

Leabon v Matta

2024 NY Slip Op 33007(U)

August 26, 2024

Supreme Court, New York County

Docket Number: Index No. 158914/2017

Judge: Lisa S. Headley

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

PRESENT: HON. LISA S. HEADLEY PART 28M

Justice

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AIMEE LEABON,

INDEX NO. 158914/2017

Plaintiff,

- v -

DECISION AND ORDER

SALWA M. MATTA, SALLY LIMO SERVICE

Defendant.

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This attorneys’ fees dispute stems from plaintiff’s personal injury action wherein plaintiff initially retained the movant-attorney, Caitlin Robin, Esq. of Caitlin Robin & Associates, PLLC (“movant-attorney”), to represent her in this action. The plaintiff subsequently retained the current counsel, Jaroslawicz & Jaros, PLLC, who obtained the settlement of this action in the amount of \$500,000.00. The movant-attorney claims that she contacted Jaroslawicz & Jaros PLLC regarding the potential resolution of her attorneys’ fees distribution, however they were unable to reach a resolution. The movant attorney then filed a motion seeking an award of attorneys’ fees, and to determine the division of attorneys’ fees. This Court’s Decision and Order dated February 18, 2022, granted the movant-attorney’s motion for attorneys’ fees only to the extent of setting the matter down for a hearing to determine whether the movant-attorney was discharged with or without cause. (*See, NYSCEF Doc. No. 34*). The attorneys’ fees hearing was held on April 9, 2024, and the former counsel, Caitlin Robin, Esq., plaintiff’s current counsel Thomas Miller, Esq. and plaintiff Aimee Leabon were present.

Former Counsel’s Arguments to Support an Award of Attorneys’ Fees

During the hearing, the movant-attorney testified that the plaintiff, as a client, was very anxious, and the movant-attorney returned the plaintiff’s telephone calls, however the plaintiff expected a telephone call every day. In support of her motion, the movant-attorney also details the worked she performed while she represented the plaintiff in her affirmation. The movant-attorney asserts that the plaintiff, Aimee Leabon (“plaintiff”), signed a retainer agreement on September 7, 2017, and the movant-attorney represented her in the instant personal injury action, where plaintiff asserts that she was struck by an airport transportation bus owned and operated by the defendants, and sustained serious injuries on September 1, 2017. The movant-attorney avers that she personally visited the plaintiff in her home to conduct the initial intake, and on September 8, 2017, she sent correspondence to the insurance company and sent medical requests and authorizations to the plaintiff’s medical providers. The movant-attorney contends that during the month of September 2017, she reviewed plaintiff’s medical record, and engaged in additional correspondence and conversations with the insurance company.

In October 2017, the movant-attorney claims her paralegal staff also accompanied Ms. Leabon to a doctor’s appointment. The movant-attorney submits that on October 15, 2017, she filed a summons and complaint on behalf of the plaintiff. Subsequently, on October 16, 2017, the

OTHER ORDER – NON-MOTION

movant-plaintiff met with plaintiff to discuss the status of her case. On October 24, 2017, the movant-attorney discussed with plaintiff how to identify witnesses to the accident and how to obtain their statements. The movant-attorney claims that in October 2017, she contacted the plaintiff's doctor to request a referral for a second opinion and reviewed medical records from the plaintiff's medical provider. In November 2017, the movant-attorney asserts that she made several calls in the attempt to obtain witness statements. The movant-attorney also asserts that she provided plaintiff with case status updates on November 15, 2017, November 20, 2017, and November 30, 2017.

Then on December 4, 2017, the movant-attorney contends that she received a letter from Jaroslawicz & Jaros PLLC, which stated that they had taken over representation of the plaintiff's case and demanded that movant-attorney cease work on the plaintiff's file. On December 7, 2017, the movant-attorney sent a list of disbursement costs to Jaroslawicz & Jaros PLLC, and a request for an acknowledgement of a lien to be determined at the end of the case by either mutual agreement or intervention of the Court. On December 11, 2017, the movant-attorney claims she received a letter from Jaroslawicz & Jaros PLLC, which contained a check for the disbursements, however Jaroslawicz & Jaros PLLC did not acknowledge the movant-attorney's lien on the case, and stated, "if there is recovery in this matter the attorney's fee would be kept in escrow until resolution of the division of fees." On December 19, 2017, the movant- attorney attests that she received another letter from Jaroslawicz & Jaros PLLC, which stated that they could not "make heads or tails" of the file she sent to them. The movant-attorney argues that this letter was sent to besmirch her law firm's work to obtain a tactical advantage on a fee dispute for a significant case.

In sum, the movant-attorney argues that the discharge of Caitlin Robin and Associates was based on the plaintiff's perceived poor communication between the firm and herself. The movant-attorney contends that her firm did return the plaintiff's phone calls and explained to her multiple times of the status and progression of her case. The movant-attorney argues that her firm did not engage in any misconduct, and her failure to prosecute the client's claims diligently, or any claims of malpractice are without merit. Therefore, the movant is seeking an apportionment of fees between Caitlin Robin and Associates, PLLC and Jaroslawicz and Jaros PLLC that represents the work conducted by the attorneys herein. Based on the work conducted in commencing the case, including the filing and service of the Summons and Complaint, the movant-attorney contends that Caitlin Robin and Associates, PLLC should receive 33.33% of the legal fees.

Plaintiff's Current Counsel Opposition to the Award of Attorneys' Fees to Former Counsel

At the hearing, the plaintiff, Ms. Leabon, testified that in early December of 2017, she became concerned that her case was not moving forward. Plaintiff also testified that her former counsel Caitlin Robin, Esq. had very little communication with her. In addition, plaintiff testified that from December 2017 to June 2020, she was represented by the law firm of Jaroslawicz & Jaros PLLC and that they communicated with her, and she saw that her case was moving forward. Plaintiff further testified that she was satisfied with the representation of Jaroslawicz & Jaros PLLC.

In opposition, Jaroslawicz & Jaros PLLC, also submitted the affidavit of plaintiff, and she attests that while the movant was her attorney, it was very difficult for plaintiff to reach her attorney, and the movant's firm was mostly unresponsive to her phone calls. Ms. Leabon attests that she was dissatisfied with the movant-attorney's representation, and she felt that the firm did not take her case seriously. Ms. Leabon contends that she retained the movant-attorney because her understanding was that the firm specialized in personal injury matters, including motor vehicle accidents. Ms. Leabon states that had she known that the movant-attorney did not specialize in

personal injury work, she would not have retained the firm to represent her in this case. Ms. Leabon further attests that she was surprised to read in the retainer that the "client shall pay for all expert witness fees necessary for testifying at trial at the time the expert witness requests his or her fees," and if that provision was made clear to her, she would not have agreed to it, and that statement was contrary to the representations made by the movant. The plaintiff did not believe she would be responsible for expenses of her own case.

In addition, counsel for plaintiff, Jaroslawicz & Jaros PLLC argues, *inter alia*, that plaintiff, Aimee Leabon, fired the movant-attorney for cause and therefore she is not entitled to any legal fee. Plaintiff's counsel argued that the movant-attorney was discharged with cause, and that she only spent three to four months on the case. Plaintiff's counsel argued that they worked on the case for three years, which included conducting depositions and participating in mediation, which ultimately led to the resolution of the case. Jaroslawicz & Jaros also argue that the movant-attorney merely "filed a cookie-cutter complaint (and other work typically handled by paralegals and/or office staff such as sending authorizations for medical records)." The current counsel contends that his firm appeared attended at least seven court conferences, conducted all the depositions, exchanged discovery, and paid for experts. In addition, the current counsel contends that his firm regularly communicated with and advised the client and appeared at a mediation which required months of follow-up, and ultimately resulted in the successful resolution of the case. In sum, Ms. Leabon states that it is not true that the movant-attorney was very involved in her case for the very limited time that the firm was retained. Ms. Leabon contends that the movant-attorney was discharged for cause, and therefore the movant should not receive a legal fee for her failure to respond to plaintiff's inquiries and to return phone calls.

Discussion

"A hearing is required to determine if the attorney has been discharged with or without cause or for misconduct." *Teichner by Teichner v. W & J Holsteins, Inc.*, 64 N.Y.2d 977, 979 (1985). "Where the attorney's misconduct relates to the representation for which fees are sought, the lawyer forfeits his entire fee." *Moore v. The City of New York*, 2024 N.Y. Slip Op. 30747[U], 2 (N.Y. Sup Ct, New York County 2024) *citing*, *Sayles v. New York City Housing Authority*, 2023 NY Slip Op 34155 [U], at *2 (Sup Ct, New York County 2023). A rule making the charging lien unavailable to attorneys who voluntarily withdraw would introduce a strong economic deterrent to the amicable settlement of attorney-client disputes." *Klein v. Eubank*, 87 N.Y.2d 459, 463-64 (1996). "Where an attorney can show that there are irreconcilable differences between counsel and client, good and sufficient cause to be relieved has been found and the charging lien preserved." *Turner v. The City of New York*, 2024 NY Slip Op 30215 [U], *1 [Sup Ct, NY County 2024]; *Ramirez v. New York City Transit Authority*, 2024 NY Slip Op 30211 [U], *2 (Sup Ct, NY County 2024).

Under *New York Judiciary Law §475*, an attorney who is not discharged for cause, and there has been no misconduct, or unjustified abandonment by the attorney is entitled "to liens in his favor to secure payment of reasonable fees and costs incurred prior to the date of substitution of counsel." *Judiciary Law §475*; *Klein v. Eubank*, 87 N.Y.2d 459, 464 (1996). The charging lien automatically comes into existence without notice or filing upon commencement of the action. *Id.*; *Resnick v. Resnick*, 24 A.D.3d 238, 239 (2005). "Good cause is generally based upon an irretrievable breakdown in the relationship or a failure of cooperation by the client." *Lashley v. City of New York*, 158371/2020 2023 WL 5317512, *1 (Sup Ct, NY County 2023), *citing*, *Farage v. Ehrenberg*, 124 A.D.3d 159, 165 (2d Dep't 2014).

After the hearing, and carefully weighing and assessing the credibility and demeanor of the movant-attorney, as well as plaintiff witness, Ms. Leabon, the Court finds the plaintiff did not discharge the movant-plaintiff's firm for cause. The Court finds the plaintiff's testimony and affidavit statement incredible. Specifically, the plaintiff testified that if the provision in the retainer agreement stating that she would have to pay for all expert witness fees necessary for testifying at trial at the time the expert witness requests his or her fees, had been made clear to her, she would not have agreed to it. However, there is no dispute that plaintiff signed her the agreement.

The Court finds the movant-attorney's testimony credible when she testified that her firm was responsive to the plaintiff's phone calls, and the plaintiff expected a telephone call every day. "Attorney-client relationships frequently end because of personality conflicts, misunderstandings or differences of opinion having nothing to do with any impropriety by either the client or the lawyer." *Klein v. Ebunk*, *supra* at 463. Since the Court has found that the movant-attorney was not discharged for cause, the movant's remedy is a fair and reasonable value of her services to be computed on a *quantum meruit* basis. *See, Nabi v. Sells*, 70 A.D.3d 252, 253-254 (1st Dep't 2009) ["Should it be determined that defendant discharged plaintiff without cause, then plaintiff's remedy would be the fair and reasonable value of its services as computed on a *quantum meruit* basis"].

"It has long been recognized that courts have traditional authority to supervise the charging of fees for professional services under the court's inherent and statutory power to regulate the practice of law." *See, Greenwald v. Scheinman*, 94 A.D.2d 842, 463 N.Y.S2d 303 (3d Dep't 1983); *Hom v. Hom*, 210 A.D.2d 296, 622 N.Y.S2d 282 (2d Dep't 1994). "The determination of what constitutes reasonable fees is a matter 'within the sound discretion of the Surrogate, who is in a superior position to judge factors such as the time, effort and skills required'." *Matter of McCann*, 236 A.D.2d 405, 654 N.Y.S2d 578 (2d Dep't 1997), *citing, Matter of Papadogiannis*, 196 A.D.2d 871, 872, 602 N.Y.S2d 68 (2d Dep't 1993).

"The following factors are considered in awarding reasonable attorneys' fees: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Hensley v. Eckerhart*, 461 U.S. 424, 430 (1982); *see also, Matter of Freeman*, 34 NY2d 1[1974]; *Sachs v. Adeli*, 121 A.D. 3d 490 (1st Dep't 2014)[affirming the Special Referee's award of attorneys' fees].

This Court finds the movant-attorney has not demonstrated an entitlement to 33.33% of the legal fees awarded in this case based upon the \$500,000.00 settlement award. However, the movant-attorney is entitled to reasonable compensation for her work done on a *quantum meruit* basis. The movant-attorney submitted into evidence the Invoice dated April 30, 2024, wherein she details the worked performed, the quantity of time she spent on the case at the hourly rate of \$500.00. The Invoice indicates that the services were rendered from September 8, 2017, through November 13, 2017, and the amount due in legal fees totaled \$11,450.00. Here, the movant-defendant demonstrated that she commenced the lawsuit and performed the initial steps in meeting with the client, filing the lawsuit, having discussions with plaintiff's doctors, contacting the insurance company, engaging in settlement discussions with adjusters, and reviewing medical records and the police report. Thus, within the Court's discretion and assessing the *quantum meruit*

of the work performed, the movant-attorney shall be awarded \$11,450.00 for her apportionment of the attorneys' fees distribution.

Accordingly, it is hereby

ORDERED that the movant-attorney's motion for attorneys' fees is GRANTED, only to the extent that the movant should be awarded a total sum of \$11,450.00 for legal services rendered on behalf of plaintiff, Aimee Leabon; and it is further

ORDERED that within 30 days of the date of this decision, the law firm of Jaroslawicz & Jaros, PLLC, shall tender to the movant-attorney, Caitlin Robin & Associates, PLLC, a certified check in the amount of \$11,450.00, and it is further

ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, movant-attorney shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision and Order of the Court.



LISA S. HEADLEY, JSC

DATE: 8/26/2024

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)