CITY COURT : CITY OF RYE
WESTCHESTER COUNTY

JOAN M. CRESAP,

Plaintiff,

-against-

KRENTSEL& GUZMAN, LLP,
STEVEN KRENTSEL, & JEFFREY GUZMAN.

Defendants.

CV19-31
(West. Co. Index # 58833/18)

DECISION AND ORDER

Appearances:
Plaintiff MICHAEL J. RANERI, Raneri, Light & O'Dell, White Plains, NY
Defendants JONATHAN PANARELLA, Krentsel & Guzman, LLP, NY, NY

This is a civil action for breach of an agreement with respect to compensation and reimbursement of expenses.

This action was originally commenced by the filing of a summons and complaint in Supreme Court, Westchester County. On July 14, 2018, plaintiff made a motion pursuant to CPLR3215 for a default. On July 19, 2018, defendants made a motion pursuant to CPLR 3211 to dismiss based upon documentary evidence and for failure to state a cause of action. Defendants then made a cross-motion seeking to extend the time to appear. By Decision and Order dated March 4, 2019 of Hon. Helen Blackwood, defendant's motion to open the default was granted, plaintiff's motion for a default and summary judgment was denied, and defendant's motion to dismiss was denied.

By Order of Hon. Terry Jane Ruderman dated April 18, 2019, the case was transferred to this Court pursuant to CPLR 325(d). A review of the Supreme Court's docket and file fails to show that any answer was served or filed by any defendant.

This Court scheduled a preliminary conference that was held on June

10, 2019 at which both sides appeared. As neither side requested any disclosure, the parties agreed to set a trial date of September 18, 2019.

By notice of motion dated September 4, 2019, defendants made a motion to dismiss identical (save two sentences) to their prior cross-motion of July 19, 2018 that had been denied by Justice Blackwood's March 4, 2019 decision and order. Upon receipt of the motion, the Court wrote to the parties, stating,

At the preliminary conference held June 10, 2019, this case was scheduled for trial on September 18, 2019 at 0900. We will proceed with that trial at that time.

The Court received a motion to dismiss dated September 4. A quick review of the moving papers indicates that it is word for word identical (except for paragraph 5) to the affirmation of Jason Herbert dated July 19, 2018, which motion was denied by Justice Blackwood by the decision and order date March 4, 2019. The Court would like to know why that decision is not law of the case binding upon the parties, and how a second motion to dismiss is even permitted in light of the plain language of CPLR 3211(e)("no more than one such motion shall be permitted"). Accordingly, unless adequately explained how the first motion is not binding and how a second motion is permitted, it is unlikely that the current motion will be granted. Thus, be prepared for trial.

If that were not enough, a review of the file fails to show that any responsive pleading was ever filed. As you should know, CPLR 3211(f) extends the time for service of a responsive pleading "until ten days after service of notice of entry of the order" denying the motion. Justice Blackwood's order was filed in the County Clerk's office and served by e-filing to the attorneys of record on March 5, 2019. The time to answer the complaint appears to have expired on March 15, 2019. Unless there is an unfiled answer, the time to answer has been extended by the parties, or some other circumstance that the Court is unaware, it appears defendant is in default.

I respectfully suggest that you work diligently to try to resolve this case, or failing that, be prepared for trial on September 18.

Dated the same date as the Court's letter, defendant made a cross-motion for sanctions.

CPLR 3211(e) says "no more than one such motion shall be

permitted". Despite the Court's invitation, defendants offered no explanation, adequate or otherwise, explaining how the first motion is not binding and how a second motion is permitted. Before trial, defendants withdrew their motion to dismiss.

Upon Justice Blackwood's denial of defendants' motion to dismiss, defendants' time to answer was extended. CPLR 3211(f) says, the time for service of a responsive pleading is extended "until ten days after service of notice of entry of the order" denying the motion. Justice Blackwood's order was filed in the County Clerk's office and served by e-filing to the attorneys of record on March 5, 2019. The time to answer the complaint appears to have expired on March 15, 2019. Before the trial, neither side could point to the service of any answer, where the time to answer has been extended by the parties, or some other circumstance explaining why an answer had not been served.

CPLR § 3018 require a party to deny those statements known or believed by him to be untrue and to specify those statements as to the truth of which he lacks knowledge or information sufficient to form a belief and this shall have the effect of a denial. All other statements of a pleading are deemed admitted, except that where no responsive pleading is permitted they are deemed denied or avoided. Thus, a defendant who has defaulted in answering admits all traversable allegations to the complaint, including liability, but does not admit the plaintiff's conclusion as to damages. *Glenwood Mason Supply, Inc. v. Frantelllizzi*, 138 A2d 925, 31 NYS2d 107 [2nd Dept 2016].

Taking the undenied allegations in the complaint, the Court finds:

1. Plaintiff is an attorney;
2. Defendant K&G LLP is a law firm;
3. Krentsel is a partner;
4. Guzman is a partner;
5. Plaintiff worked for K&G LLP from May 15, 2017 to January 5, 2018;
6. K&G LLP promised to pay plaintiff's travel and trial expenses as well as a bonus in connection with any settlements or verdicts achieved while working for K&G; &
7. Defendants breached their agreement to pay plaintiff for services and expenses despite plaintiff's demand.

At the trial, plaintiff testified defendant agreed to pay her a bonus on

all settlements and verdicts of 5% of the attorneys' fees. She also testified that she incurred travel expenses, tolls, parking expenses, and litigation fees in connection with the cases she was assigned. She also testified as to the cases she brought to verdict or settled. Plaintiff had submitted receipts and checks and invoices for the bonus to defendant K&G's office manager who arranged for their payment. At some point, despite delivering documentation, the payments stopped. Plaintiff introduced emails to and from the officer manager concerning bonuses and expenses together with a spreadsheet describing these items and copies of checks. Pl. Ex 1. Plaintiff also introduced a December 15, 2017 memo from plaintiff to Krentsel & Guzman itemizing the bonuses in question. Pl. Ex. 2. Plaintiff failed to show that any damages were attributable to the individual defendants.

Limited Liability Company Law 609(a) says,

Neither a member of a limited liability company, a manager of a limited liability company managed by a manager or managers nor an agent of a limited liability company (including a person having more than one such capacity) is liable for any debts, obligations or liabilities of the limited liability company or each other, whether arising in tort, contract or otherwise, solely by reason of being such member, manager or agent or acting (or omitting to act) in such capacities or participating (as an employee, consultant, contractor or otherwise) in the conduct of the business of the limited liability company.

The general rule, as shown by the word "limited" in the LLC name, is that members do not have personal liability for the debts, obligations or liabilities of the LLC, whether in tort, contract or otherwise. *See generally*, 1 N.Y. Prac., New York Limited Liab Companies and Partnerships § 3:3. Accordingly, there appears to be no liability of the individual defendants Krentsel and Guzman for the obligations of the LLP.

Defendant offered no witnesses.

Plaintiff calculated her claimed bonus by taking the settlement amount or verdict and multiplying that sum by the customary 1/3 attorneys fee in personal injury actions, the multiplying that number by the 5% bonus she claimed. These computations are summarized as follows:

Case	Settlement/verdict	Bonus
Palma	$300,000	$5,000

Salas	700,000/300,000[1]	$5,000
Williamson	200,000	$2,500
Mahmoud	12,000	$ 500
Total		$13,000

Plaintiff's expenses include:

Hotel for trial in Middletown	557.85
September 2017 Mileage, parking & tolls	459.71
October 2017 Mileage, parking & tolls	717.25
November 2017 Mileage, parking & tolls	549.76
December 2017 Mileage, parking & tolls	820.69
Subtotal	$3,105.26

The Court finds all these expenses reasonable except for the amount of parking fees for October for 5 times at Westchester at $37 each and once in Rockland and once in Putnam at $32 each. Westchester Supreme Court has a parking lot under the building and charges about $1 per hour at the meters. Rockland and Putnam each have a free outdoor lot at the Court complex. Accordingly, the amount of parking for October will be reduced by $249.

Total	$2,856.26
Transcript fees for Villaruel trial	600.00
Transcript fees for Marotta trial	548.95
Total	$1,148.95

Defendants offered no witnesses to contradict plaintiff's testimony. They argue there was no agreement to pay any bonuses, plaintiff introduced no receipts for tolls or parking, and any bonuses were discretionary. The agreement to pay bonuses was established by plaintiff's testimony. The argument about bonuses being discretionary is based upon a purported employee handbook that was not introduced into evidence and which plaintiff denied ever having received or seen any employee handbook until after the litigation was well underway. Both parties are lawyers and if there was any question about what if any bonus would be payable or how expense would be reimbursed, they could have reduced their understanding to writing. They didn't. The toll amounts are reasonable and

[1] Plaintiff said she obtained a $700,000 verdict that was reduced on appeal to $300,000. Her claim is based on the lower amount.

necessary. For instance, you can't drive from plaintiff's home in Westchester without going over a bridge to get to Mineola with a $7.00 toll each way. You can't get to Orange, Rockland or Sullivan County without going over the then Tappan Zee Bridge with a then toll of about $6.

Accordingly, the Court finds that plaintiff has proven her claim to the extent of $13,000 for bonuses, $2,856.26 for hotels, parking, mileage and tolls, $1,148.95 for transcripts.

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Accordingly, it is,

ORDERED and ADJUDGED that defendants' motion to dismiss is denied, and it is further

ORDERED and ADJUDGED that the action against individual defendants STEVEN KRENTSEL and JEFFREY GUZMAN is dismissed, and it is further

ORDERED and ADJUDGED that plaintiff have judgment against the defendant KRENTSEL& GUZMAN, LLP in the sum of Seventeen Thousand and Five .21 ($17,005.21) dollars and that plaintiff have execution therefor, and it is further

ORDERED and ADJUDGED that plaintiff's cross-motion for sanctions is held in abeyance until October 9, 2019 to permit the parties to submit papers, including any time records of time spent on the motion.

September 20, 2019

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JOSEPH L. LATWIN
Rye City Court Judge

ENTERED

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Clerk

Appeals
--An appeal shall be taken by serving on the adverse party a notice of appeal and

filing it in the Rye City Court Clerk's office. A notice shall designate the party taking the appeal, the judgment or order or specific part of the judgment or order appealed from and the court to which the appeal is taken. CPLR § 5515.
--Pursuant to UCCA § 1701 "Appeals in civil causes shall be taken to" the appellate term of the supreme court, 9th Judicial District.
-- An appeal as of right from a judgment entered in a small claim or a commercial claim must be taken within thirty days of the following, whichever first occurs:

1. service by the court of a copy of the judgment appealed from upon the appellant.

2. service by a party of a copy of the judgment appealed from upon the appellant.

3. service by the appellant of a copy of the judgment appealed from upon a party. Where service as provided in paragraphs one through three of this subdivision is by mail, five days shall be added to the thirty-day period prescribed in this section. UCCA § 1703(b).

Exhibits

Exhibits will be held for 30 days by the Clerk. After that time, they may be destroyed, if not picked up or arrangements for their return are not made.