

**Hines & Assoc. Law Off., P.C. v Yan Ping Liu**

2023 NY Slip Op 30738(U)

March 10, 2023

Supreme Court, New York County

Docket Number: Index No. 160355/2022

Judge: Arlene P. 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*

-----X

HINES & ASSOCIATES LAW OFFICE, P.C.

Plaintiff,

- v -

YAN PING LIU,

Defendant.

-----X

**INDEX NO.** 160355/2022

**MOTION DATE** N/A

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 7, 8, 9 were read on this motion to/for DISMISSAL.

Defendant’s motion to dismiss is granted.

**Background**

Plaintiff brings this case for unpaid legal fees as well as other claims arising out of defendant’s visit to plaintiff’s office in February 2021. It contends that defendant came to plaintiff’s office in May 2019 for help enforcing a judgment from Civil Court that defendant had previously obtained for \$20,415.87. Plaintiff offered to do the work for an initial retainer fee of \$4,200. Defendant countered with an offer to pay \$1,500 plus ten percent of any amount collected by plaintiff, an offer to which plaintiff agreed.

Plaintiff insists that defendant signed the retainer agreement in July 2019 and she paid the \$1,500 retainer. It claims it worked on her case from July 2019 until January 2021. Plaintiff alleges that defendant called the plaintiff in January 2021 about making an appointment for a separate case. It claims that when she arrived at the appointment, she brought another person (allegedly her husband) and demanded to speak about the enforcement case. Plaintiff argues that

the man with defendant, as well as defendant, began yelling so that others in the office could hear them. Plaintiff brings three causes of action against defendant for breach of contract, harassment, and defamation. It seeks \$57,000 as well as punitive damages.

Defendant moves to dismiss. She insists that the first cause of action fails to state a valid cause of action because the complaint failed to allege how defendant breached the contract. She observes that plaintiff admits she paid the \$1,500 fee and that plaintiff could only collect up to ten percent of the \$20,415.87 judgment. Defendant also claims that plaintiff failed to follow its obligation to notify defendant about her right to arbitrate. Defendant insists that the claim for harassment is not permitted under New York law and that the claim for defamation is time-barred and not properly pled.

In opposition, plaintiff insists that this case is about defendant's breach of the retainer agreement as well as her harassment of plaintiff and its staff. It also argues that defendant waived her right to resolve dispute under NYCRR Part 137 (arbitration of certain legal fee disputes). Plaintiff argues that the instant motion is premature and "an improper pre-joinder motion to dismiss." Plaintiff contends that defendant breached the contract by demanding a refund for services already rendered and that plaintiff expended many, many hours in the collection case, and should be compensated for it.

In reply, defendant claims that plaintiff failed to address the substance of its moving papers. She insists that all three causes of action should be dismissed.

## **Discussion**

"Under CPLR 3211(a)(7), pleadings are to be afforded a liberal construction, allegations are taken as true, the plaintiff is afforded every possible favorable inference, and a determination

is made only as to whether the facts as alleged fit within any cognizable legal theory” (*CSC Holdings, LLC v Samsung Elecs. Am., Inc.*, 192 AD3d 556, 146 NYS3d 17 [1st Dept 2021]).

The Court dismisses the first cause of action for breach of contract. As an initial matter, plaintiff failed to state a cognizable claim for breach of contract. Plaintiff alleges that the agreement (which is not attached) required that defendant pay an initial \$1,500 fee and then ten percent of any fees collected. There is no dispute that defendant paid the retainer and plaintiff does not allege that it recovered any amount with respect to the judgment that would enable it to seek additional monies (the ten percent).

Moreover, it is unclear what constitutes defendant’s purported breach of the contract. Plaintiff alleges that defendant demanded a refund, but that does not constitute a breach of contract (even if defendant had promised not to seek a refund). A demand for a refund did not breach the retainer agreement. Plaintiff could do what it appears to have done—simply ignore the request. Plaintiff did not allege it suffered any damages (an element of a breach of contract claim) based upon defendant’s demand for a refund.

To the extent that plaintiff asserts that it did work for defendant for which it was not compensated, plaintiff failed to allege facts sufficient to support a basis for recovery. According to the complaint, plaintiff’s compensation was supposed to arise from the retainer and a percentage of any recovery. That plaintiff views the retainer as a minimum fee is not a basis to find that plaintiff is entitled to more fees. Plaintiff does not allege it sent bills, it did not attach the retainer agreement, and it did not point to any specific reason for how its work on the collection case makes defendant liable under a breach of contract theory.

The Court severs and dismisses the second cause of action for harassment. “New York does not recognize a common-law cause of action alleging harassment” (*Scialdone v Stepping*

*Stones Assoc., L.P.*, 148 AD3d 953, 955, 50 NYS3d 413 [2d Dept 2017] [internal quotations and citation omitted]).

The defamation claim is also dismissed as it is time-barred. The alleged defamation took place on February 4, 2021. The instant action was commenced on December 6, 2022.

Defamation has a one-year statute of limitations and so this claim is untimely (*Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 47 [1st Dept 2009] [citing CPLR 215[3]).

Accordingly, it is hereby

ORDERED that defendant’s motion to dismiss is granted, this case is dismissed and the Clerk is directed to enter judgment in favor of defendant and against plaintiff along with costs and disbursements upon presentation of proper papers therefor.

3/10/2023

DATE



ARLENE P. 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