| **Parise v Carlamy Realty LLC** |
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| 2022 NY Slip Op 33713(U) |
| October 28, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 152681/2016 |
| Judge: Louis L. Nock |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. LOUIS L. NOCK** **PART** **38M**

***Justice***

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LAURIE PARISE, ARTHUR JENS, CHARLES AN,

Plaintiff,

- v -

CARLAMY REALTY LLC and WEBER FARHAT REALTY MANAGEMENT INC.,

Defendants.

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**INDEX NO.** 152681/2016

**MOTION DATE** 02/01/2022

**MOTION SEQ. NO.** 004

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126, 127, 128, 129, 130, and 131 were read on this motion to FIX A CHARGING LIEN.

Upon the foregoing documents, the motion by nonparty Crumiller, P.C. ("movant"), to fix a charging lien pursuant to Judiciary Law § 475 is decided in accordance with the following memorandum decision.

This is an action for rent overcharge in violation of Rent Stabilization Code (9 NYCRR) § 2525.6(b) and for other related relief. Movant law firm represented plaintiffs Laurie Parise and Arthur Jens, starting with the commencement of the action and until December 12, 2019, when movant was discharged as counsel. For a time, movant also represented plaintiff Charles An until a conflict of interest arose among the plaintiffs regarding settlement goals and Mr. An sought new counsel. At the time it was discharged, movant filed a notice of charging lien in the amount of $116,730 (Notice of Charging Lien, NYSCEF Doc. No. 101). Parise and Jens (the "objecting plaintiffs") filed an objection to the lien on January 8, 2020, in which they alleged that the lien was improper because movant was discharged for cause; the amount sought was excessive and did not "represent a *quantum meruit* valuation of [movant's] work performed in

this action"; and included work done for Mr. An's benefit that was, therefore, not chargeable to the objecting plaintiffs (Notice of Objection to Charging Lien, NYSCEF Doc. No. 102). Movant now seeks, pursuant to Judiciary Law § 475, to fix the amount of the charging lien at $114,952.00.

"From the commencement of an action . . . the attorney who appears for a party has a lien upon his or her client's cause of action . . . which attaches to a verdict, report, determination, decision, award, settlement, judgment or final order in his or her client's favor, and the proceeds thereof . . . . The court upon the petition of the client or the attorney may determine and enforce the lien." (Judiciary Law § 475.) Where an attorney is discharged by his or her client without cause prior to the conclusion of the action, "the attorney is limited to recovering in quantum meruit the reasonable value of the services rendered" (*Campagnola v Mulholland, Minion & Roe*, 76 NY2d 38, 44 [1990]). However, "[w]here the discharge is for cause, the attorney has no right to compensation or a retaining lien, notwithstanding a specific retainer agreement" (*id*.).

The Court of Appeals has previously held that "where an attorney's representation terminates and there has been no misconduct, no discharge for just cause and no unjustified abandonment by the attorney, the attorney's right to enforce the statutory charging lien is preserved" (*Klein v Eubank*, 87 NY2d 459, 464, *rearg denied* 87 NY2d 1056 [1996]). A discharge is not for cause where the attorney's conduct "did not fall below the ordinary and reasonable skill and knowledge commonly possessed by a member of the profession" (*Morrison Cohen Singer & Weinstein v Zuker*, 203 AD2d 119, 119 [1st Dept 1994] [internal quotation marks and citations omitted]). Further, dissatisfaction with reasonable strategic choices by the attorney does not constitute cause for discharge (*Callaghan v Callaghan*, 48 AD3d 500, 501 [2d Dept 2008]).

The objecting plaintiffs present two categories of issues in opposition to the motion: first, a variety of alleged instances of misconduct culminating in a for cause termination of movant; and second, challenges to the amount movant seeks. The court will address each matter in turn.

Applying the above cited caselaw to the objections asserted by the objecting plaintiffs, much of what is alleged does not rise to the level of impropriety necessary to find that movant's termination was for cause, falling instead into that category of "of personality conflicts, misunderstandings or differences of opinion having nothing to do with any impropriety by either the client or the lawyer" (*Klein*, 87 NY2d at 463). Possibly rising above that category and to a level of impropriety that would justify a finding that the termination was for cause, the objecting plaintiffs do claim that movant entered into a stipulation regarding the payment of rent during the pendency of the action, which they assert was based on an incorrect understanding of the law regarding whether the landlord, defendant Carlamy Realty LLC, could seek rent in the first place, and should not have been entered at all. Further, they claim that movant entered into the stipulation without consulting them and should have raised as a defense that landlord had no right to collect rent at all under Multiple Dwelling Law § 302. The statute provides, in relevant part, that no rent may be collected where a building is occupied in violation of or without a certificate of occupancy (Multiple Dwelling Law § 302[1][b]). Movant disputes both that it entered into a stipulation without consulting the objecting plaintiffs and the applicability of Multiple Dwelling Law § 302 to this case. Similarly, the objecting plaintiffs also contend that movant did not obtain their informed consent to bringing Mr. An into the case as a co-plaintiff, and that movant was not seeking a contribution of fees from Mr. An. Movant contests these assertions with references to its billing record and contemporaneous communications between and among plaintiffs and movant. Resolving the dispute regarding these issues requires factual

findings to be made by this court which are unresolvable on papers. Accordingly, an evidentiary hearing is necessary to determine whether the discharge was, or was not, for cause (*Teichner v W & J Holsteins, Inc.*, 64 NY2d 977, 979 [1985]).

Regarding the amount of the fees sought, the court is satisfied that the amount sought is a reasonable reflection of the *quantum meruit* value of movant's services rendered over the course of three years representing the objecting plaintiffs in this action. Movant produced information related to the particular experience of each of the individual billers and the typical hourly rate for complex matters such as this (Crumiller Reply Affirmation dated April 15, 2022, NYSCEF Doc. No. 128, ¶¶ 101-102). As to movant allegedly seeking amounts chargeable to Mr. An rather than to plaintiffs, if the court finds that movant is entitled to fix its charging lien, then the court will deduct the $5,855.00 charged-for work solely on Mr. An's behalf. While the objecting plaintiffs seek to charge Mr. An with half of the work that was allegedly done on behalf of all plaintiffs, again, the parties dispute whether and to what extent the objecting plaintiffs were consulted about whether movant would be seeking fees from Mr. An. Moreover, the cases cited by movant in support of finding that all three plaintiffs should be jointly and severally liable for its fees are not entirely on point, as those cases concern multiple defendants who were jointly and severally liable in the underlying litigations and should therefore be jointly and severally liable to their attorneys for fees (*Mintz & Gold LLP v Daibes*, 125 AD3d 488, 489 [1st Dept 2015]; *Epstein Becker & Green, P.C. v Amersino Mktg. Group, LLC*, 111 AD3d 428, 429 [1st Dept 2013]). A hearing is also necessary to resolve the issue of what, if anything, was discussed and agreed to regarding Mr. An's departure and movant's claim for fees.

Accordingly, it is hereby

ORDERED that the motion of nonparty Crumiller, P.C., to fix a charging lien pursuant to Judiciary Law § 475 is granted to the extent that an evidentiary hearing will be held as set forth above; and it is further

ORDERED that the parties shall appear for the hearing in Room 1166, 111 Centre Street, New York, New York, on December 6, 2022, at 10:00 AM.

This constitutes the decision and order of the court.

10/28/2022
DATE

LOUIS L. NOCK, J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | | X | NON-FINAL DISPOSITION | |
| | | GRANTED | | DENIED | X | GRANTED IN PART | OTHER |
| APPLICATION: | | SETTLE ORDER | | | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | | FIDUCIARY APPOINTMENT | REFERENCE |