

Phillips Nizer LLP v Moy
2022 NY Slip Op 31631(U)
May 18, 2022
Supreme Court, New York County
Docket Number: Index No. 156651/2021
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

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PHILLIPS NIZER LLP,

Plaintiff

Index No.: 156651/2021

against

**AMENDED
 DECISION AND ORDER**

MARVIN MOY,

Motion Sequence: 001

Defendant.

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BACKGROUND

Plaintiff commenced this action seeking a judgment for unpaid legal fees for services alleges rendered to defendant in connection with a matrimonial action.

PENDING MOTION

Plaintiff moved for a default judgment on March 7, 2022. Defendant failed to appear or oppose the motion and the motion was submitted on default on the return date.

For the reasons stated below, the motion is granted on default.

ALLEGED FACTS

On or about June 27, 2018, Mr. Moy engaged Phillips Nizer to provide legal counsel to him in connection with his matrimonial issues with Hanyue Zhu. Mr. Moy's retention of Phillips Nizer was memorialized in a written engagement letter dated June 27, 2018 (the "Engagement Letter"). The Engagement Letter was signed by Mr. Moy on his own behalf and by Richard J. Adago on behalf of Phillips Nizer.

Upon signing the Engagement Letter, Mr. Moy paid Phillips Nizer an initial retainer fee of \$25,000. Pursuant to paragraph 3 of the Engagement Letter, Mr. Moy agreed to pay Phillips Nizer for attorneys' fees incurred on his behalf on an hourly basis at the customary hourly rates

for work performed by partners, associates and legal assistants as set forth in the Engagement Letter. Mr. Moy also agreed to advance or reimburse Phillips Nizer for all out-of-pocket expenses and disbursements incurred in connection with the services rendered.

The Engagement Letter further provided at paragraph 3 that Phillips Nizer would advise Mr. Moy "at least every 60 days of all details as to how our time and disbursements were expended," that Mr. Moy would "undertake to review the billing report and promptly call [Phillips Nizer's] attention to any objection [he] may have with respect thereto," and that "[Mr. Moy's] failure to contact [Phillips Nizer] to question or dispute a time entry or disbursement within thirty (30) days will be deemed a waiver of a claim or dispute with respect to that time and charge and disbursement."

Paragraph 3 of the Engagement Letter further provides: "Payment of each invoice will be due on receipt. If payment is made more than 30 days from receipt, interest will accrue on past due invoices at the rate of 1% per month, but not to exceed the legal rate."

Phillips Nizer proceeded to represent Mr. Moy in his litigation with Hanyue Zhu. Phillips Nizer sent Mr. Moy invoices and at least every sixty (60) days, by e-mail to the e-mail addresses designated by Mr. Moy, starting with an initial invoice dated July 13, 2018 and continuing until the Firm's representation ended in January, 2019 with a final invoice dated February 6, 2019.

These invoices provided a detailed recitation of the legal services rendered for, and disbursements incurred on behalf of, Mr. Moy.

By an email dated January 14, 2019, Mr. Moy discharged Phillips Nizer. Plaintiff alleges this discharge was not for cause, and that Mr. Moy cited personal financial difficulties as his reason to change counsel.

After his initial retainer payment was exhausted, Phillips Nizer continued to provide legal services to Mr. Moy as detailed in the invoices dated July 13, 2018, August 8, 2018, September 10, 2018, October 12, 2018, November 14, 2018, December 10, 2018, January 16, 2019, and February 6, 2019, which have a total outstanding principal balance of \$63,910.35.

The services rendered to Mr. Moy consisted of court appearances, personal meetings, telephone conversations, emails, and written correspondence with both Mr. Moy, adversary counsel, various experts, the preparation of subpoenas, discovery demands, memoranda and other documents, and the analysis of financial and other documents.

Plaintiff alleges that Mr. Moy never objected to any specific item in any invoice, either in writing or verbally.

Plaintiff commenced a prior action in this court for the same relief under Index Number 154053/2019. That action was withdrawn pursuant to a Notice of Discontinuance dated October 29, 2020, after Mr. Moy engaged an attorney to challenge service.

On July 15, 2021, a Summons and Complaint in this matter were filed. On August 4, 2021, the Summons and Verified Complaint were personally served upon Mr. Moy, pursuant to CPLR § 308 (1). Phillips Nizer filed the Affidavit of Service on August 9, 2021. Mr. Moy had twenty (20) days - until August 24, 2021, to serve an answer or appear, but to date has failed to do so.

An additional mailing, pursuant to CPLR §3215 (g)(3)(i), was made on December 16, 2021.

Plaintiff alleges that Mr. Moy is not in military service, based upon an inquiry made of defendant at the time of personal service.

DISCUSSION

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

Plaintiff has established all the elements of its claim.

CONCLUSION

WHEREFORE, it is hereby:

ORDERED that plaintiff's motion seeking a default judgment against defendant Marvin Moy, is granted; and it is further

ORDERED that plaintiff is granted a judgment in the amount of \$63,910.35 plus pre-judgment interest at the rate of 1% per month from June 26, 2019, as well as costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

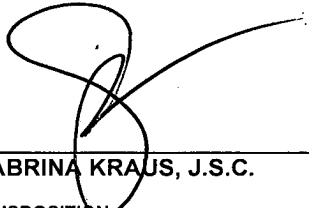
ORDERED that the clerk shall enter judgment accordingly; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on defendant, as well as defendant's prior counsel Raymond Belair, Esq and Elan J. Schefflein, Esq, and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for

Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh);

This constitutes the decision and order of the court.

<u>5/18/2022</u> DATE			 _____ SABRINA KRAUS, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE