

**PMA Mgt. Corp. v Wittenstein & Wittenstein, Esqs,
P.C.**

2020 NY Slip Op 30618(U)

March 3, 2020

Supreme Court, New York County

Docket Number: 162130/2019

Judge: Barbara Jaffe

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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. BARBARA JAFFE PART IAS MOTION 12EFM

Justice

-----X

PMA MANAGEMENT CORP.,

Petitioner,

- v -

INDEX NO. 162130/2019

MOTION DATE _____

MOTION SEQ. NO. 001

WITTENSTEIN & WITTENSTEIN, ESQS, P.C. and
LAW OFFICE OF ROBERT H. BRENT, ESQ. P.C.,

Respondents.

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**DECISION + JUDGMENT ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 24-46, 48 were read on this motion to approve/settle accounting.

By notice of petition and petition, petitioner seeks an order pursuant to CPLR 2601(a) permitting it to pay into court or the Department of Finance \$20,144, representing attorney fees incurred in the representation of nonparty Kelly Jefferson. Respondent Law Office of Robert H. Brent, Esq., PC (Brent Law Office) opposes. Respondent Wittenstein & Wittenstein (W&W) does not oppose.

I. BACKGROUND

W&W was retained by Jefferson with respect to personal injuries allegedly caused by nonparties Sanchez Express LLC and William Sanchez who were insured by nonparty Farmers Mutual Fire Insurance Company of Salem County. Nonparty Robert Brent, then a member of W&W, handled the matter. Petitioner is the third-party administrator for Jefferson's claims against Farmers.

Jefferson executed a settlement agreement dated June 12, 2017 for \$60,000 and by letter to petitioner of that date, nonparty Alyce B. Wittenstein, on behalf of W&W and Jefferson,

requested a check payable to Jefferson and W&W, as counsel for the settlement. She noted therein that Brent no longer worked for W&W. (NYSCEF 7).

By letter dated June 15, 2017, Jefferson terminated W&W and advised that she had retained Brent Law Office to represent her and that she did not wish to be contacted by W&W. That same day she executed a consent-to-change-attorney form, signed by her and Brent. (NYSCEF 43).

On June 21, 2017, Alyce emailed petitioner advising that W&W was counsel for Jefferson and that Brent had left W&W on April 27, 2017, before Jefferson's case had settled. Thus, she alleged, Brent was not entitled to a lien and the attorney fee should not be paid to him. The next day, Alyce followed up with another email to petitioner, claiming that Jefferson would call petitioner to request that only W&W be named on the check. Petitioner responded by email that day stating that if the issue between respondents was not resolved within 48 hours, it would issue a check made payable to all interested parties. (NYSCEF 8).

By letter to petitioner dated August 15, 2017, Brent advised that he was counsel for Jefferson and was returning to it a voided \$60,000 settlement check. He asked that petitioner reissue the settlement check in the form of two checks, one payable to Jefferson and the other payable to both Brent Law Office and W&W. (NYSCEF 9).

On or around August 22, 2017, petitioner issued a check for \$39,856, payable to Jefferson. (NYSCEF 12).

By letter to petitioner dated September 1, 2017, Alyce advised that she was unable to communicate with Jefferson given her belief that she may have retained Brent and asked that if petitioner receives an unexecuted consent-to-change-attorney form from Brent, any check issued to Brent should also name W&W. (NYSCEF 13).

By letter dated September 18, 2017, petitioner asked that respondents resolve their conflict and not involve it. (NYSCEF 14).

By letter dated April 12, 2018, Brent informed petitioner as follows:

On June 21, 2017, he had sent it a consent-to-change-attorney form advising that Jefferson had substituted W&W for him as her counsel and a discharge/stop work letter signed by Jefferson reflecting that W&W had been fired;

There was no need for W&W to sign the consent-to-change-attorney form for it be to valid, and W&W had no attorney lien on the case;

He had agreed to the issuance of two separate checks because Jefferson needed the money immediately;

As W&W refused to authorize him to endorse its name on the check, it was rendered non-negotiable, and as six months had elapsed since the issuance of the check, it was stale;

As the check was issued under his taxpayer identification number, he claimed that he was being held accountable by the Internal Revenue Service for the income derived from the payment;

On January 10, 2018, by court order, W&W was enjoined and restrained from contacting insurance carriers involved in any case in which he had been retained as legal counsel; and

He asked that a new check be reissued in his office's name alone and gave his legal rationale for why W&W does not have a lien in the matter.

(NYSCEF 15).

By letter dated April 19, 2018, petitioner informed respondents that absent a resolution of the issues between them, no additional checks would be issued. (NYSCEF 16).

By letter to petitioner dated on or around March 12, 2019, Brent returned the check made payable to him and W&W, and asked that it be reissued. (NYSCEF 18).

By letter dated April 8, 2019, petitioner informed Brent that it had issued, for the third time, a new check, as the prior checks were stale. (NYSCEF 17, 19). By email dated October 8, 2019, Brent asked that petitioner reissue a check it had issued on April 9, 2019 as it had become

stale. (NYSCEF 20).

By letter dated October 21, 2019, petitioner demanded that respondents enter into an agreement within ten days, and if not, it would seek to place the funds with the court or another party. (NYSCEF 21).

On November 27, 2019, Brent sent petitioner an agreement to hold it harmless from any and all claims for attorney fees asserted by W&W, if petitioner sends him the check naming only Brent Law Office. (NYSCEF 22).

II. CONTENTIONS

A. Petitioner (NYSCEF 2-23)

Petitioner contends that having been unable over the past two years to disburse the attorney fees portion of the settlement and close its file due to respondents' personal issues, it should be permitted to deposit the outstanding monies to the court or the Department of Finance. It also claims that it is unfair to Sanchez Express and Sanchez to have the claim remain outstanding on their record. It argues that neither party will suffer any prejudice if the requested relief is granted.

B. Brent (NYSCEF 39-45)

By affidavit dated January 11, 2020, Brent opposes the petition and asks that the attorney fees be paid to him, not the court, because he is Jefferson's counsel. In support, he submits a retainer agreement dated June 15, 2017 between Jefferson and his firm which reflects that it is entitled to a third of any settlement procured with respect to Jefferson's claim against Sanchez and Sanchez Express. (NYSCEF 40). He maintains that W&W was discharged for cause and that the hold-harmless agreement completely absolves petitioner of any liability.

Brent also contends that venue is improper, given an action pending in Queens County

concerning the “financial and legal status” of W&W. Thus, he asserts the issues concerning the disposition of the funds should be decided in Queens.

According to Brent, Jefferson retained him when he was the managing partner of W&W, and he was the sole attorney working on the matter, and Alyce, then his wife whom he divorced in March 2014, had not participated in W&W’s work for over ten years. He alleges that in October 2016, Alyce “began a harassment campaign engaging in verbal abuse and physical assault” against him in order to get him to leave W&W.

In April of 2017, Brent received an offer to settle Jefferson’s matter for \$60,000 and a general release from petitioner which made her responsible for any subrogation claims from her insurance carrier for no-fault benefits paid. The release requires Jefferson to ascertain whether “CMS or MSPRC (Medicare)” possessed a lien on the claim and to hold all settlement funds in escrow until the lien was paid. Brent placed the release in his file and did not intend for it to be signed until those conditions were met.

Brent contends that on April 27, 2017, Alyce locked him out of his files, and he decided to leave W&W and open his own office, and that on June 12, 2017, Alyce induced Jefferson to sign the general release with false statements about his whereabouts. Brent also alleges that Alyce did not advise Jefferson about the consequences of signing the general release, did not make the necessary inquiries with her insurance carrier about subrogation rights or with CMS or MSPRC about a Medicare lien, did not inform Jefferson that the funds would remain in escrow until there was an acknowledgment that there was no Medicare lien, and performed an unnecessary Medicaid lien search.

According to Brent, on June 15, 2017, after communicating with him about Alyce’s actions, Jefferson discharged W&W for cause, after which he contacted petitioner and warned it

not to process the release until he had made the necessary inquiries. He also informed petitioner that W&W had been discharged.

On June 27, 2017, Jefferson's insurance carrier confirmed that it would not pursue subrogation rights against her, and on July 4, 2017, Medicare confirmed that it had no lien. Thereafter, Brent contacted petitioner and instructed it to disburse the settlement funds by issuing a check made payable to him and Jefferson, but petitioner issued a check with W&W included as a payee. He maintains that Alyce intended to coerce Jefferson to retain W&W so that she could claim fees, despite not having worked on the matter. Moreover, despite Jefferson's pleas to allow the settlement check to be placed into Brent's escrow account, Alyce refused.

In support, Brent submits an email exchange between Jefferson and Alyce. By email dated July 7, 2017, Alyce informed Jefferson that on April 27, 2017, Brent had ceased working for W&W, that Brent had worked on her case as a member of W&W, that Brent had settled the case before he left W&W, that Jefferson could not switch law firms after the case was settled, and that the divorce between her and Brent had no impact on her case. For Jefferson to receive her money, Alyce wrote, she should substitute W&W back in as her counsel. Alyce also advised Jefferson that if she wanted Brent to work on her other cases, she would need to complete the required paperwork. In response, by email dated July 13, 2017, Jefferson explained that she retained Brent not because of Alyce's and Brent's personal issues, but because Brent had handled her affairs before and was familiar with her history, and that she needs the money immediately. She asked that Alyce and Brent resolve their dispute. Thereafter, the two continued to exchange emails over the next day and a half with Jefferson asking for her portion of the settlement and denying that she has a position on the attorney fees, and with Alyce denying Brent's entitlement to fees and maintaining that she will not authorize the disbursement of the

funds until Brent drops his claim for fees. (NYSCEF 44).

Brent argues that by not issuing a check without W&W named, petitioner created the problem for which it now seeks relief and that petitioner seeks to absolve itself of responsibility in this matter by burdening him with recovering the funds from the court. Such conduct, Brent maintains, warrants sanctions.

Brent also alleges that he filed an order to show cause in an action he had commenced against W&W in Queens County seeking an order directing that the funds derived from fee disputes between respondents be placed in his escrow account. He acknowledges that his motion practice has been “unproductive” and that a trial date has been set for March 23, 2020.

When he asked petitioner to issue two checks, one for Jefferson and the other for both Brent Law Office and W&W, Brent specifically stated that his request was not an acknowledgment that W&W had a lien. He contends that Alyce wants the funds placed into a third-party escrow account to enable her to attach them by way of a motion in respondents’ matrimonial action.

Brent also alleges that Alyce’s June 21, 2017 email is false and defamatory and that petitioner’s reliance on and republication of that email in support of its frivolous petition is sanctionable and argues that petitioner’s rejection of his hold-harmless agreement is evidence that it is intentionally promoting frivolous litigation to harass him. He thus asks that the court sanction petitioner by ordering it to pay his attorney fees and costs.

C. W&W (NYSCEF 48)

In support of the petition, by affidavit dated February 12, 2020, Alyce states that the facts alleged in the petition are mostly accurate, and that those alleged by Brent are false. She maintains that she has agreed to placing the funds in a neutral escrow account until the legal

matters between her and Brent are resolved, but Brent refused, and she refuses to place the funds into Brent's escrow account.

D. Reply (NYSCEF 36)

Petitioner maintains that the disagreements outlined in respondents' papers demonstrate the merit of its petition, and that venue is proper in this county as the Queens County action is irrelevant to this action and petitioner resides here. In addition, it opposes Brent's request for sanctions as it has acted in good faith to disburse the funds.

III. ANALYSIS

Pursuant to CPLR 2601, a party may pay money into the court to be discharged from liability to the extent of the money so paid in.

Brent Law Office offers no support for its contention that respondents' litigation concerning their personal disputes in Queens County renders this venue improper. In any event, venue is proper in this county as petitioner indisputably resides here. (CPLR 503[a]).

The significant and undisputed fact is that respondents are engaged in a conflict which petitioner cannot resolve. Therefore, their petition is meritorious, and the relief sought by Brent Law Office cannot be obtained here. (CPLR 2601[a]).

Although there is no need to address the issues ostensibly raised by Brent, it bears observing that when Jefferson settled her personal injury claim, W&W was her counsel. That Brent had handled Jefferson's case is immaterial as he was then associated with W&W, and the numerous allegations he advances do nothing to render immaterial that single salient fact. Moreover, Brent's allegations are unsupported by admissible evidence or apposite authority.

For all of these reasons, petitioner demonstrates that it is appropriate under these facts to permit it to pay the attorney fees into court. Thus, Brent Law Office's request that sanctions be

imposed on it is without basis.

Accordingly, it is hereby

ADJUDGED and ORDERED, that petitioner PMA Management Corp.'s petition for an order directing it to pay into court \$20,144 in attorney fees is granted; and it is further

ORDERED, that petitioner submit a proposed order encompassing the above within 10 days of the date of this order.

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BARBARA JAFFE, J.S.C.

3/3/2020
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT REFERENCE