Rakower Law PLLC v Yusifov
2020 NY Slip Op 32927(U)
September 3, 2020
Supreme Court, New York County
Docket Number: 656219/2019
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

Justice

----------X

RAKOWER LAW PLLC F/K/A RAKOWER LUPKIN PLLC,

Plaintiff,

- v -

NAUM YUSIFOV, SVETLANA YUSIFOV, NICK'S PRODUCE CORP.

Defendants.

----------X

INDEX NO. 656219/2019

MOTION DATE 08/31/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

Plaintiff's motion for summary judgment is granted.

Background

In this action to recover attorneys' fees, plaintiff claims that it was hired by defendants in relation to a litigation pending in the Eastern District of New York. Plaintiff also claims that in late 2014, defendants Naum and Svetlana asked plaintiff to assist them in two family offense proceedings in Kings County. It also claims that Svetlana then asked plaintiff in January 2015 to help her with a confession of judgment that she had previously signed.

Plaintiff then points to a summons with notice it filed in Kings County relating to a defamation case filed at defendants' direction but admits that defendants soon ceased communications with the firm, requiring plaintiff move to withdraw as counsel in that action. Plaintiff contends it sent a monthly invoices to defendants (and some payments were made) until

March 17, 2017 when Naum sent an email claiming that "We never received any legal help from your office."

Plaintiff later commenced a fee arbitration hearing in which it obtained an award against defendants. However, the award was later vacated in October 2019 on the ground that defendants did not agree to arbitrate fee disputes and that defendants did not receive proper service of the award. Plaintiff claims that as of June 25, 2020, $41,482.28 is owed (including interest).

In opposition, defendants claim that they did not solicit plaintiff's help with any other matter except for the EDNY litigation. They claim that plaintiff's failure to issue separate letters of engagement for these cases precludes plaintiff from recovering legal fees for them. Defendants acknowledge that the failure to issue new letters of engagement is not a complete bar to recovery but insist that this failure was intentional in this case. Defendants insist that plaintiff failed to show that defendants received the invoices at issue and note that the alleged invoices were sent via email to all defendants despite the fact that the other matters plaintiff allegedly did not benefit all defendants. In other words, Naum was not part of the confession of judgment work so he should not have been sent a bill for it.

Defendants argue that the text messages from Svetlana pointed to by plaintiff only show that she was willing to pay for the EDNY case not the other matters. They also claim that this case needs discovery to explore whether the invoices were actually mailed, why no engagement letters were issued for the other matters plaintiff allegedly worked on and about plaintiff's billing practices.

In reply, plaintiff points out that defendants failed to serve a single discovery demand despite claiming that the instant motion is premature because no discovery has occurred. It also

questions defendants' selective receipt of plaintiff's invoices and contends that the parties had a separate oral agreement relating to the other matters in which plaintiff purportedly represented defendants.

Discussion

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923 [1986]).

"An account stated exists where a party to a contract receives bills or invoices and does not protest within a reasonable time" (*Bartning v Bartning*, 16 AD3d 249, 250, 791 NYS2d 541 [1st Dept 2005]). "In the context of an account stated pertaining to legal fees, a firm does not have to establish the reasonableness of its fee because the client's act of holding the statement without objection will be construed as acquiescence as to its correctness" (*Lapidus & Assoc., LLP v Elizabeth St., Inc.*, 92 AD3d 405, 405-06, 937 NYS2d 227 [1st Dept 2012] [internal quotations and citations omitted]).

Here, the central question in this case is whether defendants agreed to hire plaintiff to work on the matters other than the EDNY litigation. In support of its motion, plaintiff attaches an email dated March 22, 2017 from defendants to plaintiff in which they claim in part that "We

never received any legal help from your office. And the order of protection we did pro-se. We were not represented by any one!!!" (NYSCEF Doc. No. 28). This was in response to an email from plaintiff detailing the amounts due in each of the four purported actions in which plaintiff did legal work for defendants (*id.*).

But defendants' position in March 2017 is belied by the fact that plaintiff sent invoices clearly identifying that plaintiff was working for defendants on matters other than the EDNY litigation for years (*e.g.*, NYSCEF Doc. No. 33 [invoice from January 5, 2015 discussing work on order of protection case]; NYSCEF Doc. No. 34 [invoices from January 31, 2015 containing bills for all four matters at issue]). Plaintiff also attaches an April 27, 2016 letter that references all the matters on which plaintiff contends it did work (NYSCEF Doc. No. 40).

Based on the moving papers, the Court finds that plaintiff met its burden to show that it worked on other matters for defendants, it sent invoices to them, and that defendants failed to raise objections with a reasonable time. The text messages submitted by plaintiff also show it did work on these other matters (NYSCEF Doc. Nos. 29, 30). Plaintiff's papers clearly show that defendants were fully aware that plaintiff was working on these other matters for them.

In opposition, defendants offer the affidavit of defendant Svetlana Yusifov who claims that "Plaintiff took it upon itself to perform services in connection with three other unrelated matters, and now Plaintiff seeks payment for those services. However, we never executed a separate engagement letter expanding the scope of Plaintiff's representation" (NYSCEF Doc. No. 47, ¶ 5). But Svetlana did not attach any documents showing she objected to plaintiff's work on these other matters or anything to refute the text messages between her and plaintiff's attorneys which shows an attorney working on a matter for a client.

Instead, she offers the conclusory assertion that she told plaintiff that her family could not afford an attorney with respect to the other matters (*id*. ¶ 7). Svetlana also claims that in connection with the family court proceedings, that plaintiff (on its own) filed opposition papers and that the Yusifovs objected and directed plaintiff to withdraw the opposition (*id*. ¶¶ 9-10). But these contentions, along with Mrs. Yusifov's other assertions, are not backed with documents showing she timely objected to the invoices or to actions taken by plaintiff. Rather, she tries to offer alternative explanations for how the Court should interpret the text messages and vaguely contends that she does not remember receiving invoices for the three matters in dispute.

These objections are not material. Mrs. Yusifov does not claim that she never received any invoices from plaintiff; she only claims she didn't receive invoices for the matters she now claims plaintiff was never hired to work on. But the invoices submitted by plaintiff detail work done on each of the four matters.

With respect to the transmission of the invoices, plaintiff attaches the emails that contained the invoices (NYSCEF Doc. Nos. 50-62). The invoices were sent to the same email from which defendants later raised objections in March 2017 (NYSCEF Doc. No. 28). This evidence clearly establishes that the invoices were sent and received by defendants. Submitting this additional information in reply is permissible because defendants claimed they did not receive the invoices in opposition.

The Court also observes that the failure to execute a written engagement letter for all the matters at issue does not bar plaintiff's recovery (*Thelen LLP v Omni Contr. Co., Inc.*, 79 AD3d 605, 606, 914 NYS2d 119 [1st Dept 2010]).

Summary

The Court recognizes that on a motion for summary judgment, it cannot make credibility determinations. But the Court must evaluate whether the opponent has raised a material issue of fact. Here, plaintiff submitted evidence showing that it did work on the four matters for which it seeks recovery, sent invoices for that work and pointed to text messages with defendants supporting its claim.

Defendants' assertions in opposition are simply conclusory and are unsupported. The fact is that plaintiff sent invoices to defendants starting in 2014 and defendants did not raise an objection until March 2017, years after the plaintiff stopped working on the matters. That is not a reasonable amount of time to defeat a claim for account stated. There is no evidence, for instance, that defendants responded to the invoices with an email or letter objecting to the four matters identified by plaintiff until years after bills for these matters were sent. Plaintiff even created four separate client matter numbers, making it obvious what it was working on. As for the text messages, defendant did not point to a single one showing surprise that the attorney was working on the matter or with a direction to not work on the matter because defendant never hired the attorney. Rather, what is before this Court are documents showing people accepting the attorneys' help, paying some bills then ignoring the bills for more than a year.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment is granted and the Clerk is directed to enter judgment in favor of plaintiff and against defendants jointly and severally for $12,137.02 (for matters labeled 71-1 and 71-4), against defendants Naum Yusifov and Svetlana

Yusifov jointly in the amount of $21,065.80 (for matter labeled 71-2), and against defendant Svetlana Yusifov in the amount of $1,153.04 (for matter labeled 71-3)[1] plus statutory interest from April 26, 2016 along with costs and disbursements after presentation of proper papers therefor.

9/3/2020
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE

[1] The Court did not impose a judgment against all defendants jointly and severally because not all matters involved every defendant. The order of protection matter, for instance, did not involve the corporate entity.