

Feder v Feder Kaszovitz LLP
2021 NY Slip Op 32525(U)
November 30, 2021
Supreme Court, New York County
Docket Number: Index No. 657083/2020
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK

PART 53

Justice

-----X

ALVIN FEDER,

Plaintiff,

- v -

FEDER KASZOVITZ LLP, MURRAY SKALA, GEOFFREY
BASS, HOWARD RHINE, SAUL KASZOVITZ, DAVID
KASZOVITZ

Defendant.

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INDEX NO. 657083/2020

MOTION DATE _____

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 19, 20

were read on this motion to/for DISMISSAL.

Upon the foregoing documents and for the reasons set forth on the record (11.30.21), Feder Kaszovitz LLP, Murray Skala, Geoffrey Bass, Saul Kaszovitz and David Kaszovitz's motion to dismiss the Value of Feder's interest in the dissolved partnership (second) cause of action, Quantum Meruit (third) cause of action for work and expenditures as an independent contractor, and Unjust Enrichment: Payment for the benefit conferred by work and expenditures in 2015 (fourth) cause of action of the complaint must be granted to the extent of (i) dismissing the second cause as a separate cause of action and (ii) the third and fourth causes of action solely to the extent that they seek to recover for services provided prior to and up until the time of Alvin Feder's retirement in 2014 but not with respect to services provided after the partnership's dissolution and once the partnership was reconstituted as a new partnership in which Mr. Feder is not a partner.

Briefly, the second cause of action is not a recognized separate cause of action in New York. It is essentially a remedy in respect of the first cause of action and can not be maintained as a separate cause of action. With respect to the quasi contract causes of action, the general rule in New York is that a partner may not sue another partner until an accounting of the partnership is conducted unless the alleged wrong can be determined without an examination of the partnership accounts (*see Travelers Ins. Co. v Meyer*, 267 AD2d 124, 125 [1st Dept 1999]). Mr. Feder sufficiently alleges causes of action sounding in quantum meruit and unjust enrichment for work performed after his retirement and the termination of the partnership and sufficiently pleads that these causes of action do not require an examination of the terminated partnership's accounts. This is easily determinable based on his timesheets. Indeed, to the extent that the work does not relate to the winding up of the old now deceased partnership, such work would not be included in the winding up or accounting of that partnership. That work would be accounted for in the reconstituted new partnership of which Mr. Feder was not a partner. Finally, Mr. Feder's cross-motion is granted solely to the extent of permitting Mr. Feder to file an amended complaint, which he may move to seal.

More completely, Mr. Feder was one of the founding members of the partnership and remained a partner until his retirement, effective December 31, 2014. The partnership did not have a written partnership agreement. Upon Mr. Feder's retirement, the partnership was dissolved, and the remaining partners immediately reconstituted the partnership under the same name.

Mr. Feder alleges that he continued to work for the firm after his retirement as an independent contractor. Mr. Feder sued (i) for the value of his partnership interest as of the dissolution of the

partnership and for his share of fees he alleges he earned prior to his retirement, (ii) fees for matters he originated or was responsible for that continued after his retirement, and (iii) for fees he allegedly earned as an independent contractor after his retirement.

In his complaint, Mr. Feder asserts causes of action for an accounting (first cause of action), for the value of Mr. Feder's interest in the Firm at the time of its dissolution (second cause of action), for quantum meruit (third cause of action), and unjust enrichment (fourth cause of action) (Complaint, NYSCEF Doc. No. 2, ¶¶120-133). Significantly, the quantum meruit and unjust enrichment causes of action are asserted for work performed after Mr. Feder's retirement (*id.*, ¶¶127-133).

“It is well established that an action at law may not be maintained by one partner against another for any claim arising out of the partnership until there has been a full accounting except where the alleged wrong involves a partnership transaction which can be determined without an examination of the partnership accounts” (*Travelers Ins. Co. v Meyer*, 267 AD2d at 125). Plaintiff bears the burden of proving that this exception applies (*Arkin Kaplan Rice LLP v Kaplan*, 138 AD3d 415, 415 [1st Dept 2016]).

As discussed above, Mr. Feder's causes of action sounding in quantum meruit and unjust enrichment allege that the relevant work and the money he seeks is attributable to the period of time *after* the partnership was dissolved by virtue of his retirement. At this stage of the pleadings, this is sufficient to demonstrate that these causes of action do not require a prior full

accounting as they do not relate to his partnership claims because he was not a partner in respect of these claims.

The second cause of action is duplicative of the first cause of action and must be dismissed as such. It does not matter that Mr. Feder seeks a different remedy – i.e., judgment. Should the accounting establish that Mr. Feder is entitled to compensation for which he has not been paid, he may be entitled to a judgment in respect of such amount. Thus, the second cause of action must be dismissed as a separate cause of action but Mr. Feder may request a judgment in respect of his first cause of action if it is appropriate to do so after the accounting is completed.

Mr. Feder's cross-motion to compel an accounting must be denied. It is simply premature to request the ultimate relief at this juncture (*see St. Paul Fire and Marine Ins. Co. v York Claims Service, Inc.*, 308 AD2d 347, 349 [1st Dept 2003]).

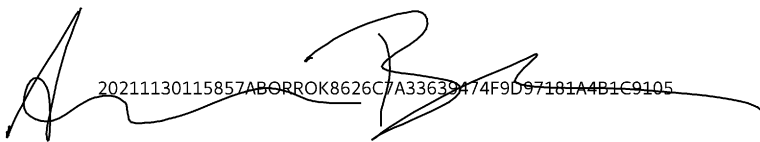
Finally, the branch of the cross-motion for permission to file an amended complaint is granted and Mr. Feder may bring the amended complaint by order to show cause provisionally sealing such amended complaint so that the record can be developed as to whether sealing is appropriate.

The court notes that it is skeptical as to whether sealing is appropriate here.

It is hereby ORDERED that the motion to dismiss is granted solely to the extent of dismissing the second cause of action as a separate cause of action; and it is further

ORDERED that the cross-motion is granted solely to the extent of allowing Mr. Feder to file an amended complaint; and it is further

ORDERED that the parties are directed to appear for a status conference in Part 53 on January 31, 2022 at 11:30 AM.

<u>11/30/2021</u>			
DATE		ANDREW BORROK, JSC	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☐ GRANTED ☐ DENIED	☒ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE