

Scarola Zubatov Schaffzin PLLC v Melchionna PLLC
2022 NY Slip Op 31989(U)
June 22, 2022
Supreme Court, New York County
Docket Number: Index No. 657046/2021
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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SCAROLA ZUBATOV SCHAFFZIN PLLC,

Plaintiff

Index No. 657046/2021

- against -

DECISION AND ORDER

MELCHIONNA PLLC,

Defendant
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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Defendant moves to dismiss the verified complaint based on plaintiff's failure to state a cause of action. C.P.L.R. § 3211(a)(7). Upon a motion to dismiss a complaint pursuant to C.P.L.R. § 3211(a)(7), the court considers the facts alleged in the complaint and presumes them to be true. Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Co., Inc., 37 N.Y.3d 169, 175 (2021); Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y.3d 137, 141 (2017); Seaman v. Schulte Roth & Zabel LLP, 176 A.D.3d 538, 538 (1st Dep't 2019).

According to the verified complaint, defendant is a law firm that represents nonparties Assembly Interiors S.r.l.s. and Assembly Interiors USA, Inc., in a separate ongoing action, where those clients agreed to pay defendant a 32% contingency fee if they prevail or settle their claims.

Defendant asked plaintiff to represent the clients jointly with plaintiff in that action, to which plaintiff agreed February 28, 2020, in exchange for 30% of defendant's 32% contingency fee. From then until June 29, 2021, plaintiff, serving as defendant's co-counsel, billed more than 100 hours of legal services, including plaintiff's work on pleadings, disclosure, and dispositive motions. Due to a "breakdown in communications," Aff. of Neil S. Comer Ex. 1 ¶ 14, however, plaintiff withdrew as co-counsel June 29, 2021, with the clients' consent. Plaintiff commenced this action to recover payment for plaintiff's work on the underlying action.

II. DEFENDANT'S MOTION TO DISMISS THE VERIFIED COMPLAINT

In moving to dismiss the verified complaint, defendant bears the burden to establish that the complaint "fails to state a viable cause of action." Connolly v. Long Island Power Auth., 30 N.Y.3d 719, 728 (2018). In evaluating defendant's motion, the court must accept plaintiff's allegations as true, liberally construe the complaint, and draw all reasonable inferences in plaintiff's favor. Doe v. Bloomberg L.P., 36 N.Y.3d 450, 454 (2021); Connolly v. Long Island Power Auth., 30 N.Y.3d at 728; JF Capital Advisors, LLC v. Lightstone Group, LLC, 25 N.Y.3d 759, 764 (2015); M & E 73-75 LLC v. 57 Fusion LLC, 189 A.D.3d 1, 5 (1st Dep't 2020). Dismissal is warranted if the complaint fails to allege facts that fit within any cognizable legal theory

against defendant. Sassi v. Mobile Life Support Servs., Inc., 37 N.Y.3d 236, 239 (2021); Faison v. Lewis, 25 N.Y.3d 220, 224 (2015).

Defendant contends that plaintiff fails to state a cause of action because plaintiff agreed to payment according to a percentage of defendant's contingency fee, which remains indeterminable until the underlying action is resolved. Despite plaintiff's initial agreement with defendant for a percentage of the fee contingent on the award or settlement received by the clients, plaintiff insists it is entitled to an immediate quantum meruit valuation of the work plaintiff performed and payment at a fixed amount, regardless whether the clients are ultimately successful in their action.

In a fee dispute between attorneys, the outgoing attorneys may elect a quantum meruit valuation of the work they performed, but only if they were discharged without cause. Cohen v. Grainger, Tesoriero & Bell, 81 N.Y.2d 655, 658 (1993); Lai Ling Cheng v. Modansky Leasing Co., 73 N.Y.2d 454, 458 (1989); Nabi v. Sells, 70 A.D.3d 252, 254 (1st Dep't 2009). When attorneys withdraw from representation, either on consent or for good cause, C.P.L.R. § 321(b), they may impose a charging lien to recover reasonable fees later for their past services. N.Y. Jud. Law § 475; Klein v. Eubank, 87 N.Y.2d 459, 464 (1996); Raff & Becker LLP v. Kaiser Saurborn & Mair, P.C., 160 A.D.3d 479, 480.

(1st Dep't 2018); Schneider, Kleinick, Weitz & Damashek v. Suckle, 80 A.D.3d 479, 480 (1st Dep't 2011). Plaintiff's attorney-client relationship terminated when plaintiff voluntarily withdrew its representation with its former clients' consent, which is distinguished from when the clients discharge their attorney without cause. Farage v. Ehrenberg, 124 A.D.3d 159, 165 (2d Dep't 2014). Thus plaintiff is entitled at least to a charging lien under New York Judiciary Law § 475.

Upon defendant's motion to dismiss the complaint, the court need not determine whether plaintiff is entitled to the further remedy plaintiff seeks, the immediate valuation of and payment for the value of plaintiff's services, since plaintiff has not moved for summary judgment or any other affirmative relief. To defeat defendant's motion, plaintiff only need allege a viable claim for quantum meruit, as the verified complaint does: that plaintiff provided legal services to the benefit of defendant and its clients, which they accepted, and for which plaintiff expected compensation. Liegey v. Gadeh, 198 A.D.3d 460, 460 (1st Dep't 2021); Elhanani v. Kuzinez, 172 A.D.3d 590, 592 (1st Dep't 2019); Farina v. Bastianich, 116 A.D.3d 546, 548 (1st Dep't 2014); Balestriere PLLC v. BanxCorp, 96 A.D.3d 497, 498 (1st Dep't 2012). The expectation of compensation, however, was contingent on the clients' recovery.

III. THE ULTIMATE RELIEF

Although by filing this action plaintiff has elected a fee based on quantum meruit, rather than the contract amount of 30% of the contingent fee, plaintiff's fee is still contingent on the clients' recovery. To allow an attorney to withdraw and thus guarantee a fee to the withdrawing attorney when neither the clients nor the continuing attorney receives any compensation would be an anomalous result, Cohen v. Grainger, Tesoriero & Bell, 81 N.Y.2d at 659, founded on an unrealistic expectation that defendant would compensate plaintiff even when neither defendant nor the clients are compensated. The authority plaintiff itself cites refers to attorneys' fees based on quantum meruit "presently payable or secured by a loan," Reubenbaum v. B & H Express, 6 A.D.2d 47, 48 (1st Dep't 1958); Paulson v. Halpin, 74 A.D.2d 990, 991 (4th Dep't 1980) (emphasis added). See Nabi v. Sells, 70 A.D.3d at 255. Plaintiff does not suggest what circumstances the latter phrase might refer to other than the circumstances here. Plaintiff well may be entitled to an immediate valuation of plaintiff's services, but not to an immediate payment of that value.

IV. CONCLUSION

Because plaintiff is entitled at least to a lien, however, as explained above, the court denies defendant's motion to dismiss the verified complaint. C.P.L.R. § 3211(a)(7).

Defendant shall answer the complaint within 10 days after entry of this order. C.P.L.R. § 3211(f). A Preliminary Conference will be held August 9, 2022, at 11:30 a.m. via Microsoft Teams.

DATED: June 22, 2022



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C