

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

2023 NY Slip Op 32364(U)

July 11, 2023

Supreme Court, New York County

Docket Number: Index No. 652887/2022

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

SCAROLA ZUBATOV & SCHAFFZIN PLLC,

Plaintiff,

- v -

ROCKETFUEL BLOCKCHAIN, INC., ROCKETFUEL  
BLOCKCHAIN COMPANY

Defendant.

-----X

**INDEX NO.** 652887/2022

**MOTION DATE** 06/22/2023

**MOTION SEQ. NO.** 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126

were read on this motion to/for SUMMARY JUDGMENT.

Plaintiff’s motion for summary judgment on its account stated cause of action is granted and defendants’ cross-motion for an adjournment of this motion pending discovery is denied.

**Background**

In this case about legal fees, plaintiff, a law firm, represented defendants in connection with a legal malpractice case (defendants here were the plaintiffs in that case). Plaintiff argues that it entered into a retainer agreement with the former clients for that case (which was filed in the Southern District of New York). Plaintiff observes that it successfully defended a motion to dismiss on its former client’s behalf. However, according to plaintiff, soon thereafter the clients informed plaintiff that as a cost-cutting move, the clients would retain a contingent-fee lawyer to replace plaintiff.

Plaintiff attaches an email dated January 18, 2022 from Bennett Yankowitz (an attorney with a private law firm and also defendants' CFO and in-house general counsel) in which he says:

“Our board has made the determination to switch to a contingency fee attorney for the EGS case. This was done primarily as a cost-savings matter; please do not take it as a reflection on the quality of your services. The new attorney going forward will be Andrew Bluestone. I have attached a Consent to Change of Attorneys. Please let me know if you need anything else.” (NYSCEF Doc. No. 87).

Plaintiff insists that over the next seven months it attempted to secure payment for the outstanding balance owed by defendants, as reflected in invoices sent to defendants on January 18, 2022. Plaintiff seeks \$119,846.24 and argues that defendants did not pay nor did they ever object to the invoices.

It attaches another email from Mr. Yankowitz from August 12, 2022 in which he rejected plaintiff's offer to work on an appeal and also claimed that “The Company will be making a partial payment to your firm early next week. We are hoping to settle this matter with EGS and/or obtain funding fairly soon” (NYSCEF Doc. No. 90).

Plaintiff insists it is entitled to summary judgment as defendants received the January 2022 invoices and it retained them without objection until after this case was commenced in September 2022. It argues that defendants' belated objections do not raise an issue of fact for an account stated cause of action.

In opposition and in support of their cross-motion, defendants insist that plaintiff only briefed a single motion to dismiss in the SDNY case and that defendants became concerned at the amounts demanded in the invoices. They argue that they terminated plaintiff as their attorney in the underlying action because of the purportedly bloated invoices and allegedly continued to object to these invoices.

Defendants observe that they received a large invoice for June 2021 (although this is not an invoice that is the subject of this action) and there was a subsequent phone call objection to this invoice. They insist that they did not receive any other invoices prior to their termination of plaintiff and then plaintiff sent two invoices “in retaliation”. Defendants claim that they objected in writing.

Mr. Yankowitz attaches a new affidavit (defendants also uploaded other affidavits from previous motions) in which he insists that defendants objected to an invoices from June 2021 (NYSCEF Doc. No. 120 at 2-3). He claims that the invoices they received in January 2022 covered periods for June to July 2021 and from August 2021 through January 2022 (NYSCEF Doc. No. 120 at 5). Mr. Yankowitz questions how plaintiff could incur over \$150,000 for a single motion to dismiss (*id.* at 6).

In reply and in opposition to the cross-motion, plaintiff emphasizes that defendants retained the subject invoices for over seven months without objection and then promised to make a payment in August 2022. With respect to the alleged complaints from June 2021, plaintiff asserts that previous complaints about an earlier and *paid* invoice does not constitute a proper objection to all future invoices. It emphasizes that defendants cannot create a standing prospective objection.

### **Discussion**

“[E]ither retention of bills without objection or partial payment may give rise to an account stated” (*LePatner Project Sols. LLC v 320 W. 115 St., LLC*, 192 AD3d 507, 508, 140 NYS3d 407 (Mem) [1st Dept 2021] [internal quotations and citation omitted]). “In the context of an account stated pertaining to legal fees, a firm does not have to establish the reasonableness of its fee because the client's act of holding the statement without objection will be construed as

acquiescence as to its correctness” (*Lapidus & Assoc., LLP v Elizabeth St., Inc.*, 92 AD3d 405, 405-06, 937 NYS2d 227 [1st Dept 2012]).

The Court’s analysis begins with the invoices at issue, sent in January 2022. Plaintiff met its burden on a motion for summary judgment for its account stated cause of action by alleging that it sent the bills to defendants who retained them without objection until this case was filed.

Defendants did not raise an issue of fact in opposition. They did not assert that they objected to the invoices sent in January 2022 within a reasonable time period. The record shows that defendants did not expressly object to these invoices before this case was filed. In fact, the email from Mr. Yankowitz from August 2022 contends that defendants were going to make a partial payment and mentions nothing whatsoever about any objections to these bills. In other words, defendants clearly received the invoices and did not object.

The discussions that occurred in July 2021 about objections to a June 2021 invoice (which is *not* the subject of this lawsuit) do not raise an issue of fact because defendants admit that they paid this bill (NYSCEF Doc. No. 120, ¶ 7). And defendants cannot establish a timely objection to a bill before it is even sent (*see Katsky Korins LLP v Moskovits*, 198 AD3d 566, 567, 152 NYS3d 909 [1st Dept 2021]). This same logic applies to defendants’ assertion that the January 2022 termination somehow constitutes a valid objection to the subsequent invoices that are at issue in this case. Moreover, the termination email expressly characterizes the decision to switch attorneys as a cost-cutting move and stresses it was not based upon the quality of the legal services provided by plaintiff. Switching attorneys because a firm is expensive is not the same thing as lodging an objection to the invoices themselves.

Defendants’ claim that these invoices were sent in retaliation is wholly without merit. “[P]laintiff’s termination does not prohibit its recovery under an account stated theory, and the


law firm may recover for pretermination legal services billed to defendants” (*id.* at 56). Of course, plaintiff was entitled to send invoices for work completed prior to the termination.

Defendants also failed to raise an issue of fact regarding their assertion that plaintiff’s motion is premature or that discovery is required. Plaintiff attached the subject invoices as well as email communications with defendants. Certainly, defendants possess any documents that might raise an issue of fact regarding whether they raised a timely objection after receiving the invoices. Put another way, defendants did not adequately explain what discovery is outstanding that would compel the Court to reach a different conclusion. And they did not raise an issue of fact by showing any proof that they objected to the bills at issue here before this suit began.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment on its second cause of action for an account stated is granted and defendants’ cross-motion is denied; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendants, jointly and severally, in the amount of \$119,846.24 plus statutory interest from February 17, 2022 along with costs and disbursements upon presentation of proper papers therefor.

<u>7/11/2023</u> <b>DATE</b>			 <hr/> <b>ARLENE P. BLUTH, J.S.C.</b>	
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE