

<b>Kamaras v Bristow</b>
2021 NY Slip Op 31528(U)
May 5, 2021
Supreme Court, New York County
Docket Number: 150710/2020
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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

*Justice*

-----X

PHILIP L. KAMARAS, ESQ.

Plaintiff,

- v -

INGRID BRISTOW,

Defendant.

-----X

**INDEX NO.** 150710/2020

**MOTION DATE** 04/26/2021

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for JUDGMENT - SUMMARY.

The motion by plaintiff for summary judgment is granted.

**Background**

Plaintiff moves for summary judgment in this case concerning outstanding legal fees. He claims that he represented defendant pursuant to a retainer agreement dated June 30, 2016. He claims that the retainer agreement provided that plaintiff would send invoices for services every 60 days and defendant was to remit payment or objections within 30 days. Plaintiff explains that between 2016 and 2019 he delivered invoices and defendant made some payments but \$28,880.85 remains outstanding. He argues that defendant did not timely object to these invoices. Plaintiff brings four causes of action in this case: for breach of contract, unjust enrichment, account stated and for legal fees. In this motion, plaintiff seeks summary judgment on its first three causes of action all of which are based on the outstanding legal fees.

In opposition, defendant admits that she retained plaintiff for her divorce action as well as an action to recover a \$95,000 judgment against her ex-husband. She claims that she does not owe what plaintiff seeks and argues that she did some of the work cited on plaintiff's invoice.

Defendant claims that invoices are inaccurate and complains about a lack of an explanation or a breakdown for a particular invoice. Defendant argues that there are issues of fact with plaintiff's prima facie case, including confusing billing, billing for work not actually done and that defendant already paid what was owed.

In reply, plaintiff emphasizes that there are no issues of fact with respect to the account stated cause of action. He observes that defendant did not make any timely objections to the invoices nor does defendant deny that she received the invoices.

### **Discussion**

“ [A] court will grant a motion for summary judgment upon a determination that the movant's papers justify holding, as a matter of law, that there is no defense to the cause of action or that the cause of action or defense has no merit. Further, all of the evidence must be viewed in the light most favorable to the opponent of the motion. The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact as to the claim or claims at issue. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers.

“Once the prima facie showing has been made, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact. The substantive law governing a case dictates what facts are material, and only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment” (*People ex rel. Spitzer v Grasso*, 50 AD3d 535, 545, 858 NYS2d 23 [1st Dept 2008] [internal quotations and citations omitted]).

A plaintiff makes “a prima facie showing of his entitlement to summary judgment on his account stated claim by providing documentary evidence of the invoices, and an affidavit stating that he sent the invoices on a monthly basis to defendant, and that defendant received the invoices and failed to object to the invoices until this litigation” (*Glassman v Weinberg*, 154 AD3d 407, 408, 62 NYS3d 54 [1st Dept 2017]). “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 citation omitted]).

The Court grants summary judgment with respect to the account stated cause of action. Plaintiff alleges that she sent timely invoices for legal services rendered and defendant did not object after receiving these bills. Defendant does not argue in her opposition that she raised timely objections to these bills or that she failed to receive the invoices. Instead, she appears to make substantive objections to the invoices. Unfortunately, raising objections for the first time in this litigation is not a sufficient basis to raise an issue of fact. The time to object was when defendant received the bills not in opposition to motion for summary judgment. Pursuant to the well-established case law cited above, the Court grants the motion.

The Court observes that the first two causes of action (breach of contract and unjust enrichment) which seek recovery of the same amount are moot given that they seek the same relief as the account stated cause of action.<sup>1</sup>


Accordingly, it is hereby

---

<sup>1</sup> The Court observes that plaintiff seeks entry of a “judgment” but was silent as to its fourth cause of action for legal fees. The Court will direct the Clerk to enter judgment and plaintiff may, if it desires, move for reasonable legal fees although the Court takes no position on whether plaintiff is entitled to such fees.

ORDERED that the motion by plaintiff for summary judgment is granted on plaintiff's third cause of action and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$28,880.85 plus interest from June 1, 2019 along with costs and disbursements upon presentation of proper papers therefor.

5/5/2021  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>		<input checked="" type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE