

**Thompson v Nelson**

2023 NY Slip Op 31807(U)

May 25, 2023

Supreme Court, New York County

Docket Number: Index No. 651072/2022

Judge: Andrea Masley

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ANDREA MASLEYPART 48*Justice*

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LU-SHAWN THOMPSON,

INDEX NO. 651072/2022

Plaintiff,

- v -

ALIYA J. NELSON, HARVEY K. NEWKIRK, STREAMTEAM  
MEDIA, LLC, OMNIS, LLC

Defendant.

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On October 17, 2022, plaintiff Lu-Shawn Thompson was granted a default judgment on liability against defendants Aliya J. Nelson, Harvey K. Newkirk, Streamteam Media, LLC (Streamteam), and Omnis, LLC (Omnis). (NYSCEF 28, Decision and Order [mot. seq. no. 001].) The court directed an inquest on the issue of damages. (*Id.*) Plaintiff's motion for a default judgment was granted as to the following claims and the inquest was held for determination of these claims only:

- (1) fraudulent inducement against Nelson and Newkirk;
- (2) fraudulent misrepresentation against Nelson and Newkirk;
- (3) breach of contract against Streamteam; and
- (4) unjust enrichment against Nelson;
- (5) breach of fiduciary duty against Nelson
- (6) an accounting against Nelson and Streamteam; and
- (7) constructive trust against Nelson (*Id.*)<sup>1</sup>

<sup>1</sup> A default judgment was not entered on plaintiff's claims for breach of contract-third party beneficiary against Omnis, breach of fiduciary duty against Newkirk, constructive

**OTHER ORDER – NON-MOTION**

On November 9, 2022, this court conducted an inquest on damages. Plaintiff testified credibly and offered into evidence seven documents to support her request for damages of \$162,000 and her request for \$450,000 in punitive damages.<sup>2</sup> Plaintiff is awarded \$162,000 in damages.

As to punitive damages,

“[b]ecause the standard for imposing punitive damages is a strict one and punitive damages will be awarded only in exceptional cases, the conduct justifying such an award must manifest spite or malice, or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that the conduct may be called wilful or wanton. ... [P]unitive damages may only be awarded if defendant's acts were, wanton and reckless or malicious. Punitive damages may be awarded for conduct that represents a high degree of immorality and shows such wanton dishonesty as to imply a criminal indifference to civil obligations.” (*Marinaccio v Town of Clarence*, 20 NY3d 506, 511 [2013] [internal quotation marks and citations omitted].)

“Punitive damages are not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrongs but to vindicate public rights.” (*Rocanova v Equit. Life Assur. Soc. of U.S.*, 83 NY2d 603, 613 [1994].)<sup>3</sup> However, “to obtain punitive damages for breach of fiduciary duty in a tort case, plaintiff was not required to allege that defendant's conduct was directed to the general public.” (*Mejia-Gonzalez v Storch*, 148 AD3d 467, 469 [1st Dept 2017] [citation omitted].)

Plaintiff asserts that punitive damages are appropriate here because Nelson induced plaintiff to send the investment funds to Nelson's attorney escrow account.

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trust against Newkirk, an accounting against Omnis and Newkirk, and breach of good faith and fair dealing against all defendants. (*Id.*)

<sup>2</sup> Plaintiff's request for attorneys' fees was withdrawn in the absence of any legal authority.

<sup>3</sup> Plaintiff's request for \$450,000 in punitive damages is based on the amount of revenue she was promised for this “windfall opportunity,” which suggests that this request is impermissibly seeking punitive damages for breach of contract.

While plaintiff's contract is with Streamteam, not Nelson, plaintiff testified that Nelson said that she was Streamteam's attorney.<sup>4</sup> Plaintiff states that Nelson's conduct was reported to the U.S. Attorney's Office in the Southern District for review and possible criminal action. However, referral to the U.S. Attorney is not evidence that a crime was committed, and the court cannot make that determination on this record. Further, plaintiff's allegation that she was directed to wire the investment funds into Nelson's attorney escrow account without more does not rise to a level of exceptional misconduct. (See *Gamiel v Curtis & Riess-Curtis, P.C.*, 16 AD3d 140, 141 [1st Dept 2005] [holding that, although plaintiff sufficiently stated conversion of escrow funds, plaintiff failed to support a punitive damage claim where there was no showing of "intentional or deliberate wrongdoing, aggravating or outrageous circumstances, a fraudulent or evil motive, or a conscious act that willfully and wantonly disregards the rights of another"].) There are no allegations or evidence that Nelson's actions were "maliciously, wantonly, or with a recklessness that betokens an improper motive or vindictiveness . . . or has engaged in outrageous or oppressive intentional misconduct or with reckless or wanton disregard of safety or rights." (*Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 489 [2007] [internal quotation marks and citations omitted].) Rather, plaintiff's testimony and documentary evidence that Nelson directed the investment funds into her attorney escrow account may give rise to a disciplinary inquiry. (See generally *In re Sabghir*, 211 AD2d 337, 340 [2d Dept 1995] [finding that attorney's

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<sup>4</sup> Nelson has been a registered New York attorney in the Second Department since 2003. (Registration # 14101390) (<https://iapps.courts.state.ny.us/attorneyservices/wicket/page/SearchResultsPage?>

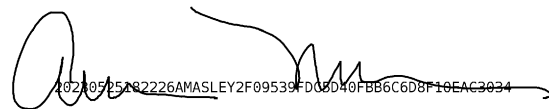
“fraudulent investment scheme” and “the gross mishandling of his escrow account constitute[d] serious professional misconduct” and warranted his disbarment[.]

As to improper motive, it was asserted on the record that defendants preyed upon plaintiff because she is a widow. Plaintiff failed to offer any evidence of such predatory behavior. While plaintiff testified that she had known Nelson for some time, plaintiff did not testify as to when they met or the circumstances. The attorney’s statement that plaintiff was preyed upon does not make it so. Moreover, that argument seems to have been abandoned in plaintiff’s papers.

Plaintiff is directed to the Lawyer’s Fund for Client Protection of the State of New York.

Accordingly, it is

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants in the amount of \$162,000, together with interest at the rate of 9% per annum from the date of May 31, 2020 until the date of the decision and order, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.



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DATE: 5/25/2023

ANDREA MASLEY, JSC

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify \_\_\_\_\_ )