

<b>Kandelaki v Hartmann</b>
2022 NY Slip Op 30343(U)
February 9, 2022
Supreme Court, New York County
Docket Number: Index No. 151665/2012
Judge: David Benjamin Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DAVID B. COHEN PART 58**

*Justice*

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INDEX NO. 151665/2012

SOPHIA KANDELAKI,

Plaintiff,

MOTION SEQ. NO. 012

- v -

THOMAS HARTMANN,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 012) 204, 205, 206, 207, 208, 209, 210, 211, 212, 213

were read on this motion for ATTORNEY'S FEES.

In this personal injury action, plaintiff's prior counsel, Louis Grandelli, P.C. (Grandelli), moves for an order directing the Law Offices of Rosemarie Arnold (Arnold), counsel for plaintiff, to provide documentation verifying its disbursements, its retainer agreement with plaintiff, and "relevant documents associated with the apportionment of the \$200,000.00 settlement" of the action, in advance of a hearing to apportion attorneys' fees pursuant to Judiciary Law § 475.

Plaintiff alleges that in 2011, defendant assaulted her outside a restaurant called Baraonda located at 1439 Second Avenue in Manhattan, causing serious and permanent injuries (NY St Cts Elec Filing [NYSCEF] Doc No. 1, complaint ¶¶ 4-7). On or about July 9, 2018, Arnold settled this action for \$200,000 during the trial before Justice Carmen Victoria St. George (NYSCEF Doc No. 211).

Previously, Grandelli moved for an order directing a hearing, pursuant to Judiciary Law § 475, to apportion attorneys' fees (NYSCEF Doc No. 181). By decision and order dated

November 18, 2019, the court referred the issue of the reasonable value of legal services rendered and disbursements paid by Grandelli to a Special Referee to hear and report with recommendations (NYSCEF Doc No. 200).

Judiciary Law § 475 provides:

“From the commencement of an action, special or other proceeding in any court or before any state, . . . , the attorney who appears for a party has a lien upon his or her client's cause of action, claim or counterclaim, which attaches to a . . . , settlement, judgment or final order in his or her client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien.”

When there is a fee dispute between outgoing and incoming attorneys,

“[t]he outgoing attorney may elect to take compensation on the basis of a presently fixed dollar amount based upon quantum meruit for the reasonable value of services or, in lieu thereof, the outgoing attorney has the right to elect a contingent percentage fee based on the proportionate share of the work performed on the whole case”

(*Lai Ling Cheng v Modansky Leasing Co.*, 73 NY2d 454, 458 [1989]).

“In fixing an award of legal fees in quantum meruit, the court should consider ‘evidence of the time and skill required in that case, the complexity of the matter, the attorney’s experience, ability, and reputation, the client’s benefit from the services, and the fee usually charged by other attorneys for similar services’”, as well as whether the attorney committed any ethical violations (*DeGregorio v Bender*, 52 AD3d 645, 646 [2d Dept 2008], quoting *Rosenzweig v Gomez*, 250 AD2d 644, 644 [2d Dept 1998]; accord *Kennedy v Point Dedicated Servs., LLC*, 31 AD3d 1117, 1119 [4th Dept 2006]; *Buckley v Surface Transp. Corp. of N.Y.*, 277 App Div 224, 225-226 [1st Dept 1950]). “The calculation of an award of legal fees as a portion of a contingent fee and based on an hourly rate are both properly fixed as quantum meruit determinations” (*SBC 2010-1, LLC v Smits Structure Corp.*, 167 AD3d 795, 796 [2d Dept 2018]).

Grandelli argues that, although Arnold received the settlement money on October 1, 2018, she did not notify him of the settlement or respond to his telephone inquiries or letters of January 22, February 14, March 21, and April 19, 2019 regarding the status of the case (NYSCEF Doc No. 208). In an email dated June 17, 2021, Arnold advised Grandelli that her firm “held sufficient funds to cover any award you receive in connection with this case,” but did not state whether she kept the entire portion of attorneys’ fees in escrow (NYSCEF Doc No. 209). Therefore, Grandelli requests “records” indicating: (1) when the settlement monies were received; (2) whether the settlement monies were deposited in escrow; and (3) whether any portion of the attorneys’ fees has been withdrawn. Further, Grandelli seeks an itemization of Arnold’s disbursements and a copy of her retainer agreement.

In opposition, Arnold argues that she informed Grandelli, by email dated June 17, 2021, that she received the settlement monies on October 1, 2018 (NYSCEF Doc No. 209). Counsel states that she was on maternity leave at that time and that the attorney who was handling the file must have neglected to notify Grandelli of the settlement, but asserts that the money was deposited in the firm’s escrow account on October 8, 2018. Arnold also maintains that Grandelli improperly requests that she provide confidential banking information, and that it is not possible to redact its bank records without producing a bank statement showing that there are still sufficient funds in the account. Arnold argues that she did not violate the Rules of Professional Conduct because “the appropriate funds [are] in the firm’s escrow account.”

In reply, Grandelli requests: (1) a copy of the closing statement filed in this case, or if a closing statement was not filed, an affidavit; and (2) the identity of the attorney who handled the file in counsel’s absence. Grandelli argues that, to the extent Arnold claims that she would be

required to provide “confidential banking information,” she can redact those portions of its bank records that are unrelated to this case.

Grandelli’s request for Arnold’s bank records is granted. Although bank records are of a confidential and private nature (*Chang v SDI Intl. Inc.*, 15 AD3d 520, 521 [2d Dept 2005]; *Saratoga Harness Racing v Roemer*, 274 AD2d 887, 889 [3d Dept 2000]), Grandelli has demonstrated the need for this discovery (*see Greenfield, Eisenberg, Stein & Senior v Tallering*, 200 AD2d 609, 611 [2d Dept 1994]; *Gargano v V.C. & J. Constr. Corp.*, 148 AD2d 492, 493 [2d Dept 1989]; *see* Rules of Professional Conduct [22 NYCRR 1200.00] rules 1.15 [c] [1], 1.15 [c] [3], 1.15 [c] [4]). It is undisputed that Arnold did not inform Grandelli of the settlement or that she received settlement funds, in violation of a stipulation between Grandelli and Arnold, pursuant to which Arnold agreed to notify Grandelli within seven days of receiving settlement funds (NYSCEF Doc No. 207). In addition, Arnold does not claim that she responded to Grandelli’s letters inquiring about the settlement and division of attorneys’ fees (NYSCEF Doc No. 208). Arnold has also failed to set forth a sufficient reason why it cannot redact its bank records or why the production of these records would be unduly burdensome. Therefore, Arnold shall produce its bank records responsive to Grandelli’s requests, redacted as to account number and information and entries unrelated to this action, within 20 days of the date of this decision and order.

Grandelli acknowledges that Arnold has provided an itemization of her disbursements and a copy of her retainer agreement (NYSCEF Doc No. 212 at 1). Therefore, these requests are moot.

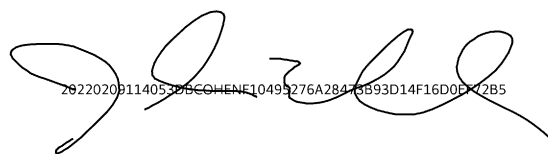
Finally, Grandelli’s requests for a copy of the closing statement filed in this case or an affidavit why one was not filed, as well as the identity of the attorney who handled the file in

Arnold’s absence, is improper since it was raised for the first time in reply (*id.* at 1-2). “The purpose of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of the motion” (*Gumbs v Flushing Town Ctr. III, L.P.*, 114 AD3d 573, 574 [1st Dept 2014] [internal quotation marks and citation omitted]). Since Arnold did not have an opportunity to respond to these requests, they are denied.

Accordingly, it is hereby:

**ORDERED** that the motion (sequence number 012) to compel of Louis Grandelli, P.C. is granted to the extent of directing the Law Offices of Rosemarie Arnold to produce bank records responsive to Louis Grandelli, P.C.’s requests, redacted as to account number and information and entries unrelated to this action, within 20 days of the date of this decision and order, and the motion is otherwise denied.

2/9/2022  
DATE

  
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DAVID B. COHEN, J.S.C.

CHECK ONE:

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<input type="checkbox"/>	SETTLE ORDER	
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<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: