

Synergy Intelligence Holdings, LLC v Advocate, LLP
2020 NY Slip Op 32665(U)
August 6, 2020
Supreme Court, New York County
Docket Number: 657749/2019
Judge: Louis L. Nock
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**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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SYNERGY INTELLIGENCE HOLDINGS, LLC,

Plaintiff,

- v -

ADVOCATE, LLP and CHRISTINE YOUNGWALL,

Defendants.

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INDEX NO. 657749/2019

MOTION DATE 02/20/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion of defendant Advocate, LLP (“Movant”) to dismiss the complaint against it is granted without opposition, in accord with the following memorandum decision.

Background

In this action, Plaintiff asserts claims for breach of contract, unjust enrichment, account stated arising from the purported breach of a letter agreement between the parties (the “Engagement Letter”). Plaintiff Synergy Intelligence Holdings, LLC (“Plaintiff”) is engaged in the business of risk management and investigative services, including data forensics and technical consulting (complaint ¶ 2). Movant is a law firm that represented defendant Christine Youngwall (“Youngwall”) in a divorce action. By the Engagement Letter, dated June 6, 2018, Movant and Youngwall (together, “Defendants”) retained Plaintiff to provide investigative services for Youngwall, including forensic analysis of several electronic devices and electronic security mechanisms (*id.* ¶ 5; Advocate aff, exhibit C). The complaint alleges that Movant

executed the Engagement Letter on behalf of the client and sent the initial payment of \$15,000, acknowledging the agreement between the parties, that the defendants received, accepted and benefitted from its services, and that Plaintiff duly performed all of the labor and furnished all of the materials, pursuant to the obligations under the agreement. Plaintiff further alleges that Defendants failed to make payments for such services and that they are responsible for an outstanding balance of \$44,778.30, plus 12% interest, pursuant to the agreement, from January 1, 2019.

Movant now moves to dismiss the complaint on the basis of documentary evidence, citing its retainer agreement with Youngwall and the Engagement Letter in support of its position. By affidavit of Jason Advocate, Esq., a partner at Movant, Movant refers the court to its retainer agreement with Youngwall, which states, in relevant part, the following:

F. Retention of Experts and Consultants. [Client] is responsible [for] pay[ing] for services rendered in connection with [her] matter by third parties, such as experts . . . or consultants. Before [Advocate, LLP] contract[s] with experts or consultants, [she would be] notif[ied] . . . of their proposed fee arrangements, including any retainer fees and the rates charged by them, and [Advocate, LLP] will obtain [her] approval of the hiring”

(Advocate aff, exhibit B at II [F] [emphasis in original]). Advocate attests that Youngwall agreed to retain Plaintiff’s services and that he subsequently signed the Agreement on her behalf (Advocate aff, exhibit C). He further acknowledges that, on July 19, 2018, Youngwall wired \$15,000 to Movant for Plaintiff’s retainer (Advocate aff, exhibit D) and that, on or about July 24, 2018, Movant paid Youngwall’s \$15,000 to Plaintiff by check (Advocate aff, exhibit E). He alleges that, after Plaintiff’s retention, the majority of communications and directives were between Youngwall and Plaintiff.

Advocate further attests that, although he signed the agreement, Movant is not liable for any of Plaintiff’s fees for work done on behalf of Youngwall. In support of this position,

Advocate cites to language in the Agreement where Plaintiff agreed that, “We understand and acknowledge that your client [Youngwall] will be solely responsible for the payment of our invoices and indemnification hereunder and that [Movant] will have absolutely no liability” (Advocate aff ¶ 4, exhibit C ¶ 4).

Discussion

On a motion to dismiss the complaint, a plaintiff abandons a claim by failing to address the defendant’s arguments in support dismissal in its opposition papers (*Saidin v Negron*, 136 AD3d 458, 459 [1st Dept 2016]; *see also Ng v NYU Langone Medical Ctr.*, 157 AD3d 549, 550 [1st Dept 2018] [“Plaintiff’s failure to oppose so much of the motion as sought dismissal of the lack of informed consent claim, constituted an abandonment of the claim”]; *Josephson LLC v Column Fin., Inc.*, 94 AD3d 479, 480 [1st Dept 2012] [same]). Whereas Plaintiff did not oppose the instant motion, dismissal is warranted on this basis alone. Moreover, the documentary evidence submitted by Movant demonstrates that Youngwall agreed to be solely liable for Plaintiff’s fees, and, by the plain language of the Engagement Letter, Plaintiff acknowledged that Movant “will have absolutely no liability” for the debts it seeks to recover in this action. Thus, Advocate’s motion is granted and the complaint, as against it, is hereby dismissed.

Accordingly, it is

ORDERED that Advocate, LLP’s motion to dismiss the complaint is granted with regard to the claims asserted against it in the complaint, and, therefore, those claims are hereby dismissed; and it is further

ORDERED that counsel for Youngwall and Plaintiff are directed to contact the court at lfurdyna@nycourts.gov to arrange a preliminary conference to be held no later than 30 days after the entry of this order; and it is further

