

<b>Drezin v Delidimitriou</b>
2022 NY Slip Op 31154(U)
April 8, 2022
Supreme Court, Kings County
Docket Number: Index No. 514940/2020
Judge: Francois A. Rivera
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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 8th day of April 2022

HONORABLE FRANCOIS A. RIVERA

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ALAN DREZIN, ESQ.,

Plaintiff,

**ORDER**

Index No. 514940/2020

- against -

VICKY DELIDIMITRIOU,

Defendant.

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By notice of motion filed on June 11, 2021, under motion sequence number two, plaintiff Alan Drezin, Esq. (hereinafter plaintiff or Drezin) seeks an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor against the defendant Vicky Delidimitriou (hereinafter defendant) in the sum certain of \$60,127.50, with interest thereon from November 8, 2020, together with the costs and disbursements. This motion is opposed.

**BACKGROUND**

By summons and notice of motion electronically filed with the Kings County Clerk's office on August 14, 2020, plaintiff has moved pursuant to CPLR 3213 for summary judgment in lieu of complaint against defendant. The motion was opposed.

By decision and order issued on May 14, 2021, the aforementioned motion by Drezin for summary judgment in lieu of complaint against the defendant was denied, and

the moving papers were deemed the complaint and the opposition papers were deemed the answer.

Plaintiff's prior motion papers (hereinafter the commencement papers) consisted of the summons, the notice of motion, an affirmation of plaintiff's counsel, plaintiff's affidavit and one annexed exhibit. The annexed exhibit was a decision and order issued on March 3, 2020, by Justice Theresa M. Ciccotto in a matrimonial action in Kings County Supreme Court under Index Number 51309/2016 and titled *Vicky Delidimitriou v John Delidimitriou* (hereinafter the matrimonial action). In accordance with this Court's decision and order dated May 14, 2021, the commencement papers were deemed the complaint.

Defendant's prior opposing papers consisted of an affidavit by the defendant with two exhibits annexed to the affidavit. The first exhibit was described as a copy of the defendant's grievance complaint against the plaintiff submitted to the Supreme Court of the State of New York, Appellate Division Second Department. The second exhibit is a reply affirmation submitted by the plaintiff in the action. These papers were deemed to be the defendant's answer.

Plaintiff submitted an affirmation of counsel in reply to defendant's prior opposition papers.

## LAW AND APPLICATION

It is well established that summary judgment may be granted only when it is clear that no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

The burden is upon the moving party to make prima facie showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any material facts (*Giuffrida v Citibank*, 100 NY2d 72 [2003]).

A failure to make that showing requires the denial of that summary judgment motion, regardless of the adequacy of the opposing papers (*Ayotte v Gervasio*, 81 NY2d 923 [1993]). If a prima facie showing has been made the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez*, 68 NY2d at 324).

A party opposing a motion for summary judgment is obligated to sufficiently demonstrate, with admissible evidence, that a triable issue of fact will exist (*Friends of Animals, Inc. v Associated for Manufacturers, Inc.*, 46 NY2d 1065 [1979]). A genuine issue of fact may not be demonstrated by using mere conclusions, expressions of hope or unsubstantiated allegations or assertions (*Amatulli v Delhi Constr. Corp.*, 77 NY2d 525 [1991]).

Plaintiff was the prior counsel of the defendant in the matrimonial action until the defendant retained new counsel to substitute for the plaintiff. By the decision and order of March 3, 2020, by Justice Theresa M. Ciccotto, plaintiff's motion for a charging lien in the matrimonial action was granted. Plaintiff's current motion for summary judgment is based on the granting of the aforementioned charging lien and alleged claim that the amount due under the charging lien remains unsatisfied.

While an attorney's charging lien does extend to settlement proceeds, it is enforceable only against the portion of the fund created in that action as a result of the attorney's efforts, and not against the fruition of a distinct cause of action not resulting from his efforts (*Rothfeder v City of New York*, 48 AD3d 234 [1st Dept 2008]).


Plaintiff's charging lien in the matrimonial action is only enforceable against the portion of the funds created in that action as a result of the plaintiff's efforts. The charging lien, standing alone, does not make a prima facie showing of entitlement to judgment in the amount of the charging lien against the defendant in the instant action.

Consequently, the motion is denied without regard to the sufficiency of the defendant's opposition papers (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]).

## CONCLUSION

The motion by plaintiff Alan Drezin, Esq. for an order granting summary judgment in plaintiff's favor against the defendant Vicky Delidimitriou in the sum certain of \$60,127.50, with interest thereon from November 8, 2020, together with the costs and disbursements is denied.

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J.S.C.