Matter of Crumiller P.C. v Phillips

2025 NY Slip Op 30995(U)

March 21, 2025

Supreme Court, New York County

Docket Number: Index No. 156545/2024

Judge: Verna L. Saunders

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART 36**
Justice

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In the Matter of the Application of
CRUMILLER P.C. and
MESIDOR LAW PLLC,
Petitioners,

- v -

WILLIAM K. PHILLIPS, BRYAN S. ARCE, JESSE S. WEINSTEIN, and PHILLIPS & ASSOCIATES, PLLC,
Respondents.

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INDEX NO. 156545/2024

MOTION SEQ. NO. 001, 002, 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4. 5
were read on this motion to/for **MECHANICS LIEN**.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 6, 7, 16, 17, 18, 19, 20, 21, 22, 23
were read on this motion to/for **REINSTATE**.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 8, 9, 10, 11, 12, 13, 14, 15, 24, 25, 26, 27, 28, 29, 30, 35, 40
were read on this motion to/for **MISCELLANEOUS**.

Petitioners CRUMILLER P.C. ("Crumiller") and MESIDOR LAW PLLC ("Mesidor PLLC") commenced this special proceeding, pursuant to Judiciary Law § 475, against respondents WILLIAM K. PHILLIPS ("Phillips"), BRYAN S. ARCE ("Arce"), JESSE S. WEINSTEIN ("Weinstein"), and PHILLIPS & ASSOCIATES, PLLC ("P&A"). The facts as alleged in the petition are as follows. On or about November 11, 2021, respondent P&A, a law firm with its principal place of business at 45 Broadway, Ste. 430, New York, NY 10006, represented "Jane Doe" in a legal matter involving her former employer. From November 11, 2021 through June 4, 2023, the lead counsel on Doe's matter was Marjorie Mesidor ("Mesidor"), principal of petitioner Mesidor PLLC. After Mesidor's departure from P&A, Phillips became lead counsel on the case. According to the petition, on February 1, 2024, Doe authorized P&A to relay a "last, best, and final" settlement offer, to expire within forty-eight (48) hours thereof; however, petitioners claim that, on February 12, 2024, P&A relayed the offer, but without the expiration, exceeding its authority. Petitioners further allege that, on March 28, 2024, Doe fired P&A for cause. On April 4, 2024, Doe hired petitioners to represent her in the legal matter and, within three months, the matter was settled.

Petitioners now seek an order finding that respondents' representation of Doe was terminated for cause and, thus, that their attorney's lien is forfeited. Alternatively, petitioners

request an order setting this matter down for a hearing to determine the equitable provision of those fees as between the parties (NYSCEF Doc. No. 1, *petition*).

Respondents interposed an answer wherein they raised several affirmative defenses (NYSCEF Doc. No. 5, *answer*).

Petitioners also move separately for an order "reinstating the petition and scheduling the matter for a hearing to determine the apportionment of attorney's fees as between the parties; b) pursuant to 22 NYCRR § 130-1.1, awarding sanctions against respondents for conduct that is without legal or factual basis; and c) granting petitioner's witness, former client Jane Doe, leave to testify remotely at the hearing." Specifically, petitioners claim that "traveling to New York to testify would be extremely burdensome for [Doe] because of her mental health conditions." (NYSCEF Doc. No. 7, *Crumiller aff.* ¶ 21) (Mot. Seq. 002).

Respondents oppose the motion, arguing that petitioner's request for sanctions is meritless as petitioners have provided no support for their position that the parties' disagreement regarding the attorney's lien warrants sanctions. As for the request that Doe be permitted to testify at a hearing remotely, respondents argue that said request is premature since no hearing has been scheduled and that, to the extent the court is inclined to order a hearing, petitioner has failed to make a sufficient showing that remote testimony is merited. They also argue that petitioner's motion to reinstate the petition and schedule a hearing misstates facts (NYSCEF Doc. No. 16, *memo. of law in opposition*).

Respondents filed a separate motion, pursuant to Judiciary Law § 475, "fixing a charging lien in favor of [r]espondents in an amount equal to at least 75% of the fees and costs in dispute, or in the alternative referring this matter to a special referee to resolve any issues of fact regarding the proper apportionment of fees; . . . ii. dismissing [p]etitioners' claim that [r]espondents were terminated for cause; ... iii pursuant to NYCRR § 130-1.1, imposing sanctions against [p]etitioners Crumiller P.C. and Mesidor Law PPLC for their frivolous sanctions motion against [r]espondents" (NYSCEF Doc. No. 8, *notice of motion*) (Mot. Seq. 003).

In support of respondents' motion, Weinstein submits an affirmation in which he states, *inter alia*, that in May 2023, prior to Mesidor's departure from P&A, Mesidor asked that Weinstein take over Doe's matter as lead counsel. Following Mesidor's departure in May 2023, P&A successfully defeated defendant's motion for summary judgment against Doe, after which time Weinstein continued to engage in settlement negotiations in an attempt to resolve the case before a scheduled JAMS arbitration hearing. On November 30, 2024, Weinstein secured a $450,000.00 settlement offer, which was within the range authorized by Doe; however, when presented with the offer, Doe declined and instructed Weinstein not to submit a counteroffer. On January 25, 2024, Weinstein had "off the record" discussions with new opposing counsel for defendant, discussing the possibility of a $1 million dollar settlement. Weinstein represents that Doe was not amendable to said offer. On February 12, 2024, he presented a "best and final" settlement offer of $1.65 million to opposing counsel, open for forty-eight (48) hours. However, opposing counsel requested additional time to consider the offer, a request that was conveyed to Doe, without objection. On March 7, 2024, Doe expressed frustration that the $1.6 million offer had been made and that it was a mistake to "put a specific number on the table." Then, on March 13, 2024, Doe sent Weinstein a

list of tasks to complete in preparation for the arbitration hearing, even though the hearing was still ninety (90) days away. On March 27, 2024, after accusing Weinstein of pressuring her to accept the $1.65 million offer, Doe terminated P&A's representation, stating that P&A was not the right attorney for her (NYSCEF Doc. No. 9, *Weinstein's aff.*). On April 4, 2024, a notice of attorney's lien was forwarded to Crumiller (NYSCEF Doc. No. 14, *notice of lien*). Pursuant to the retainer agreement between Doe and P&A, P&A would be entitled to forty (40%) percent of any amount Doe recovered over $350,001.00 (NYSCEF Doc. No. 10, *retainer agreement*).

By memorandum of law, respondent argues that, under the law, they are entitled to at least seventy-five (75%) percent of the fees at issue since it performed most of the substantive work in Doe's case for nearly three years. Respondents further contend that they were not terminated for cause. Instead, respondents posit that Doe's dissatisfaction with P&A was primarily due to the pace of negotiations and the length of time it took for the case to get to an arbitration hearing. However, the delays, claim respondents, were largely due to Doe's own shifting demands during settlement negotiations, as well as, the schedule of the tribunal, which P&A had no control over. Additionally, respondents maintain that petitioners' motion for sanctions (Mot. Seq. 002) lacks any legitimate legal or factual basis because petitioners themselves placed the issue of apportionment of fees in dispute by filing the instant petition, therefore acknowledging that the allocation of fees was a legitimate issue requiring court intervention. To then file a sanctions motion against respondents based on their efforts to challenge the very issue petitioners have placed before the court is, argue respondents, frivolous and sanctionable.

In opposition (NYSCEF Doc. 24),[1] Mesidor affirms that respondents misrepresent material factual statements. Mesidor states that the successful summary judgment was completed under her tenure with P&A and that, despite a favorable disposition, they failed to make any meaningful progress on settlement negotiations from June 2023 through April 2024 — representing the time Mesidor did not represent Doe. Mesidor also insists that Weinstein's version of events, as memorialized in his affidavit (NYSCEF Doc. No. 9), is replete with misrepresentations as to the nature of the breakdown in the relationship between P&A and Doe, arguing instead that respondents' representation of Doe was grossly inadequate. Mesidor denies that petitioners induced Doe to terminate her relationship with petitioner. Instead, Mesidor claims that Doe was frustrated with Weinstein's repeated attempts to persuade her to settle the claims for less than seven figures and lost trust on Weinstein after he exceeded his settlement authority and failed to adequately prepare for the arbitration hearing that was only a few months away (NYSCEF Doc. Nos. 26, *Lewis e-mails*; 27, *Weinstein-Doe e-mails*). Inasmuch as Doe terminated respondents' representation for cause, Mesidor maintains that respondents have forfeited their entitlement to a lien and, therefore, that respondents' motion to affix a charging lien should be denied. Mesidor reiterates that petitioner has made out a claim for sanctions.

Susan Crumiller, founding attorney for Crumiller P.C., submits an affirmation wherein she proffers "the retainer agreement between petitioners and Doe" (NYSCEF Doc. No. 28); timekeeping records maintained in this matter (NYSCEF Doc. No. 29), and costs (NYSCEF Doc. No. 30).

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[1] This court notes that although petitioners attempt to address a purported "opposition/cross-motion" cited as NYSCEF Doc. No. 8, NYSCEF Doc. No. 8 is a separate motion and not a cross-motion. Petitioners' documents under Mot. Seq. 003 appear to be both in opposition to Mot. Seq. 003 and a reply under Mot. Seq. 002 (see NYSCEF Doc. Nos. 24-35).

In reply, respondents argue, among other things, that petitioners cannot refute that P&A is entitled to fees. Respondents contend that, as evidenced by Mesidor's own affidavit, a substantial part of the work on Doe's case was performed by P&A while Mesidor was employed by the firm. Thus, there is no meaningful dispute, argue respondents, that they are entitled to seventy-five (75%) of the fees at issue. Respondents further argues that the time records submitted by petitioners in opposition to the motion are unreasonable and excessive. Additionally, respondents argue that petitioner has failed to put forth any direct proof to establish that P&A was terminated for cause. Respondents note that, although petitioners submit a retainer agreement executed between petitioners and Doe (NYSCEF Doc. No. 28, *retainer*), said agreement was entered into solely between Crumiller P.C. and Doe. Mesidor PLLC is not a party to said agreement. Thus, any amounts attributable to Mesidor, who does not claim to be associated with the Crumiller firm, violates Rule of Professional Conduct 1.5(g). They reiterate that petitioner's sanction motion lacks a good-faith basis and is thus, sanctionable (NYSCEF Doc. No. 40, *memo. of law in reply*).

"A client has an absolute right to discharge an attorney at any time. If the discharge is with cause, the attorney has no right to compensation or to a retaining lien" (*Teichner v W & J Holsteins*, 64 NY2d 977, 979 [1985] [citations omitted]; see *Matter of Verdugo v Schwartz Goldstone & Campisi, LLP*, 184 AD3d 441, 441 [1st Dept 2020]). A client asserting a discharge for cause must show that outgoing counsel fell "below the ordinary and reasonable skill and knowledge commonly possessed by a member of the profession" (*Morrison Cohen Singer & Weinstein v Zuker*, 203 AD2d 119, 119 [1st Dept 1994]). "[R]easonable strategic choices regarding litigation" are insufficient to establish for-cause discharge (*Morrison Cohen Singer & Weinstein v Zuker*, 203 AD2d at 119). Moreover, "an honest mistake of judgment where the proper course is open to reasonable doubt" is also insufficient to establish for-cause discharge (*Bernstein v Oppenheim & Co., P.C.*, 160 AD2d 428, 430 [1st Dept. 1990]). "In general, the issue of whether an attorney was terminated for cause is a factual one that must be resolved at a hearing or at trial" (*Teichner*, 64 NY2d 977, 979 [1985]; see *Byrne v Leblond*, 25 AD3d 640, 642 [2006]; *Ulico Cas. Co. v Wilson, Elser, Moskowitz, Edelman & Dicker*, 56 AD3d 1, 12-13 [1st Dept 2008]). However, where the papers fail to raise a factual dispute on a material point to be resolved by the court, the court may decide the legal issue as to whether the firm was terminated for cause, without a hearing (see *Braider v 194 Riverside Owners Corp.*, 237 AD2d 147, 147 [1st Dept 1997]).

Here, petitioners' allegations attempting to justify respondents' discharge rest largely on conclusory statements of inadequate representation by respondents. Notably, said allegations are proffered solely via the affidavit of Mesidor, a former employee of P&A, who does not purport to have personal knowledge as to the full extent of the relationship between Doe and P&A after her departure from P&A in May 2023. It is also unclear to the court the nature of Mesidor PLLC's representation of Doe, given that no claim is made that said firm represented Doe after P&A's termination. Furthermore, Weinstein denies that he acted without authority during P&A's representation of Doe, and he avers that delays in resolving Doe's matter were occasioned, principally, by his former client's own indecisiveness during settlement negotiations. Although petitioners submit e-mail correspondence in support of their allegation of for-cause termination, these exchanges, at the very best, reflect a disagreement between strategy choices, which does not serve as a basis for a finding of a for-cause discharge. Accordingly, since petitioner has failed to establish that the discharge was without cause, outgoing counsel is entitled to a charging lien on the proceeds of this lawsuit (see *Braider v 194 Riverside Owners Corp.*, 237 AD2d 147, 147 [1st Dept

1997]). Thus, the parties' motions are granted solely to the extent that the matter is referred to a Special Referee to determine the appropriate apportionment of the fees at issue, and are otherwise denied.

As for the request that petitioners' witness, Doe, be permitted to testify remotely at the hearing (Mot. Seq. 002), that request is denied at this juncture, without prejudice to renew before the special referee.

Those branches of the respective motions seeking sanctions is denied. Accordingly, it is hereby

ORDERED that petitioners' motions (Mot. Seq. 001 and 002) are granted solely to the extent that the matter shall be referred to a Special Referee to hear and determine the appropriate apportionment of attorney's fees due to petitioners and respondents, and the motions are otherwise denied; and it is further

ORDERED that respondents' motion (Mot. Seq. 003), pursuant to Judiciary Law § 475, is granted solely to the extent that the matter be set for a hearing to determine the proper apportionment of legal fees and seeking dismissal of petitioners' claim that respondents were terminated for cause, and it is otherwise denied; and it is further

ORDERED that this matter shall be referred to a Special Referee to hear and determine in accordance with this decision and order; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for petitioners shall serve a copy of this decision and order, with notice of entry, upon respondents and the Special Referee Clerk, as well as upon the Clerk of the Court; and it is further

ORDERED that service upon the Special Referee Clerk and the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this court.

March 21, 2025

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	[ ] **CASE DISPOSED**			[X] **NON-FINAL DISPOSITION**		
	[ ] **GRANTED**	[ ] **DENIED**		[X] **GRANTED IN PART**		[ ] **OTHER**
APPLICATION:	[ ] **SETTLE ORDER**			[ ] **SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ] **INCLUDES TRANSFER/REASSIGN**			[ ] **FIDUCIARY APPOINTMENT**		[X] **REFERENCE**