

<b>Villaver v Paglinawan</b>
2019 NY Slip Op 32161(U)
May 7, 2019
Supreme Court, Queens County
Docket Number: 718901/18
Judge: Robert I. Caloras
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. ROBERT I. CALORAS

PART 17

Justice

-----X  
DOROTHY VILLAVER,

Plaintiff,

-against-

JAMES S. PAGLINAWAN and  
THE PAGLINAWAN FIRM, P.C,

Defendants.  
-----X

Index No. 718901/18  
Motion Date: 3/14/19  
Motion Cal. No. 42  
Seq. # 1

The following papers numbered E4 to E10, E13, E15, and E16 to E21 read on this motion by defendants for an order pursuant to CPLR 3211 (a) (1), (5), (7) and (8) dismissing the complaint .

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affidavit-Exhibits-Memo.....	E4 to E10
Affidavit of Service.....	E13
Affirmation in Opposition-Exhibits.....	E15 to E21

**FILED**  
MAY 21 2019  
COUNTY CLERK  
QUEENS COUNTY

Upon the foregoing papers it is ordered that the motion by defendants for an order pursuant to CPLR 3211 (a) (1), (5), (7) and (8) dismissing the complaint, is decided as follows:

According to the complaint, this is an action for legal malpractice, breach of fiduciary duty, and intentional infliction of emotional distress. The action stems from Plaintiff retaining defendants James S. Paglinawan (“Paglinawan”) and The Paglinawan Firm, P.C. (the “Paglinawan Firm”) to pursue claims against her former immigration attorneys, Loreto Kudera (“Kudera”) and the Law Offices of Barry Silberzweig, P.C. (the “Silberzweig Firm”). Plaintiff told Paglinawan that she had retained Kudera and the Silberzweig Firm to obtain the visa and working papers she needed to work as a nurse in this country. Plaintiff provided defendant Paglinawan with documents, her recollection of conversations and events, and other evidence sufficient to state causes of action against Kudera and the Silberzweig Firm for breach of contract, breach of fiduciary duty, fraud, and legal malpractice.

Plaintiff’s Legal Malpractice cause of action claims that on October 5, 2016, defendants Paglinawan and the Paglinawan Firm filed a complaint in this Court alleging that the Silberzweig Firm breached its duty of care to plaintiff by “failing to timely commence Plaintiff’s I-140 Immigration Petition; failing to properly advise Plaintiff regarding the statute of limitations related to her I-140 Immigration Petition; and failing to procure Plaintiff’s I-140 Immigration Petition.” Plaintiff alleges that the complaint filed by defendants Paglinawan and

the Paglinawan Firm misstated the nature of her claims against her former immigration lawyers. Plaintiff's Breach of Fiduciary Duties cause of action claims that defendants made false statements, withheld information, and repeatedly threatened to cause her harm unless she acted in their best interests. Plaintiff's cause of action for Intentional Infliction of Emotional Distress claims, among other things that, on April 3, 2018, when she informed defendant Paglinawan that she had been injured in a car accident, he demanded that she retain him as her personal injury lawyer. When plaintiff said that she already had a personal injury attorney, Paglinawan yelled at her and threatened to withdraw from her lawsuit against the Silberzweig Firm unless she retained him and his law firm for the accident case. On April 12, 2018, plaintiff filed a complaint against Paglinawan with the Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts. After the disciplinary complaint was filed, Paglinawan threatened plaintiff and demanded that she drop her disciplinary complaint, fire her personal injury lawyers, and retain him and his law firm for all of her legal work.

Defendants have now made the instant motion to dismiss and Plaintiff has opposed.

The branch of the motion seeking to dismiss pursuant to CPLR 3211(a)(8) because this Court lacks personal jurisdiction over Defendants due to Plaintiff's failure to effect proper service of the summons and complaint is denied. On January 30, 2019, plaintiff filed the Affidavit of Sherry Gordon, sworn to on January 22, 2019, stating that Ms. Gordon personally served the summons and complaint on defendants by serving Lawrence Cerbone, a person of suitable age and discretion, at Paglinawan's law office. Also on January 30, 2019, plaintiff filed the Affidavit of Nasim Dehghani, sworn to on January 21, 2019, stating that he served the summons and complaint upon defendants by mailing the documents, by first class mail, to Paglinawan at his law office in a plain envelope bearing the legend "personal and confidential." On February 11, 2019, the Paglinawan Firm was served with the summons and complaint pursuant to Business Corporation Law §306 by service upon the New York State Secretary of State. Defendants do not dispute any of the above. Accordingly, defendants were properly served pursuant to CPLR §308.

The branch of the motion seeking to dismiss pursuant to CPLR 3211(a)(1) and (5) based on the arbitration provision within the duly executed retainer agreement between Plaintiff and Defendants is granted. The retainer agreement between Plaintiff and Defendants contained the following provision:

10. OBLIGATION TO SUBMIT DISPUTES TO BINDING ARBITRATION: CLIENT and ATTORNEY voluntarily consent to submit to binding arbitration of ANY and ALL disputes, controversies, claims or demands ("disputes") between ATTORNEY and CLIENT. This arbitration clause covers any and all disputes arising out of, concerning, or related to

ATTORNEY'S representation of CLIENT and/or ATTORNEY'S relationship with CLIENT, including, but not limited to, claims for malpractice, conspiracy, fraud, breach of fiduciary duties, deceptive trade practices, breach of contract, etc. This arbitration clause is intended to be as broad as permitted by law and any dispute regarding the applicability of this clause is to be decided in arbitration. The ONLY exception to CLIENT's obligation to arbitrate is that he/she retains the right to pursue fee disputes pursuant to Part 137 of the Rules of the Office Administrator of the Courts of New York. In the event that a dispute arises between ATTORNEY and CLIENT relating to the payment of fees, you may have a right to arbitration of the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to you upon request.

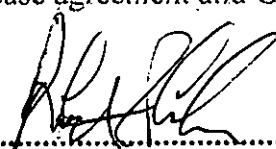
The policy of this State favors and encourages arbitration as a means of conserving the time and the resources of the courts and contracting parties (*see Matter of Nationwide Gen. Ins. Co. v Investors Ins. Co. of Am.*, 37 NY2d 91, 95 [1975]). Generally, it is for the courts to make the initial determination as to whether the dispute is arbitrable. Ideally, the courts should confine themselves to the arbitration clause and leave the merits to the arbitrators (*see Id.*) In general, the court's role is to determine whether the parties have agreed that the subject matter under dispute should be submitted to arbitration. Once done, the court's inquiry is usually at an end (*see, Id.*) However, the Court should make inquiry into whether the subject matter of the dispute is one that may be submitted to arbitration without violation of any law or public policy and, if so, whether it falls within the scope of the arbitration agreement.

Here, the Court finds that there is a valid agreement to arbitrate and the terms of the agreement are such that the subject matter in the instant action should be submitted to arbitration. Plaintiff has not submitted any statute or case law that prohibits the arbitration of the subject dispute. Moreover, contrary to plaintiff's claim, there is no public policy that precludes the arbitration of the instant claims (*see, Altamore v. Friedman*, 193 A.D.2d 240 [2d Dept 1993]). Significantly, plaintiff has not submitted any evidence that suggests defendants engaged in coercive, fraudulent or otherwise unethical behavior to gain her consent to the retainer agreement and its arbitration clause. Based on the above, the dispute is arbitrable and the motion by defendant for an order pursuant to CPLR 3211 (a) (1) is granted and the complaint is dismissed. The parties are ordered to proceed to arbitration, pursuant to the Agreement. Since the Agreement is silent as to the appointment of an arbitrator, the

Court deems it appropriate to order that an arbitrator shall be designated by the American Arbitration Association.

Based on the above, the Court need not discuss the branch of the motion seeking dismissal of the complaint based upon the Release agreement and General release.

**Dated: May 7, 2019**



.....

**ROBERT I. CALORAS, J.S.C.**

**FILED**  
MAY 21 2019  
COUNTY CLERK  
QUEENS COUNTY