

**Scarola Zubatov & Schaffzin PLLC v Rocketfuel
Blockchain, Inc.**

2023 NY Slip Op 31609(U)

May 10, 2023

Supreme Court, New York County

Docket Number: Index No. 652887/2022

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

SCAROLA ZUBATOV & SCHAFFZIN PLLC,

Plaintiff,

- v -

ROCKETFUEL BLOCKCHAIN, INC., ROCKETFUEL
BLOCKCHAIN COMPANY

Defendants.

-----X

INDEX NO. 652887/2022

MOTION DATE N/A

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for

INJUNCTION

Plaintiff's motion for an order requiring defendants to deposit the amount at issue in this case into Court is denied.

Background

Plaintiff, a law firm, is suing for fees incurred in a federal lawsuit. The background facts are largely uncontested. Starting in February 2021, plaintiff represented defendants on an hourly basis in an attorney malpractice case. Plaintiff commenced that case on defendants' behalf in the Southern District of New York. After working for defendants for nearly a year, in January 2022 defendants expressed that plaintiff's fees were high and decided to retain a lawyer who would take the case on a contingency basis. Plaintiff immediately signed a consent to change attorney to allow the contingency lawyer to take over the case that plaintiff had commenced. That case has since settled and the settlement funds were disbursed (but no money went to plaintiff). Plaintiff insists that defendants failed to pay the outstanding legal fees and nearly \$120,000 is owed.

Plaintiff now moves for an order to compel defendants to deposit more than \$140,000 into Court pending the determination of this lawsuit. It claims that it has a charging lien on the proceeds recovered by and disbursed to defendants in connection with the underlying federal lawsuit that forms the basis of this action. Plaintiff asserts that the federal case settled (after plaintiff was substituted as counsel) and the settlement funds were disbursed. Based on that charging lien, plaintiff wants a portion of the money already received by defendants to be deposited into Court. It argues that defendants are in a precarious financial situation as evidenced by their public filings that allegedly document that defendants have less than \$400,000 in cash on hand as of December 2022. Plaintiff complains that the settlement was paid to defendants without providing for or recognizing plaintiff's charging lien.

In opposition, defendants emphasize that plaintiff did not follow the correct procedures in federal court concerning a charging lien and point to the decision of the federal judge, who declined to exercise jurisdiction over the instant fee dispute. They argue that charging liens only apply to specific judgment funds (not general money) and that plaintiff waived its protections by not following the local rules in the SDNY. Defendants contend that injunctive relief is not appropriate where plaintiff (an unsecured creditor) has not yet obtained a judgment against defendants.

Discussion

As an initial matter, the Court agrees with plaintiff's view that it has a charging lien. Judiciary Law § 475 provides that:

“From the commencement of an action, special or other proceeding in any court or before any state, municipal or federal department, except a department of labor, or the service of an answer containing a counterclaim, or the initiation of any means of alternative dispute resolution including, but not limited to, mediation or arbitration, or the provision of services in a settlement negotiation at any stage of the dispute, the attorney who appears for a party has a lien upon his or her client's

cause of action, claim or counterclaim, 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 in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien.”

“Under New York law, an attorney discharged without cause may choose between two distinct remedies; she may seek a quantum meruit judgment, enforceable immediately against all of the client's assets, or a charging lien against the underlying lawsuit” (*Dweck Law Firm, L.L.P. v Mann*, 03 CIV.8967 SAS, 2004 WL 2202587, at *3 [SD NY 2004]).

There is no basis to find that plaintiff somehow waived its right to a charging lien in federal court. The question, then, is the effect or benefit of that charging lien. The Court observes that plaintiff's failure (whether intentional or not) to abide by Local Rule 1.4 in federal court resulted in the federal judge finding that “Counsel also never moved to withdraw and did not file an appropriate affidavit specifying any charging lien as required under the local rules. See Local Rule 1.4. The Court has therefore not presided over any relevant proceedings that would warrant jurisdiction over counsel's request” (NYSCEF Doc. No. 73).

From a practical perspective, that failure resulted in the payment of a settlement to defendants without any motion practice or assessment of what plaintiff might be due from that federal case. In other words, plaintiff lost its chance to seek immediate relief in federal court based on the charging lien. That is, if plaintiff wanted to intercept the settlement funds until a determination was made regarding the fees owed, then it had to follow the rules of the court in which that case was pending. Instead, plaintiff chose to pursue a judgment in this case instead of following the proper procedures *before* the settlement funds were disbursed.

Given that the settlement funds were already disbursed to defendants, the central remaining issue here is whether injunctive relief, in the form of requiring defendants to deposit the funds in controversy, is appropriate. The Court finds that it is not.

“A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party” (*1234 Broadway LLC v W. Side SRO Law Project*, 86 AD3d 18, 23, 924 NYS2d 35 [1st Dept 2011] [citations omitted]).

A preliminary injunction¹ is typically not appropriate where a plaintiff can be compensated with money damages (*Sterling Fifth Assoc. v Carpentille Corp., Inc.*, 5 AD3d 328, 329, 5 AD3d 328 [1st Dept 2004]). And plaintiff did not meet its burden to show that it is entitled to injunctive relief on these papers. That defendants may be struggling financially is not a reason to force defendants to transfer money into court before a judgment has been entered against them. There are no allegations, as defendants point out, that defendants are dissipating their assets or engaged in nefarious efforts to render themselves as judgment proof.

And even if defendants were “about to secrete its assets or remove them from the state with intent to defraud its creditors, a claim not presently made, plaintiff's remedy, if it could establish such conduct, would be an order of attachment pursuant to CPLR 6201(3), not a preliminary injunction” (*id.* at 330). Simply because plaintiff fears that defendants might not be able to pay a judgment, assuming that plaintiff is successful in this action, is not a basis for instant relief sought.

¹ Although the notice of motion did not specifically demand a preliminary injunction, the memorandum of law in support seeks this relief.

In summary, a charging lien is enforceable to intercept the funds to be received by the former client in the underlying lawsuit. And a general judgment can be enforced against all (non-exempt) assets of the judgment debtor. But, contrary to plaintiff's argument, a charging lien alone is not enforceable against all (non-exempt) assets of the former client.

Accordingly, it is hereby

ORDERED that plaintiff's motion is denied.

See NYSCEF Doc. Nos. 50 and 57 concerning discovery conferences.

5/10/2023

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

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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