transcript of Special Referee's Allocation) at 2]) and is, thus, amenable to the jurisdiction of this court. Furthermore, the affidavit of service of process on file in this case is *prima facie* evidence of service of process (e.g., *Johnson v Deas*, 32

AD3d 253 [1st Dept 2006]; *see also, e.g., F.I. DuPont Glove Forgan & Co. v Chen*, 41 NY2d 794 [1977] [service on doorman of apartment building suffices under CPLR 308 (2)]. No refutation is presented in opposition to this motion. For the foregoing reasons, plaintiff's motion to dismiss the second and third affirmative defenses is granted.

Motion for Summary Judgment on Plaintiff's First and Fourth Causes of Action

First and Fourth Causes of Action:

As recited hereinabove, the parties' retainer agreement, and as supplemented, requires payment by Ms. Karambelas of legal fees for services rendered on her behalf by the Firm. As further recited above, an open-court settlement was entered into by the parties before Special Referee Louis Crespo, to the extent of a charging lien in favor of the Firm in an amount of \$90,000, which sum was subject to reduction in the event that the Firm would be able to collect on certain fee awards issued in its favor against the plaintiff-adversary in the matrimonial case. Such reduction actually did ensue, by virtue of the Firm's collection of \$12,288.87 from said plaintiff-adversary, reducing the lien to \$77,711.13. Plaintiff's instant motion for summary judgment on its first (breach of contract) and fourth (*quantum meruit*) causes of action seeks precisely said principal amount, plus accrued interest.

In opposition to this straightforward motion for judgment commensurate with the parties' open-court and fully allocuted stipulation of settlement, defendant Andrea Karambelas presents the incredulous position that, notwithstanding her signed stipulation of settlement, and notwithstanding her allocution thereof, she, somehow, some way, did not quite understand what she was agreeing to (*see, Karambelas Affidavit* [NYSCEF Doc. No. 26], *passim*). The evidence emanating from the following excerpts from the transcript of Special Referee Crespo's Allocution of defendant dispels any such possibility:

THE SPECIAL REFEREE: Mrs. Kaplan-Karambelas, state your name for the record.
THE WITNESS: Andrea Karambelas.

* * *

THE SPECIAL REFEREE: You can sit down. Ms. Karambelas, you are represented by counsel in the matrimonial action, correct?

THE WITNESS: Yes.

THE SPECIAL REFEREE: And that's Mr. Helweil, correct?

THE WITNESS: Yes.

THE SPECIAL REFEREE: Helwill?

MR. HELWEIL: Helweil.

THE SPECIAL REFEREE: Ms. Karambelas, today you have disposed of the issue of the lien; you're aware of that, right?

THE WITNESS: Yes.

THE SPECIAL REFEREE: And you have read the terms of the stipulation you executed, correct?

THE WITNESS: Yes.

THE SPECIAL REFEREE: And for purposes of today, you are self-represented, correct?

THE WITNESS: Yes.

THE SPECIAL REFEREE: And you agreed to these terms, correct?

THE WITNESS: Yes.

THE SPECIAL REFEREE: And you're not being forced to sign this stipulation, isn't that correct?

THE WITNESS: No.

THE SPECIAL REFEREE: You were not compelled or coerced to sign the stip, correct?

THE WITNESS: No.

THE SPECIAL REFEREE: You understand it fully, correct?

THE WITNESS: Yes.

THE SPECIAL REFEREE: And you understand that the scope and the issues of the lien have been disposed of pursuant to the terms of the stipulation?

THE WITNESS: Yes.

THE SPECIAL REFEREE: And you're not under any medication today that impairs your ability to understand those terms, correct?

THE WITNESS: No.

* * *

THE SPECIAL REFEREE: Then the matter has been disposed of. We will start the matrimonial action on Thursday at 9:30, and before we go off the record, I want to thank counsel and Ms. Karambelas in reaching – in resolving this issue, in disposing of the time and expense.

(NYSCEF Doc. No. 44 at 2-5.)

With regard to the Stipulation of Settlement itself, it clearly and unambiguously provides that “Cohen Goldstein shall have a charging lien on all equitable distribution proceeds of this action in the amount of \$90,000.” (NYSCEF Doc. No. 23 at 1.) It further provides that: “In the event that the defendant brings any suit seeking damages against Cohen Goldstein, (a) Cohen Goldstein shall nevertheless be entitled to collect the amount of its charging lien as set forth above (\$90,000)” (*Id.*, at 2.)

Those indisputable circumstances serve as proof positive of defendant’s agreement to the clear and unambiguous terms of the parties’ Stipulation of Settlement, entitling the Firm “to collect the amount of its charging lien as set forth above (\$90,000)” (*id.*). There is, quite simply, no issue of fact whatsoever to be tried in said regard. As recited hereinabove, plaintiff’s instant motion seeks less than the stipulated \$90,000 figure – to wit, \$77,711.13 – due to the Firm’s successful collection of the balance from the plaintiff-adversary in the underlying matrimonial case. That, too, is in full accord with the Stipulation of Settlement, which provides that: “Cohen Goldstein has received awards of fees against the plaintiff To the extent, if any, that Cohen Goldstein collects any of the principal amounts of such fee awards, the amount of its charging lien shall be reduced, dollar for dollar.” (*Id.*, at 1.) As the Court of Appeals has declared: “Stipulations of settlement are favored by the courts and not lightly cast aside. This is all the more so in the case of “open court” stipulations within CPLR 2104, where strict enforcement not only serves the interest of efficient dispute resolution but also is essential to the management of court calendars and integrity of the litigation process.” (*Hallock v State*, 64 NY2d 224, 230 [1984].)

The foregoing circumstances prominently support the Firm’s entitlement to the fee amount sought on its within motion. Indeed, in a similar case – *Resnick v Resnick* (24 AD3d 238

[1st Dept 2005]) – the Appellate Division, First Department, unanimously reversed an order that did what Ms. Karambelas apparently seeks to do in opposition to this motion: to have this court conduct a hearing on the issue of the reasonableness of the charging lien in the face of an unambiguous stipulation to the quantum of the lien. The First Department stated: “Under Judiciary Law § 475, a charging lien automatically comes into existence, without notice or filing, upon commencement of the action, and is measured by the reasonable value of the attorney’s services in the action, unless fixed by agreement. Accordingly, the stipulation, if it is to have meaning and effect, could only have been executed for the purpose of fixing the amount of the lien.” (*Id.*, at 238 [emphasis added]. *See also, Miller v Kassatly*, 216 AD2d 260 [1st Dept 1995].)

For these reasons, plaintiff’s motion for summary judgment on its first cause of action for breach of contract, seeking judgment against defendant in the principal amount of \$77,711.13, is granted.¹

Although the motion is styled as one for “partial” summary judgment, this court does not perceive any remaining claim to be considered in this case, seeing as whatever excess fees the Firm might have been entitled to, have already been collected by the Firm from the plaintiff-adversary in the underlying matrimonial case. The only fee amount currently due and owing is the \$77,711.13 sought on this motion and recognized hereinabove.

Plaintiff seeks accrued interest on said principal sum of \$77,711.13. CPLR 5001-a, titled “Prompt payment following settlement,” provides that a settling obligor “shall pay all sums due to any settling plaintiff within twenty-one days of tender, by the settling plaintiff to the settling

¹ Insofar as the motion seeks the same judgment under *quantum meruit* theory, as pleaded in the fourth cause of action, the motion is denied as moot in light of the clear and unambiguous language of the parties’ stipulation of settlement of the lien, which stands as a contract between the parties, at law.

defendant, of a duly executed release and a stipulation discontinuing action executed on behalf of the settling plaintiff.” Because the underlying matrimonial action continued after the date of the stipulation of settlement of charging lien – September 20, 2016 – the provision focusing on tender of release and discontinuance of action are inapplicable here. However, the court derives guidance from the timeframe fixed in that statute, and further derives guidance from CPLR 5001 (b) which permits the court to assess interest from another reasonable date in instances where, as here, exact precision may not be feasible. Accordingly, the court designates a period that is one year subsequent to the date of the stipulation – bringing the operable date to September 20, 2017, as the date from which interest shall accrue.

Accordingly, it is

ORDERED that plaintiff’s motion to dismiss the first, second, and third affirmative defenses is granted and, accordingly, they are dismissed; and it is further

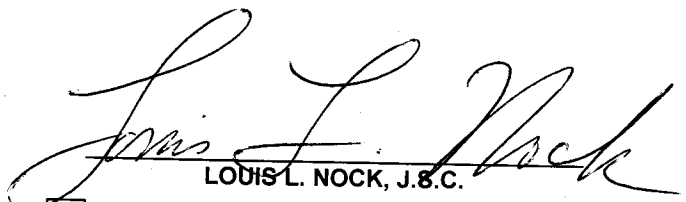
ORDERED and ADJUDGED that plaintiff’s motion for summary judgment on its first cause of action for breach of contract is granted and, accordingly, the Clerk of the Court is directed to enter judgment in favor of plaintiff Cohen Goldstein LLP and against defendant Andrea Karambelas in the principal amount of \$77,711.13, with interest accruing thereon at the statutory rate from September 20, 2017, through the date of satisfaction of judgment, as calculated by the Clerk, together with statutory costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs, and that said plaintiff have execution therefor; and it is further

ORDERED that plaintiff’s motion for summary judgment on its fourth cause of action for *quantum meruit* is denied as moot.

This shall constitute the decision and order of the court.

ENTER:

6/10/2019
DATE


LOUIS L. NOCK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE