

Zanani v Scott Seidler Family Trust
2021 NY Slip Op 32200(U)
November 4, 2021
Supreme Court, New York County
Docket Number: Index No. 156268/2021
Judge: Frank P. Nervo
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. FRANK NERVO

PART

04

Justice

-----X

DORON ZANANI,

Plaintiff,

- v -

SCOTT SEIDLER FAMILY TRUST, STEPHANIE SEIDLER
FAMILY TRUST, STEVEN SEIDLER

Defendant.

-----X

INDEX NO. 156268/2021MOTION DATE 07/30/2021,
09/30/2021MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 51, 60

were read on this motion to/for

JUDGMENT - MONEY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73

were read on this motion to/for

LEAVE TO FILE

In this special proceeding, petitioner-attorney seeks, inter alia, a money judgment related to legal services rendered to defendants. As an initial matter, the Court notes a number of irregularities in this matter.

Initially, the Court notes that the parties' papers fail to comply with the Court's Uniform Rule 202.8-b, requiring an attorney certify the number of words in their motion papers does not exceed 7,000 (22 NYCRR § 202.8-b). "Page limits on submissions are appropriate, as is the rejection of papers that

fail to comply with those limits” (*Macias v. City of Yonkers*, 65 AD3d 1298 [2d Dept 2009])). All parties here have failed to provide the requisite certification.

The current Uniform Rules had been in effect for nearly five months prior to defendants’ filings, public comment on these rules was sought in August 2020, and the rules were published, via Administrative Order 270/20, in December 2020. Additionally, the Uniform Rules are available on the Court’s website. This is not a situation where counsel can reasonably argue they were caught unawares of the Uniform Rules. Consequently, the applications are denied for failure to comply with the Uniform Rules.

Assuming, *arguendo*, that the Court were to consider these noncompliant filings, it notes further irregularities. Petitioner has brought this action as a special proceeding. The petitioner is wholly silent as to the justification for bringing such action as a special proceeding as opposed to an action sounding in contract, despite petitioner alleging it is due payment under various retainer contracts between petitioner and its former-client-respondents. Under these circumstances, the Court finds further basis to deny the petition as improperly brought where petitioner has an adequate remedy at law – a contract action.

The petition seeks to recover attorney's fees for services rendered in three separate lawsuits in Kings County Supreme Court (506543/2014 [sic]; 510008/2018; and 518713/2019). The Court's review of these matters reveals that the 2018 action remains active and pending, and the 2019 action was settled and discontinued.¹

Of the three remedies available to a discharged attorney, plenary action, charging lien, and retaining lien, only the first two are at issue in this matter. An action in quantum merit, to recover the reasonable value of legal services rendered, accrues upon the attorney's discharge and is enforceable against all of the client's assets (*Butler, Fitzgerald & Potter v. Gelmin*, 235 AD2d 218 [1st Dept 1997]). However, where a discharged attorney seeks a charging lien pursuant to Judiciary law § 475, to recover the reasonable value of legal services rendered, such remedy is not immediate enforceable (*id.*). Put simply, an attorney who has a charging lien pursuant to Judiciary Law § 475 is not entitled to an immediate judgment. Instead, such attorney may have the amount of the lien fixed prior to the outcome of the underlying matter and if the services rendered were contingent on a successful outcome, the attorney must wait until a

¹ Petitioner provided an incorrect index number for the 2014 matter, and this Court is unable to search for such matter given only a partial caption. Consequently, the disposition of the 2014 matter is unknown to this Court.

successful resolution of the matter before seeking to enforce his or her lien (*id.*).

“Unlike [a plenary action], the charging lien does not provide for an immediately enforceable judgment against all assets of the former client. All it provides to the discharged attorney is security against a *single* asset of the client, i.e., any judgment or settlement reached in favor of the former client in the action in which the discharged attorney was formerly attorney of record” [emphasis in original]).

Stated differently, a “law firm is not entitled to a money judgment against defendant, its former client, on a motion pursuant to Judiciary Law § 475 ... which does not provide for an immediately enforceable judgment” (*Bernard v. De Rham*, 161 AD3d 686 [1st Dept 2018]). “To obtain a money judgment, the law firm must commence a plenary action” (*id.*). However, in bringing such plenary action, the law firm must disclose the prior related actions in its request for judicial intervention, so that the Court may administratively assign the subsequent action to the jurist familiar with the prior underlying matter. Put simply, judicial economy is not served by litigating a fact-specific fee-dispute in one county while the underlying matter remains pending before a jurist of co-ordinate jurisdiction in another county.

Here, although purportedly brought, in part, as a plenary action, petitioner also seeks relief related to alleged charging liens and states five causes of action identified as: breach of contract, account stated, declaratory judgment, unjust enrichment, and quantum meruit. Petitioner has not distinguished claims related to any charging liens from those seeking separate relief as a plenary action. At best, the petition is duplicative seeking to recover the same fees as a charging lien and a plenary action. In any event, to the extent that petitioner seeks declaratory judgment, such relief is not available for a charging lien pursuant to Judiciary Law § 475 while the underlying matters remain sub judice or without judgment (*Butler, Fitzgerald & Potter v. Gelmin*, 235 AD2d 218 [1st Dept 1997]; see also *Bernard v. De Rham*, 161 AD3d 686 [1st Dept 2018]). This Court's search of the records in the underlying matters reveals at least one matter remains active and pending (see NYSCEF Index. No. 510008/2018).

Petitioner makes much of respondents' refusal to execute a stipulation "recognizing" its charging lien (NYSCEF Doc. No. 1 at ¶ 119). It is beyond argument that respondent's refusal to stipulate is entirely irrelevant in addressing the issues raised in this matter. Furthermore, the charging liens petitioner purportedly seeks to enforce in this matter have not been fixed, and should be fixed before the Court which heard the underlying matters as that

Court is familiar with the underlying facts (*see e.g. Hudson v. Hahn Kook Center (USA), Inc.*, 136 AD3d 459 [1st Dept 2016]). The petition and answer present issues of fact as to whether petitioner committed malpractice or otherwise failed to render proper services.

Accordingly, it is

ORDERED that the motion is denied for failure to comply with the Uniform Rules; and it is further

ORDERED the matter is dismissed without prejudice as improperly brought as a special proceeding; and it is further

ORDERED that to the extent petitioner seeks to have the amount of any charging liens fixed, such relief must be brought in Court which heard the underlying matters and petitioner shall identify the underlying matters as related matters in any subsequent requests for judicial interventions and applications seeking same; and it is further

ORDERED that as an alternative holding, the petition is dismissed as improperly seeking to have charging liens fixed in open matters pending before

a jurist of co-ordinate jurisdiction in another county familiar with the underlying facts giving rise to the charging lien; and it is further

ORDERED that as a second alternative holding, the petition is dismissed as improperly intermixing claims for payment under charging liens, retainer contracts, and quantum meruit such that this Court cannot separate said claims; and it is further

ORDERED that motion sequence 002 is academic, given the foregoing; and it is further

ORDERED that any requested relief not addressed herein has nevertheless been considered and is hereby denied.

THIS CONSTITUTES THE ORDER OF THE COURT

11/4/2021

DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☒ DENIED

☐ ☐ ☐ ☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐ OTHER

☐ REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

FRANK NERVO, J.S.C.