

Goldberg Weprin Finkel Goldstein LLP v Moinian Group
2023 NY Slip Op 31310(U)
April 19, 2023
Supreme Court, New York County
Docket Number: Index No. 653006/2019
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: <u>HON. LOUIS L. NOCK</u> <i>Justice</i> -----X GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP, Plaintiff, - v - THE MOINIAN GROUP, Defendant. -----X	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">PART</td> <td style="width: 50%; text-align: right;">38M</td> </tr> <tr> <td>INDEX NO.</td> <td style="text-align: right;"><u>653006/2019</u></td> </tr> <tr> <td>MOTION DATE</td> <td style="text-align: right;"><u>04/01/2021</u></td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td style="text-align: right;"><u>001</u></td> </tr> </table> DECISION + ORDER ON MOTION	PART	38M	INDEX NO.	<u>653006/2019</u>	MOTION DATE	<u>04/01/2021</u>	MOTION SEQ. NO.	<u>001</u>
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The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 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, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, and 99

were read on this motion and cross-motion for SUMMARY JUDGMENT, etc..

LOUIS L. NOCK, J.

Plaintiff law firm sues for the balance of legal fees it contends are due and owing from defendant, The Moinian Group, over the course of eight years (2007 through 2015), aggregating \$409,951.92. No written retainer agreement was ever executed among the parties. Rather, plaintiff contends that:

For about 50 years (from 1990 to 2019), Moinian and [plaintiff] had a close attorney-client relationship. [Plaintiff] was Moinian's law firm for a multitude of legal matters. Accordingly, [plaintiff] provided continuous and expansive legal services for Moinian with respect to numerous properties in New York.

(Affidavit of Barry E. Zweigbaum [NYSCEF Doc. No. 20] [the "Zweigbaum Aff."] ¶ 6.)

Plaintiff now moves for summary judgment on its complaint.¹ To support its claims, plaintiff submits a host of legal bills issued and addressed by it directly to defendant (*see*,

¹ As indicated toward the end of this decision, plaintiff also moves for leave to file an amended summons and complaint naming an additional defendant.

NYSCEF Doc. Nos. 45-80), spanning a period from 2007 through 2015. No written rejection of those bills emerges in the record until, by letter dated January 9, 2019, defendant's general counsel tersely states that "the invoices . . . are hereby disputed" (NYSCEF Doc. No. 41). Plaintiff's affiant attests that "[t]hroughout the parties' relationship, Moinian made numerous partial payments on account to [plaintiff]" (Zweigbaum Aff. ¶ 12).

Defendant cross-moves for summary judgment of dismissal on the theory that it served only as the agent for numerous disclosed principals, providing some detail on who those principals were – all appearing to be real property holding companies as indicated on reference lines contained in plaintiff's bills (*see*, Affirmation of Harry Dreizen [NYSCEF Doc. No. 35] ¶¶ 49-115). Plaintiff, in turn, characterizes all those companies as subsidiary companies controlled by Moinian (*see*, Plaintiff's Memorandum [NYSCEF Doc. No. 95] at 14).

The seminal issues in this case are – whether Moinian, as managing agent for the various real property holding companies, is not responsible for legal work done in technical benefit to those companies who are, at least nominally, Moinian's "principals"; or whether Moinian, in fact, is the controlling force of all those companies, and thus, responsible for its retention of plaintiff, as a principal. And furthermore, whether, even under the rubric of agent, Moinian's realistic intent was to bear the responsibility of compensating plaintiff for the work it retained in nominal benefit to those companies. The Appellate Division, First Department, in addressing the challenge of determining the responsibility status of an agent who retains goods or services, had this to say: "Despite the existence of a disclosed principal, personal liability may be imposed upon an agent where there is clear and explicit evidence of an intention to assume such liability" (*Weidman v Klot*, 11 AD2d 641, 641 [1st Dept], *lv denied* 8 NY2d 710 [1960]; *see also*, *Edelman Arts, Inc. v New York Art World, LLC*, 193 AD3d 527, 527 [1st Dept 2021] "[E]ven if [the party]

had acted as an agent, it should still be held liable, because . . . it undertook the responsibility of paying”)).

Prefatorily, evidence of eight years of receipt of legal bills (from 2007 to 2015) addressed expressly to Moinian, without any independent evidence of objection until long afterward (2019), coupled with evidence of its partial payment during that eight-year period, seem to militate toward a finding of assumption, or recognition, of direct liability. On the other hand, years of bills containing reference lines indicating other companies, coupled with the fact that no measure was taken by plaintiff during all that time to reduce its representational status to writing by way of agreement, may merit a contrary finding. But viewing all of this as an issue of “intent” (*see, Weidman, supra*), summary judgment is not the appropriate context for adjudication (*Yanuck v Simon Paston & Sons Agency, Inc.*, 209 AD2d 207, 208 [1st Dept 1994] [where “intent must be gleaned from disputed evidence or from inferences outside the written words, it becomes an issue of fact that must be resolved by trial”]; *Ingram v Cunningham*, 262 AD2d 454, 455 [2d Dept 1999] [the question of intent, absent clear evidence of same, is “[a] triable issue of fact”])).

The foregoing issues are only compounded by issues involving the organizational relationship between Moinian and the various companies referenced in plaintiff’s bills. “[S]ummary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue” (*Moskowitz v Garlock*, 23 AD2d 943, 944 [3d Dept 1965]).

Therefore, the parties’ motion and cross-motion for summary judgment are denied.

Plaintiff also moves for leave to amend the summons and complaint to add Josephson LLC as a party defendant “because the Moinian Group is a registered trade name of Josephson”

(Plaintiff's Memorandum [NYSCEF Doc. No. 19] at 23). Leave to amend pleadings "shall be freely given" (CPLR 3025). Accordingly, the motion to amend is granted.

Accordingly, it is

ORDERED that the motion and cross-motion for summary judgment are denied; and it is further

ORDERED that plaintiff's motion for leave to file an amended summons and complaint adding Josephson LLC as a party defendant is granted, and plaintiff shall accomplish such filing, upon service of process on Josephson LLC, no later than May 5, 2023; and it is further

ORDERED that a status conference will occur June 7, 2023, at 10:00 a.m., at the Courthouse, 111 Centre Street, Room 1166, New York, New York.

This will constitute the decision and order of the court.

ENTER:



4/19/2023

DATE

CHECK ONE:

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CASE DISPOSED

☐

GRANTED

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DENIED

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

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OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

LOUIS L. NOCK, J.S.C.