

Oddo & Babat, P.C. v Joseph T. Mullen, Jr. & Assoc.

2023 NY Slip Op 34249(U)

November 28, 2023

Supreme Court, New York County

Docket Number: Index No. 652376/2021

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

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ODDO & BABAT, P.C.,

Plaintiff,

- v -

JOSEPH T. MULLEN, JR. & ASSOCIATES,

Defendant.

-----X

INDEX NO. 652376/2021MOTION DATE 07/30/2021MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of the plaintiff ODDO & BABAT, P.C., for summary judgment, is GRANTED, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the sum of \$ 23,450.00 (\$33,450.00 less \$10,000 partial payment), constituting plaintiff's share of attorneys' fees allocated from funds recovered in settlement of Luciano v Benias, MD, (Bronx County, Supreme Court, 2015), plus \$,2000.00 in expert fees reimbursement, for a total of \$25,450.00, with interest at the statutory rate from the date of November 30, 2020, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs

and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

DECISION

This action arises out of a dispute between two law firms over legal fees allegedly earned during the parties' referral arrangement (the "Referral Letter") (NYSCEF Doc. No. 9). The legal fees at issue relate to the matter entitled Luciano v Benias, Bronx County Supreme Court, which was settled by the plaintiff ODDO & BABAT, P.C ("Oddo") for the sum of \$225,000 in March 2020.

Oddo asserts that the defendant JOSEPH T. MULLEN, JR. & ASSOCIATES ("JTM") breached the Referral Letter by failing to remit Oddo's portion of the legal fees from the Luciano matter plus \$2,000 in disbursements.

First, JTM concedes that it did not pay Oddo 50% of the legal fees it received in connection with the Luciano matter (NYSCEF Doc. Nos. 10, 12, 17 ¶ 13). On March 11, 2021, JTM paid Oddo \$10,000 as a partial payment of the legal fees outstanding, with a cover letter (1) apologizing for Oddo's delayed payment, (2) promising to pay the balance in full in 21 days, and (3) expressing dissatisfaction that Oddo did not "keep JTM in the loop with the settlement negotiations" (NYSCEF Doc. No. 12). JTM never made the additional payment, despite promising to do so in that letter.

Second, despite JTM's contention that its withholding of legal fees is proper based on Oddo's alleged breach of the Referral

Letter, there is no provision in the Referral Agreement that provides for such a reduction of Oddo's legal fees. JTM also fails to provide any factual support for Oddo's alleged breach of contract.

Third, the evidentiary record demonstrates that JTM contemporaneously complimented Oddo's performance, claiming it was a "[g]reat settlement" when JTM was initially notified of the settlement (NYSCEF Doc. No. 25). As has been stated by New York's appellate courts,

In disputes between attorneys over the enforcement of fee-sharing agreements the courts will not inquire into the precise worth of the services performed by the parties as long as each party actually contributed to the legal work and there is no claim that either refused to contribute more substantially

Graham v Corona Group Home, 302 AD2d 358, 359 (2d Dept 2003)

(citations and internal quotations omitted).

It is undisputed that Oddo performed the legal work, and JTM does not claim that Oddo refused to contribute more substantially. Nor does JTM identify a provision of the Referral Letter that would permit JTM to reduce the legal fees due to Oddo. Lastly, Oddo has remedied the purported procedural defects raised by JTM by filing an affidavit from a party with knowledge and establishing that Oddo has standing to pursue these claims against JTM (NYSCEF Doc. Nos. 24, 26).

Finally, as in Friedlander v Jack's Holdings Inc., 203 AD3d 573, 575 (1st Dept 2022) (citation omitted),

Contrary to defendant[]' contention, plaintiff's motion was not premature (CPLR 3212 [f]). Given the clear terms of the contract and the undisputed [operative facts], defendant[] failed to show that "discovery might lead to relevant evidence or the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant".

This court holds that Oddo has established that JTM breached the Referral Letter by failing to pay the legal fees as agreed upon, and JTM fails to raise a triable issue of fact in opposition. Thus, Oddo is granted summary judgment on its complaint and is it is entitled to 50% of the legal fees received by JTM in connection with the Luciano matter, as well as reimbursement of expert fees expended.

Debra A. James

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11/28/2023			DEBRA A. JAMES, J.S.C.	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE