

Cohen v Moskowitz

2025 NY Slip Op 32977(U)

August 4, 2025

Supreme Court, New York County

Docket Number: Index No. 653874/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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STAN COHEN,

Plaintiff,

- v -

JAMES MOSKOVITZ, JMJ FILMS, INC., JOYCE
MOSKOVITZ, JOY-CPW, INC.

Defendant.

-----X

INDEX NO. 653874/2022

MOTION DATE 05/04/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is denied.

Background

James Moskovitz and Joyce Moskovitz (the “Moskovitz Defendants”) operated a television production company, JMJ Films, Inc. (“JMJ”, collectively with the Moskovitz Defendants and Joy-CPW, Inc. the “Defendants”) that ran a high-profile sports talk show starring Tim McCarver. In early 2016, The Moskovitz Defendants had agreed to sell JMJ to non-party Digital Realm (“DR”). They began to become concerned about that sale as well as the behavior of their then-counsel, and in May of 2016 they discussed the matter with Stan Cohen, Esq. (“Plaintiff”). Ultimately, Plaintiff was retained to represent Defendants in the matter of the DR sale and the attorney-client relationship with their former counsel. A federal case was initiated and ultimately resulted in a settlement.

In June of 2016, the parties signed a retainer agreement. This agreement set an hourly rate of \$400, and in addition gave Plaintiff “a fee of 8% of JMJ shares, or the proceeds of sale of

JMJ, whether in present dollars paid, future payments, or in stock, *pari passu*.” Plaintiff was ultimately terminated in August of 2016, according to Defendants’ allegations, and at some unspecified time following the federal action settlement according to Plaintiff. Alleging that there was an outstanding hourly amount due on the retainer agreement of \$109,900 plus the 8% of shares in JMJ, Plaintiff filed suit in October of 2022.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a *prima facie* entitlement to judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

Plaintiff moves for summary judgment and Defendants oppose. Their main arguments in opposition are that the complaint is time-barred, that Plaintiff did not perform under the retainer agreement, and that the retainer agreement is ambiguous. For the reasons that follow, the motion is denied.

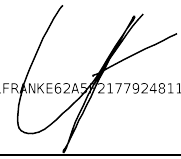
Breach of contract claims are governed by a six-year statute of limitations. CPLR § 213(2). The complaint states that Plaintiff was terminated “[i]mmediately upon settling the Federal Court action” and at that time Defendants refused to pay the balance due. It goes on to

state that the termination was “prior to finalizing various state court matters that Plaintiff was pursuing towards settlement.” It also claims that Plaintiff asked for his fees and 8% interest according to the retainer agreement “[i]mmediately after the celebration of the settlement victory” but that he was instead terminated, and that Plaintiff presented a final bill after control over JMJ was returned to Defendants, but this was also rebuffed. The complaint does not state a specific time period when Plaintiff was terminated, only that it was “immediately” upon the resolution of the federal court case and that at termination, the Defendants refused to pay the amount allegedly owed under the retainer agreement. Mr. Moskowitz states in his sworn affidavit that Plaintiff was terminated in August of 2016. Plaintiff has provided what purports to be a bill for services rendered that extends into November of 2016, but does not state when he was terminated. As this action was brought in October 2022, this factual question is crucial in determining whether this matter is time barred.

Therefore, there are unresolved issues of fact here on when Plaintiff was terminated, when he last provided legal services in accordance with the retainer, and when the Defendants allegedly breached by refusing to pay on the retainer agreement. The general rule in New York is that “the cause of action accrues when the contract is breached” even in cases where the nonbreaching party is unaware of the breach. *Deutsche Bank Natl. Trust Co. v. Flagstar Capital Mkts.*, 32 N.Y.3d 139, 146 – 46 [2018]. Because there are factual issues in the record as to when the contract was breached, summary judgment would be premature at this time. The Court, therefore, does not reach the remaining arguments of the parties. Accordingly, it is hereby

ADJUDGED that the motion is denied.

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8/4/2025

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE