

**New York Black Car Operators' Injury Compensation  
Fund Inc. v Michael Gasi, Esq. & Assoc., P.C.**

2025 NY Slip Op 31428(U)

March 31, 2025

Supreme Court, New York County

Docket Number: Index No. 452975/2023

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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INDEX NO. 452975/2023

THE NEW YORK BLACK CAR OPERATORS' INJURY
COMPENSATION FUND INC.,

MOTION DATE 02/05/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

MICHAEL GASI, ESQ. AND ASSOCIATES, P.C., MICHAEL
GASI, SMR PERVEZ

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12,
13, 14, 15, 16, 17, 18

were read on this motion to/for JUDGMENT - SUMMARY

Petitioner New York Black Car Operators' Injury Compensation Fund Inc. (NYBCOICF)
moves here for summary judgment against defendants Michael Gasi, Esq. and Associates, P.C.
and Michael Gasi, Esq. in the amount of \$9,669.00. Plaintiff commenced this action for breach
of contract and breach of fiduciary duty against defendants alleging that defendants failed to pay
plaintiff its workers' compensation lien under Workers' Compensation Law, §29(1).

On December 7, 2019, defendant Smr Pervez was injured during the course of his
employment and received workers' compensation benefits from plaintiff, with a settlement
amount of \$28,014.32. Smr Pervez retained the remaining defendants in an action to recover
damages for personal injuries sustained in the accident in New York Supreme Court, Queens
County, Inc. 725640/2022, against the owner and driver of the alleged responsible vehicle Fang
Hui Lin. Pervez's third-party action against Lin resulted in a settlement offer of the \$15,000
policy limit, which plaintiff consented to and asserted a lien against in the amount of \$18,217.71.

According to Craig Davis, Claims Manager for plaintiff New York Black Car (Nyscef doc 10, p 3):

By letter dated April 21, 2023, Plaintiff NYBCOICF consented to the settlement of the aforesaid third-party action for \$15,000.00 subject to its lien in the amount of \$28,014.32...

Pursuant to Workers' Compensation Law§29(1), plaintiff NYBCOICF's workers' compensation lien of \$28,014.32 was reduced to \$18,21771 to account for plaintiff's responsibility to pay its equitably apportioned amount of defendant LAW FIRM's legal fees and expenses, and thus, plaintiff NYBCOICF asserted a lien in the amount of \$18,217.71 on the proceeds of the \$15,000.00 settlement.

By the same letter dated April 21, 2023, I miscalculated the defendant LAW FIRM's legal fee and expenses by reducing the \$15,000.00 settlement by only the \$496.00 in expenses and therefore, agreed to accept the sum of \$14,504.00 in satisfaction of plaintiff NYBCOICF's \$18,217.71 lien.

Defendants accepted plaintiff's consent letter, settled the third-party action, and received \$15,000 in settlement proceeds (Davis Aff, ¶17). Plaintiff argues that because its equitably apportioned lien of \$18,217.71 exceeded the settlement, it is entitled to recover the net proceeds of \$9,669.00 which remained after the law firm's deduction of legal fees and expenses of \$5,331.00. By letter dated September 29, 2023 (Exh E), plaintiff requested reimbursement from defendants of the lien amount of \$28,014.32 and received no response.

It is well-established that the “function of summary judgment is issue finding, not issue determination” (*Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989) (quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957])). As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320 (1986); *Winegrad v New York University Medical Center*, 64 NY2d 851 (1985)).

Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 (1980)). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990)).

"Under Workers' Compensation Law § 29 (1), when an employee commences an action against a third party to recover damages for a job-related injury, the compensation carrier has a lien on the proceeds of the action, after reasonable litigation costs are deducted therefrom, to the extent of compensation previously paid to the employee. The court shall equitably apportion the litigation costs between the employee and the carrier to the extent that each was benefited by the recovery" (*Smith v. Spinoccia*, 119 A.D.2d 660 (2<sup>nd</sup> Dept 1986)).

"Funds belonging in part to a client or third person and in part currently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved" (NY ST RPC Rule 1.15(4) (McKinney)). "An attorney who proceeds to disburse settlement funds after having been placed on notice of a § 29(1) lien, is personally liable for the satisfaction of the lien" (*Commissioners of State Ins. Fund v. Garcia*, 49 Misc. 3d 875 (N.Y. Sup. Ct. 2015)).

The Court notes that defendants admitted to certain allegations from plaintiff's Complaint in its Verified Answer dated March 29, 2024 (Nyscef doc. 6): "1. Defendants Michael Gasi,

Michael Gasi, Esq. & Associates, P.C. admit the allegations found in in paragraphs: 3, 4, 7, 9, 10, 11, 18, 20, 22, 23, 24, and 35.” Plaintiff provided proof of service of the Summons and Complaint and the instant motion upon defendants Michael Gasi, Esq. and Associates, P.C. and Michael Gasi, Esq., who have failed to file any opposition. In view of the foregoing, plaintiff’s motion is granted in its entirety.

Accordingly, it is hereby

ORDERED, that plaintiff is granted summary judgment against defendants Michael Gasi, Esq. and Associates, P.C. and Michael Gasi, Esq in the amount of \$9,669.00, plus interest thereon from May 15, 2023, at the statutory rate of 9% per annum, and costs and disbursement; and it is further

ORDERED, that plaintiff shall serve a copy of this order upon defendants and the County Clerk within 30 days; and it is further

ORDERED, that the County Clerk is directed to enter judgment.

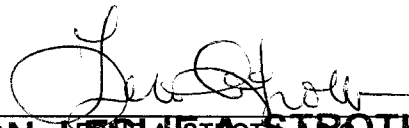
The foregoing constitutes the decision and order of the Court.

3/31/2025  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  SETTLE ORDER  SUBMIT ORDER  OTHER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE

  
**HON. LESLIE A. STROTH**  
J.S.C.