

**Cohen Goldstein, LLP v Marbury**

2024 NY Slip Op 34582(U)

December 30, 2024

Supreme Court, New York County

Docket Number: Index No. 656642/2022

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

*Justice*

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COHEN GOLDSTEIN, LLP,  
  
Plaintiff,

**INDEX NO.** 656642/2022

**MOTION DATE** 09/06/2024

**MOTION SEQ. NO.** 002

- v -

LATASHA MARBURY,  
  
Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 46, 47, 48, 49, 50, 51, 52, 53, and 54

were read on this motion for RENEWAL.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, plaintiff’s motion to renew its prior motion for summary judgment on its second cause of action for an account stated is granted without opposition, and upon renewal the court grant’s plaintiff’s motion for summary judgment on the second cause of action, for the reasons set forth in the moving papers in support of summary judgment (NYSCEF Doc. Nos. 12, 13), the moving affirmation of Jeffrey R. Cohen, Esq., in support of renewal (NYSCEF Doc. No. 47), and the exhibits attached thereto, in which the court concurs, as summarized herein.

In its prior decision dated May 6, 2024, the court denied plaintiff’s motion for summary judgment, holding that plaintiff was not entitled to pursue defendant, its former client, for fees incurred in plaintiff’s representation of her during part of her divorce action in Supreme Court, Westchester County (the “Divorce Action”). This court stated that defendant was not obligated to pay plaintiff until defendant’s husband was either ordered to pay defendant’s attorneys’ fees in the Divorce Action, or absolved from any obligation to do so (decision and order, NYSCEF Doc.

No. 44 at 6). The court also held that an account stated claim may not be pleaded along with a breach of contract claim, as they are duplicative (*id.* at 5).

Subsequent to the court's prior decision, two events took place giving rise to plaintiff's motion to renew. First, the Appellate Division, First Department, clarified that an account stated claim is not duplicative of a breach of contract claim (*Aronson Mayefsky & Sloan, LLP v Praeger*, 228 AD3d 182, 183 [1st Dept 2024]). Second, plaintiff discovered that while its summary judgment motion was *sub judice*, defendant (represented by new counsel) and her now ex-husband had settled the divorce action, including a waiver of any claims that either party had against each other for attorneys' fees (Cohen affirmation, NYSCEF Doc. No. 47, ¶ 10; Divorce Action Docket, NYSCEF Doc. No. 51; Fee application decision and order, NYSCEF Doc. No. 54 at 2). Plaintiff did not discover the settlement terms until it accessed the docket in the Divorce Action and made a fee application therein (Cohen affirmation, NYSCEF Doc. No. 47, ¶ 10 n 3). On August 16, 2024, plaintiff's application was denied by the Hon. James L. Hyer, J.S.C. (Fee application decision and order, NYSCEF Doc. No. 54 at 2). Justice Hyer quoted portions of the transcript of the hearing at which the parties placed the terms of their settlement on the record, including that the parties had waived any claim for attorneys' fees that either had against the other (*id.*). Only after receiving Justice Hyer's decision did plaintiff become aware that the facts on which this court based its prior decision were no longer operative. This motion followed shortly thereafter.

“A motion for leave to renew . . . 2. shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and 3. shall contain reasonable justification for the failure to present such facts on the prior motion” (CPLR 2221 [e]). Here, the

fact that defendant had waived her claim for attorneys' fees against her husband in the Divorce Action would have led to a different result on plaintiff's motion for summary judgment. Defendant argued in her papers that the court in the Divorce Action had not yet determined her now ex-husband's obligation to pay attorneys' fees (memorandum of law in opposition, NYSCEF Doc. No. 39 at 3), which the court relied on in rendering its determination. Because the defendant waived any claims she had against her ex-husband for fees, by the logic of this court's prior decision she is now required to pay plaintiff (decision and order, NYSCEF Doc. No. 44 at 6). Plaintiff offers no opposition to the motion to renew, and thus the court grants the motion and awards summary judgment to plaintiff.

Plaintiff also seeks sanctions pursuant to the Uniform Rules for Trial Courts (22 NYCRR) 130-1.1 due to defendant's failure to disclose the divorce settlement to plaintiff or the court, necessitating plaintiff to spend time and expense on discovering the settlement and its terms, seeking fees in the underlying action, and bringing the instant motion to renew. The Uniform Rules provide that the court may award costs and reasonable attorneys' fees, sanction an attorney or party, or both, for frivolous conduct (*id.*, § 130-1.1 [a], [b]). As relevant here, conduct is frivolous when it "asserts material factual statements that are false" (*id.*, § 130-1.1 [c] [2], [3]).

The court is reluctant to conclude that defendant's counsel engaged in a deliberate falsification of the circumstances, although his failure to submit any opposition papers explaining any error does not assist the court in attaining certainty regarding same. But notwithstanding such lack of assistance, this court does take note of the length of the pendency of the motion for summary judgment, which was determined in May 2024, and which may have caused defendant's counsel to overlook the need to inform the court of intervening

circumstances. The court, therefore, refrains from imposing a sanction on defendant or her counsel.

Accordingly, it is hereby

ORDERED that plaintiff’s motion to renew its prior motion for summary judgment is granted; and it is further

ORDERED that upon renewal, the court grants the plaintiff’s motion for summary judgment; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$279,305.05, with interest thereon at the statutory rate from June 15, 2021,<sup>1</sup> through entry of judgment, as calculated by the Clerk, with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff’s application for sanctions is denied.

This constitutes the decision and order of the court.

ENTER:



<b>12/30/2024</b>		<b>LOUIS L. NOCK, J.S.C.</b>
<b>DATE</b>		
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE

<sup>1</sup> “Where [a party’s] damages were incurred at various times, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date” (CPLR 5001[b]; *Kachkovskiy v Khlebopros*, 164 AD3d 568, 572 [2d Dept 2018]).