

Dembia v Cassar

2022 NY Slip Op 34318(U)

December 19, 2022

Supreme Court, New York County

Docket Number: Index No. 653364/2019

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR

PART

34M

Justice

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INDEX NO. 653364/2019

ROBERT DEMBIA, ROBERT DEMBIA, P.C.,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 003

- v -

CHRISTOPHER J. CASSAR, CHRISTOPHER J. CASSAR,
ESQ. D/B/A CHRISTOPHER J. CASSAR, P.C., THE
CASSAR LAW FIRM, P.C., JAMES PARKER

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 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, 88, 89, 90, 91, 92, 93, 94

were read on this motion to/for

SUMMARY JUDGMENT(AFTER JOINDER

Plaintiffs, Robert Dembia and Robert Dembia, P.C. (collectively, Dembia or plaintiffs), commenced this action for breach of contract and fraud stemming from January 21, 2019 agreement with co-defendants, Christopher J. Cassar, Christopher J. Cassar, Esq. d/b/a Christopher J. Cassar, P.C., The Cassar Law Firm, P.C. (collectively, Cassar or the Cassar defendants), wherein plaintiffs agreed to waive a charging lien asserted by plaintiffs against settlement funds associated with plaintiff's former client, co-defendant James Parker (Parker), in exchange for Cassar's agreement to pay plaintiff \$87,534.13 from the settlement funds. Plaintiffs now move pursuant to CPLR 3212 for summary judgment on their claim for breach of contract and for the breach of the covenant of good faith and fair dealing, pursuant to CPLR 603 to sever plaintiffs' remaining claims, and an order reserving plaintiff's right to seek sanctions against Cassar pursuant to 22 NYCRR 130-1.1. The Cassar defendants cross-move pursuant to CPLR 3211(a)(7) to dismiss the complaint, for sanctions against plaintiffs, or in the alternative,

reducing the total amount of the charging lien. The motions are opposed. For the following reasons, the motion is granted, and the cross-motion is denied.

Plaintiff represented Parker in a claim against the City of New York in an action entitled *Parker v The City of New York, et al.*, Bronx County, Index No. 22801/2015, stemming from a May 30, 2014 altercation at Rikers Island between Parker, an inmate at the time, and other inmates. The settlement of the underlying matter was reached on or about August 28, 2018, for the sum of \$250,000.00 with plaintiffs acting as attorney of record. A dispute arose between the plaintiff and Parker, and Parker terminated plaintiffs prior to the filing of the settlement agreement. On or about December 6, 2018, Cassar was substituted as counsel for Parker. On the same day, plaintiffs filed a notice of lien in the amount of \$87,534.13, representing work plaintiff undertook in the underlying action.

On January 21, 2019, the Cassar defendants, including Cassar individually, entered into an agreement entitled, "Acknowledgment of Lien and Agreement to Satisfy and Pay Lien from Proceeds [Agreement to pay on distribution of proceeds]," wherein the Cassar defendants agreed to pay plaintiffs the sum of \$87,534.13 within fourteen days of receipt of those funds, on the condition that plaintiffs release and discharge the attorneys' lien (NYSCEF doc. no. 59). On January 22, 2019, Dembia released the lien as to the City of New York, thereby releasing the settlement proceeds (NYSCEF doc. no. 60).

Cassar received the settlement proceeds from the settlement of the underlying matter in May 2019, but plaintiffs allege that Cassar failed to pay the monies due under the agreement between the parties despite plaintiffs' demand for said payment. According to the Cassar

defendants, payment would not be made because plaintiffs “refused” to process the settlement documents and because Cassar did not have Parker’s consent to release the funds to plaintiffs. The Cassar defendants state that on August 31, 2020, Parker consented to release the full amount of \$87,534.13 to plaintiffs, but that plaintiffs refused to accept the full amount of \$87,534.13 and returned the check for \$87,534.13 to the Cassar defendants.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of N. Y.*, 49 NY2d 557 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). If the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Reslani Construction Corp.*, 18 NY3d 499, 503 [2012]).

Here, plaintiffs establish their prima facie entitlement to relief on their breach of contract claim by demonstrating the existence of the agreement, plaintiffs’ performance of the agreement by releasing the lien, the Cassar defendants’ breach of its obligation of the agreement, i.e., the Cassar defendants’ failure to pay the monies due under the agreement upon receipt of the settlement proceeds, and damages (*see VisionChina Media Inc. v S’holder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013]). In opposition, Cassar fails to raise an issue of fact. Instead, Cassar argues that he cannot release the funds without the consent of Parker. Cassar neither cites to any caselaw supporting his proposition, nor any factual basis suggesting that

Parker refused to release the subject funds to plaintiffs. The Cassar defendants Cassar also fail to address the fact that Cassar represented Parker at the time he agreed to release the funds to plaintiffs, indicating that Cassar entered the agreement at Parker's agent.

Further, the record is clear that plaintiff is not entitled to a reduction in the amount of settlement proceeds. Cassar argues that Parker paid Cassar \$16,708.00 to complete the legal work to obtain the settlement check, which according to Cassar, should have been completed by plaintiffs. However, this issue was already litigated and denied. Under *res judicata*, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action (*Landau v LaRossa, Mitchell & Ross*, 11 NY3d 8, 12 [2008]). Under New York's transactional approach, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (*O'Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). Here the June 8, 2020 decision and order issued by another justice of this court dismissed Parker's legal malpractice claim premised on the allegation that Dembia's delay in processing the settlement was not a reasonable course of action. As Cassar's argument is premised on an identical transaction previously dismissed, Cassar is precluded from arguing that the proceeds plaintiffs are entitled to should be reduced in an amount based on plaintiffs' failure to process the settlement.

Accordingly, plaintiffs' motion for summary judgment is granted, and the Cassar defendants' cross-motion to dismiss the amended complaint is denied.

In light of the above findings, including that plaintiffs' motion was not frivolous, the branch of Cassar's motion for sanctions pursuant to 22 NYCRR 130-1.1 is denied.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for summary judgment on the first and second causes of action for breach of contract and breach of the covenant of fair dealing, respectively, is granted, and plaintiffs, Robert Dembia and Robert Dembia, P.C., are entitled to a judgment against co-defendants, Christopher J. Cassar, Christopher J. Cassar, Esq. d/b/a Christopher J. Cassar, P.C., The Cassar Law Firm, P.C., in the amount of \$87,534.13, plus costs and disbursements, and with statutory interest to from May 1, 2019; and it is further

ORDERED that a preliminary conference shall take place on February 21, 2023 at 11:00 a.m.

This constitutes the decision and order of the Court.



12/19/2022
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE