

Scarola Malone & Zubatov LLP v Ellner
2020 NY Slip Op 34124(U)
December 10, 2020
Supreme Court, New York County
Docket Number: 651324/2017
Judge: Anthony Cannataro
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANTHONY CANNATARO PART IAS MOTION 41EFM

Justice

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SCAROLA MALONE & ZUBATOV LLP,

Plaintiff,

- v -

ANDREW ELLNER, LIGHTBOX CAPITAL MANAGEMENT,
LLC, LIGHTBOX VENTURES, LLC, BREM MOLDOVSKY,
LLC

Defendant.

INDEX NO. 651324/2017

MOTION DATE N/A, N/A, N/A,
03/19/2020,
N/A, N/A, N/A

MOTION SEQ. NO. 017 018 020
023 024 025
026

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 017) 652, 653, 655, 656, 687, 688, 691, 882, 884, 887

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 018) 692, 693, 694, 695, 696, 697, 698, 726, 736, 737, 738, 739, 740

were read on this motion to/for SANCTIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 020) 727, 728, 729, 730, 731, 732, 752, 753, 755, 989, 990, 991, 992, 995

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 023) 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 875, 876, 877, 878, 879, 888

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 024) 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 885, 886, 912, 913, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 934, 935, 939

were read on this motion to/for SANCTIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 025) 980, 981, 982, 983, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1051, 1052, 1054, 1055

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 026) 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 984, 985, 986, 987, 988, 999, 1000, 1010, 1011, 1012, 1015, 1016, 1017, 1018, 1021, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037

were read on this motion to/for

SANCTIONS

In this action by the Scarola law firm for attorney's fees, the Court now has before it seven motions filed by the Lightbox defendants. One of the motions is for leave to reargue that branch of their prior motion which sought to dismiss plaintiff's claims for account stated and contractual lien, and a second motion is for leave to reargue the branch of their prior motion which sought to dismiss the crossclaims of defendant Brem Moldvosky, LLC, for account stated and contractual lien. They also have four separate motions for sanctions and/or contempt against plaintiff and defendant Brem Moldovsky, LLC, and a motion to compel defendant Brem Moldovsky, LLC, to supplement its bill of particulars. These motions, sequence numbers 017, 018, 020, 023, 024, 025 and 026, are consolidated for decision herein.

A motion for leave to reargue is directed to the court's discretion and, to warrant reargument, the moving party must demonstrate that the court overlooked or misapprehended the relevant facts or misapplied a controlling principle of law (*see* CPLR 2221 [d]; *Cioffi v S.M. Foods, Inc.*, 129 AD3d 888, 891 [2015]; *Central Mtge. Co. v McClelland*, 119 AD3d 885, 886 [2014]).

Initially, the branches of the Lightbox defendants' motions seeking leave to reargue the branches of their prior motions which sought to dismiss the causes of action for account stated do not persuasively point to any material fact that was overlooked, or controlling principle of law that was misapplied, by the Court. As such, those two reargument motions are denied.

Next, in the remaining branches of the Lightbox defendants' motions for leave to reargue, they argue that the Court overlooked both their and the other parties' arguments regarding the portion of their prior motions which sought dismissal of the "contractual lien" claims. Upon closer examination of the parties' arguments, it appears that, in opposition to the contention of the Lightbox defendants that the "contractual

lien” claim cannot exist as a separate cause of action, the Scarola firm and Brem Moldovsky, LLC, assert that it does so exist as its own separate cause of action pursuant to their respective retainer agreements with the Lightbox defendants. The Scarola firm and Brem Moldovsky, LLC, argue that these claims still exist despite the federal court’s dismissal of their charging lien claims, and this Court’s dismissal of their breach of contract claims. Further, they argue that this “contractual lien” claim separately enables them to collect the full amount of their fees owed pursuant to the retainer agreement.

Contrary to the Scarola firm’s and Brem Moldovsky, LLC’s arguments, the controlling caselaw does not recognize the workaround which they argue is contained in their retainer agreements. Indeed, as discussed in this Court’s July 8, 2019 and December 18, 2019 decisions and orders, it is well settled that an attorney discharged without cause is limited to compensation measured by the fair and reasonable value of the services rendered whether that be more or less than the amount provided in a retainer agreement (*Sae Hwan Kim v M & Y Gourmet Grocers*, 239 AD2d 170 [1997], citing *Matter of Montgomery*, 272 NY 323, 326-327 [1936]); see also *Liddle & Robinson, LLP v Garrett*, 720 F Supp 2d 417, 425 (SDNY 2010).

Once the charging lien claims were dismissed by the federal court, and this Court dismissed the breach of contract claims in their entirety, no “contractual lien” claims survived. As such, reargument is granted as to this issue and, upon reargument, the portions of the Lightbox defendants’ motions which sought dismissal of the causes of action based on a contractual lien are granted, and those causes of action are dismissed.

Regarding the Lightbox defendants’ motion to compel Brem Moldovsky, LLC, to supplement its bill of particulars, the issues raised in that motion can and should be resolved at a court conference. As such, that motion is denied.

Lastly, the Lightbox defendants’ four motions for sanctions and/or contempt are denied in their entirety.

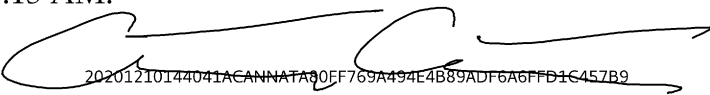
Accordingly, it is

ORDERED that the branches of the Lightbox defendants' motion seeking leave to reargue the branches of their prior motions which sought to dismiss the causes of action against them for account stated are denied; and it is further

ORDERED that the branches of the Lightbox defendants' motions which seek leave to reargue the branches of their prior motions which sought to dismiss the causes of action for contractual lien are granted, and upon reargument, those branches of the Lightbox defendants' prior motions are granted, and the causes of action for contractual lien in plaintiff's complaint and defendant Brem Moldvosky, LLC's crossclaims are dismissed; and it is further

ORDERED that the Lightbox defendants' motion to compel defendant Brem Moldvosky, LLC, to supplement its bill of particulars is denied; and it is further

ORDERED that the Lightbox defendants' four motions for sanctions and/or contempt are all denied in their entirety; and counsel are directed to appear for a virtual status conference on December 23, 2020 at 10:15 AM.


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12/10/2020
DATE

ANTHONY CANNATARO, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE