

Katlowitz & Assoc. v Spark Light. Corp.

2022 NY Slip Op 33502(U)

October 14, 2022

Supreme Court, New York County

Docket Number: Index No. 651301/2020

Judge: Arlene Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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KATLOWITZ & ASSOCIATES,

Plaintiff,

- v -

SPARK LIGHTING CORP., JOSEPH SEIDENFELD

Defendants.

-----X

INDEX NO. 651301/2020

MOTION DATE 09/29/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87

were read on this motion to/for SUMMARY JUDGMENT.

Plaintiff’s motion for summary judgment is granted as to liability only, and defendants’ affirmative defenses are severed and dismissed.

Background

Plaintiff filed this breach of contract claim after defendants failed to pay invoices for legal services plaintiff allegedly rendered.

This was not the first time that defendant hired plaintiff as a lawyer. Defendant Joseph Seidenfeld, president of defendant Spark Lighting Corporation, retained plaintiff to represent him in relation to a shareholder agreement dispute beginning in March 2019 through May 2019. On March 25, 2019, Seidenfeld met with plaintiff to undertake the representation. At that time, plaintiff accepted a \$3,500.00 check for its services. No retainer agreement was signed. Plaintiff continued to work on Seidenfeld’s matter until April 10, 2019, at which time Seidenfeld settled

the shareholder agreement matter and advised plaintiff that its services were no longer needed. Plaintiff then sent an invoice to Seidenfeld for an additional \$5,473.00 related to plaintiff's services for the shareholder agreement dispute. Seidenfeld paid the invoice on April 15, 2019.

Seidenfeld required plaintiff's services once more, which is the subject of the current dispute. On April 22, 2019, an Article 75 petition was filed against Seidenfeld and his corporation by his adversary in the shareholder agreement matter. Plaintiff requested a \$20,000.00 advance for his services, which Seidenfeld paid on April 30, 2019; no retainer agreement was signed at that time. A week later, on May 6, 2019, Seidenfeld and his corporation entered into a formal retainer agreement relating to the Article 75 petition. In his affidavit, Seidenfeld swears that plaintiff offered the retainer agreement and stated it was required for insurance purposes (NYSCEF Doc. No. 67 at 4). Additionally, May 6, 2019 was the deadline for defendants to answer the Article 75 petition, and Seidenfeld contends he did not have time to find a new attorney in time for the deadline (*id.*). Accordingly, on behalf of both defendants (the corporate defendant and himself), Seidenfeld signed the retainer agreement. Despite paying \$20,000.00 one week earlier, plaintiff requested another \$20,000.00 from Seidenfeld, which Seidenfeld claims that plaintiff represented that the additional \$20,000.00 would cover all expenses related to the Article 75 litigation.

Plaintiff worked on the Article 75 proceeding for the month of May, and on May 31, 2019, Seidenfeld reached an understanding with his adversary in the Article 75 proceeding and signed a deal. The Article 75 petition was discontinued the same day. The date of filing the petition, April 22, to the date of discontinuance, May 31, was less than six weeks.

On June 7, 2019, plaintiff sent Seidenfeld two invoices. One invoice requested \$17,377.60 for negotiations plaintiff participated in with opposing counsel from April 4, 2019 to

April 18, 2019 and for negotiations which occurred from May 21, 2019 until May 31, 2019. The second invoice was for \$134,855.90 and gave a credit for the \$40,000 already paid, leaving a balance due of \$94,855.90 for substantive work on the Article 75 Petition from April 19, 2019 through May 21, 2019. On July 15, 2019, Seidenfeld received a third invoice for \$6,263.00 regarding the preparation for the shareholder sales agreement from March 20, 2019 until April 18, 2019.

According to Seidenfeld, upon receipt of the invoices, he was “outraged” by the costs and immediately objected to the credibility of the invoices (NYSCEF Doc. No. 67 at 6). That is not surprising, considering he swore that his payment of \$40,000 would cover it.

Seidenfeld refused to pay the invoices. Plaintiff now brings this claim for breach of contract and quantum meruit related to plaintiff’s representation of defendants from March until May 6, 2019. Plaintiff provided detailed invoices for services charged. In their answer, defendants denied the allegations and presented nine affirmative defenses.

Plaintiff moves for summary judgment seeking to recover the amounts owed in unpaid fees and disbursements for legal services as well as attorney fees. Plaintiff contends that since defendants did not address the invoices in its answer, pursuant to CPLR 3016(f), plaintiff has met its burden establishing a prima facie case of breach of contract.

In its response to plaintiff’s motion for summary judgment, defendants assert that plaintiff’s invoices are padded, that the engagement letter dated May 6, 2019 is neither fair nor reasonable because of the conditions under which defendants were required to sign it, that defendants’ objection to the invoices should preclude plaintiff’s claims, and that plaintiff should be estopped from pursuing his breach of contract claim.

Discussion

To be entitled to the remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012]).

Pursuant to CPLR 3016(f), a plaintiff makes a prima facie case for a breach of contract claim by including “detailed billing statements showing its performance and damages due to defendants’ lack of payment.” (*Kasowitz Benson Torres LLP v United States Ambassador Cesar B. Cabrera*, 188 AD3d 602, 603, 132 NYS3d 761 [1st Dept 2020]).

The Court finds that plaintiff satisfied its burden for summary judgment as to liability only. Defendants signed a retainer agreement that set the hourly rate for “partner” time at \$400.00 per hour and \$250.00 per hour for “associate” time (NYSCEF Doc. No. 2 at 2). Plaintiff submitted detailed billing that was tracked by both partners and associates. Although Seidenfeld contends that he was given little choice in signing the retainer agreement, signing an agreement under a deadline crunch is not a defense to breach of contract and unpaid fees (*c.f. Beltway 7 & Props., Ltd. V Blackrock Realty Advisers, Inc.*, 167 AD3d 100, 107-8, 90 NYS3d 3 [1st Dept 2018] [stating that “fear of financial embarrassment... or the stress that might follow from a lawsuit... is not sufficient to constitute such duress as will excuse or invalidate an agreement made to avoid such consequences,”]). Defendants signed a retainer agreement that is clearly

titled “Retainer Letter” despite Seidenfeld’s contention he believed he was signing an insurance document (*id.*). It may be necessary for insurance purposes too, but it is clearly an agreement to pay the lawyers.

That does not mean, however, that a retainer agreement is a blank check; a client still has the right to object to bills and to question them. The bills may not be correct for many reasons, including but not limited to intentional padding or honest mistakes. And any way someone looks at this, it is an enormous amount of billing in a very short period of time by very few people.

Plaintiff’s contention that defendants were obligated to put all their concerns in the answer does not sway this Court. Answers to complaints do not require a defendant to assert a new version of events. It was appropriate for Seidenfeld to file a sworn affidavit alleging his version of the facts. Seidenfeld claims he objected to the invoices upon receipt.

Defendants admit that they signed the retainer agreement, which is a contract. That defendant claims it was for plaintiff’s insurance purposes, or that he was pressured to sign, is not a defense. Nor does the document reflect that the fees were capped at \$40,000. And there is no dispute that plaintiff claims there are bills outstanding. Therefore, defendant breached the agreement to pay, but the amount due must be decided by the finder of fact.

Defendants filed a sur-reply without leave of court on September 25, 2022. Because this document was impermissibly filed, the Court did not consider it in the instant decision. Finally, defendants failed to oppose plaintiff’s arguments against all nine of defendants’ affirmative defenses, and those affirmative defenses are severed and dismissed.

The Court emphasizes that it merely finds that plaintiff is entitled to summary judgment on liability and that defendants will have an opportunity to contest the amount sought by plaintiff at trial. The vast majority of defendants’ arguments concern the amount sought by plaintiff as

opposed to the fact they hired plaintiff to work as their attorneys. It may be that a fact finder agrees with defendants that the amount sought is wildly disproportionate to the work actually performed, agrees with plaintiff that every cent it seeks is due, or the fact finder may reach an entirely different conclusion. But this Court’s conclusion only concerns the fact that, indisputably, defendants hired plaintiff to represent them.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment is granted as to liability only and defendant’s affirmative defenses are severed and dismissed.

10/14/2022

DATE



ARLENE BLUTH, J.S.C.

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