

**Capell Barnett Matalon & Schoenfeld LLP v  
Production Lounge Inc.**

2025 NY Slip Op 33090(U)

August 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 523337/2020

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 11<sup>th</sup> day of August, 2025.

P R E S E N T:

HON. INGRID JOSEPH,

Justice.

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CAPELL BARNETT MATALON & SCHOENFELD LLP  
As successor in interest to SANDERS LITIGATION  
ASSOCIATES P.C.,

Plaintiff,

- against -

Index No. 523337/2020

THE PRODUCTION LOUNGE INC., JOSEPH ARIOLA,  
GERARD CURCIO A/K/A JERRY CURCIO A/K/A  
GERARDO CURCIO, DANIANO CORACI and ROBERT  
CROWLEY,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_  
Reply Affidavits (Affirmations) \_\_\_\_\_

40, 42-48 49-58 61-78 79-99  
62-78 80-99 102-103 101  
102-103 100 104-105 106-108

Upon the foregoing papers in this action to collect legal fees, defendant Gerardo Curcio (Curcio) (s/h/a Gerard Curcio a/k/a Jerry Curcio a/k/a Gerardo Curcio) moves (in motion sequence [mot. seq.] two), for an order, pursuant to CPLR 3212, dismissing the complaint and any cross-claims asserted against him (NYSCEF Doc No. 40).

Defendant Robert Crowley (Crowley) moves (in mot. seq. three) for an order: (1) granting him summary judgment dismissing the complaint as against him, pursuant to CPLR 3212, and (2) awarding him attorneys' fees and costs, pursuant to 22 NYCRR § 130-1.1 (Part 130) (NYSCEF Doc No. 49).

Plaintiff Capell Barnett Matalon & Schowenfeld LLP, as successor in interest to Sanders Litigation Associates, P.C. (SLA) (plaintiff), cross-moves (in mot. seq. four) for an order, pursuant to CPLR 3211 (b), 3013 and 3018 (b), striking the affirmative defenses asserted by defendant Curcio in his January 14, 2021 answer (NYSCEF Doc No. 61).

Plaintiff also cross-moves (in mot. seq. five) for an order, pursuant to CPLR 3211 (b), 3013 and 3018 (b), striking the affirmative defenses asserted by defendant Crowley in his March 4, 2021 answer (NYSCEF Doc No. 79).

On November 23, 2020, the plaintiff law firm commenced this action seeking to collect legal fees for services that SLA allegedly performed on behalf of their former corporate client, The Production Lounge. The complaint alleges that defendants Curcio and Crowley, individually, collectively and as officers of The Production Lounge, hired plaintiff's predecessor, SLA, to defend The Production Lounge in a commercial holdover proceeding captioned *Guard General Merchandise Co. Inc v. The Production Lounge Inc.*, Kings County index No. 94652/10 (complaint at ¶ 8). The complaint alleges that SLA successfully defended The Production Lounge in the holdover proceeding (*id.* at ¶ 9).

The complaint alleges that “thereafter, in May 2011, defendants approached SLA to commence an action in Kings County Supreme Court for, *inter alia*, damages arising out of breach of the covenant of quiet enjoyment, breach of contract, nuisance, and unjust enrichment against their then landlord” (*id.* at ¶ 10). On or about May 12, 2011, SLA sent defendants a letter of engagement detailing the terms of SLA's representation, including SLA's hourly fees for its lawyers and paralegals and a minimum retainer fee of \$4,250.00 (*id.* at ¶¶ 11-14).

Upon the retention, SLA commenced an action against defendants' landlord captioned *The Production Lounge Inc. v Guard General Merchandise Co. Inc.*, Kings County index No. 13632/11 (the Supreme Court Action) (*id.* at ¶ 16). Regarding the legal services performed by SLA, the complaint alleges that:

“[i]n the course of litigating the Supreme Court Action, SLA and its staff performed a myriad of legal services for Defendants over several years. These services included but

were not limited to: researching and drafting pleadings and motion papers; corresponding with opposing counsel and the court, including drafting e-mails and letters and conducting telephone calls; and attending numerous court appearances. These court appearances were particularly lengthy due to an extended hearing which lasted several months” (*id.* at ¶ 17).

The complaint alleges that throughout SLA’s legal representation of The Production Lounge, “SLA regularly presented invoices to defendants for their legal services performed” (*id.* at ¶ 18). Pursuant to the Letter of Engagement, upon receipt of each invoice, defendants had 30 days to review the charges, raise any questions or concerns regarding the amount billed or services rendered, and tender payment of the amount due (*id.*). Allegedly, “as the action moved forward and required increasing amounts of legal services, defendants started to fall behind on their payments” (*id.* at ¶ 21). The complaint alleges that “[o]n or about March 2, 2012, defendants made two payments in partial satisfaction of their outstanding balance” which were “the last payments tendered by Defendants” (*id.* at ¶¶ 23-24). The complaint alleges that “at the request of Defendants and in reliance upon guarantees of payment, SLA continued to provide and perform significant legal services, amounting to many thousands of dollars of additional legal fees, which remain uncompensated” (*id.* at ¶ 25). In July 2014, when defendants stopped responding to SLA’s communications, SLA was “forced” to make a motion to be relieved as counsel, which was granted on September 19, 2014 (*id.* at ¶¶ 26-28).

The complaint alleges that “[o]n December 18, 2014, SLA sent Defendants Ariola, Crowley, and Curcio, a notice of their right to arbitrate any dispute over Defendants’ outstanding balance of unpaid legal fees, pursuant to Part 137 of the Rules of the Chief Administrator . . .” and the total amount of fees owed to SLA was \$23,196.03 (*id.* at ¶ 29). The complaint alleges that defendants failed to respond to the Arbitration Notice and the “time to do so has long since expired” (*id.* at ¶ 31).

The complaint asserts causes of action for: (1) breach of contract (*id.* at ¶¶ 33-38); (2) account stated (*id.* at ¶¶ 39-45); (3) unjust enrichment (*id.* at ¶¶ 46-51); (4) quantum meruit (*id.* at ¶¶ 52-59); and (5) attorneys’ fees (*id.* at ¶¶ 60-64).

On January 14, 2021, defendant Curcio answered the complaint, denied the material allegations therein and asserted affirmative defenses, including the statute of limitations, “[t]here is no duty or contractual relationship between the plaintiff and the answering defendant[.]” “Plaintiff was directed to cease all legal services but nonetheless continued thereby improperly charging legal fees” and “[t]he legal fees claimed due and owing are incorrect, unreasonable, and unwarranted” (NYSCEF Doc No. 3).

On March 4, 2021, defendant Crowley answered the complaint, denied the material allegations therein and asserted affirmative defenses, including the statute of limitations, “[t]here is no duty or contractual relationship between the plaintiff and the answering defendant[.]” “[t]he legal fees claimed due and owing are incorrect, unreasonable, and unwarranted” and “Plaintiff’s lacks privity with Defendants herein and therefore has no standing to sue” (NYSCEF Doc No. 7). Crowley also asserted a cross-claim for indemnification on the ground that he “has not been a member of the defendant THE PRODUCTION LOUNGE since on or about January 1, 2009[.]” prior to SLA’s engagement in April 2011 (*id.* at ¶¶ 21-22).

The remaining defendants failed to answer or otherwise respond to the complaint. Plaintiff’s March 29, 2022, motion for a default judgment against the non-appearing defendants, including The Production Lounge Inc., was granted by a September 14, 2022, decision and order (NYSCEF Doc No. 18).

On August 23, 2024, a note of issue and certificate of readiness for trial was filed, despite the fact that none of the defendants were deposed (NYSCEF Doc No. 38).

On October 18, 2024, Curcio moved for summary judgment dismissing the complaint and Crowley’s cross-claim for indemnification (NYSCEF Doc No. 40).

Curcio submits a two-page affirmation asserting that “[f]or all relevant time periods I was a limited shareholder (not a majority) of The Production Lounge Inc.[.]” which operated a lounge in Brooklyn (NYSCEF Doc No. 48 at ¶¶ 2-3). Curcio affirms that The Production Lounge Inc. is no longer in business, but during the relevant time, defendant Ariola operated its day-to-day operations and “Ariola retained the Plaintiff, on behalf of

The Production Lounge Inc., in connection with the legal actions . . .” (*id.* at ¶¶ 5-7). Curcio affirms that “I did not sign the retainer agreement(s) . . .” with SLA and “[a]t no time did I agree to be personally responsible, either orally or in writing, for the payment of legal fees incurred by The Production Lounge Inc. for any legal services performed by Plaintiff . . .” (*id.* at ¶¶ 9-10).

Curcio also submits a memorandum of law arguing that he was a minority shareholder of the Production Lounge and he cannot be held personally liable for the legal fees plaintiff provided to The Production Lounge because: (1) he did not sign the retainer agreement; (2) he did not sign a personal guarantee; (3) the retainer agreement does not reference him; and (4) plaintiff did not provide any legal services to him personally (NYSCEF Doc No. 41). Curcio asserts that “[p]ermitting personal liability against Curcio would be in clear violation of the statute of frauds and the limited liability protection afforded by the corporate structure” (*id.* at 10).

Notably, while Curcio’s notice of motion seeks dismissal of Crowley’s cross-claim for indemnification, his moving papers do not mention or even address the cross-claim.

On October 23, 2024, Crowley moved for summary judgment dismissing the complaint and awarding him attorneys’ fees, pursuant to Part 130 (NYSCEF Doc No. 49). Crowley submits an affidavit explaining that “The Production Lounge, Inc was formed in 2007, as a domestic corporation to operate as a bar and music production studio” and “[a]t the time of its formation, the Production Lounge had three shareholders, me, Gerardo Curcio, and Josph Ariola” (NYSCEF Doc No. 51 at ¶¶ 4-5). Crowley attests that he was a “limited shareholder” in the Production Lounge while “Joseph Ariola operated and ran the day-to-day operations of The Production Lounge” (*id.* at ¶¶ 6-7).

Crowley attests that “[o]n January 1, 2009, I forfeited all my common outstanding shares and resigned as an officer of The Production Lounge” (*id.* at ¶ 8). Crowley submits a copy of a January 1, 2009, Letter of Withdrawal addressed to the NY Department of State Division of Corporations, which states that:

[i]n accordance with the Articles of Incorporation, I, Robert Crowley, are forfeiting all outstanding common shares in The Production Lounge Inc and resigning as an officer, effective January 1, 2009 (NYSCEF Doc No. 53).

Crowley attests that “[f]rom that day forward I had no connection with The Production Lounge” (NYSCEF Doc No. 51 at ¶ 9). Crowley attests that SLA was subsequently retained and that he was not involved in any of the litigations for which SLA was retained (*id.* at ¶¶ 10-20). Crowley further attests that “I had no knowledge of the relationship between SLA and The Production Lounge, the invoices, or the Notice to Arbitrate until the filing of the present litigation” (*id.* at ¶ 21).

Defense counsel submits an affirmation arguing that Crowley is entitled to summary judgment dismissing all claims asserted against him as time-barred since “the alleged breach occurred in March 2012 and continued through October 20, 2014” and “[t]he action against Mr. Crowley was filed on November 23, 2020, well beyond the statute of limitations” (NYSCEF Doc No. 50 at ¶¶ 25-31).

Defense counsel also asserts that plaintiff’s breach of contract claim fails because “Plaintiff has failed to produce any contract signed by Mr. Crowley retaining their firm’s services” (*id.* at ¶ 38). Defense counsel argues that “[w]ithout an express contract and/or guaranty signed by Defendant Crowley whereby he personally guaranteed the debt of the Production Lounge, he cannot be liable for its legal expenses to Plaintiff” (*id.* at ¶ 40).

Defense counsel also argues that plaintiff’s quantum meruit claim must be dismissed because “Plaintiff has not, and cannot, satisfy the critical element of acceptance of services” since “[a]s demonstrated by the Letter of Engagement, The Production Lounge is the party who retained Plaintiff’s services” (*id.* at ¶ 48). Defense counsel notes that “Crowley could not have ‘accepted’ services rendered by plaintiff on behalf of The Production Lounge as he had withdrawn from the Production Lounge and was no longer affiliated or an officer at the time the Production Lounge retained Plaintiff’s services” (*id.* at ¶ 51). Counsel asserts that “[n]othing in the Retainer Agreement even suggests that Crowley, a former officer, would be personally responsible for the payment of the legal

fees incurred thereunder” and thus, there could not have been any reasonable expectation by plaintiff of payment by Crowley (*id.* at ¶ 52).

Finally, defense counsel contends that plaintiff’s claim for an account stated is subject to dismissal since “it undisputed that the invoices are addressed to The Production Lounge and Joseph Ariola at their offices located at 113 Franklin Street, Unit FC, Brooklyn, New York – not to Defendant Crowley” (*id.* at ¶ 56).

Plaintiff opposed both summary judgment motions with similar opposing affirmations from Peter S. Sanders, Esq. (Sanders), the former President and owner of SLA (NYSCEF Doc Nos. 62 and 80). Sanders advises that nobody signed the Engagement Letter, and thus, there are triable issues of fact as to whether or not a contract was formed by and between the parties based on their expressed words and actions (NYSCEF Doc No. 62 at ¶¶ 9-11).

Sanders affirms that Ariola retained SLA on behalf of his “partners” and paid SLA the requisite retainer fee “from funds from his partners”:

[i]t became clear at that time that despite Mr. Ariola’s representation that he was acting as the agent for all Defendants in this action, to protect them against their liability as guarantors should the holdover eviction proceeding succeed, and the urgency of time in mounting such a defense, he was having trouble wrangling his partners together to sign the Retainer Agreement. Nevertheless, as their agent, *he retained us through his words, actions, ascension, and by paying the required retainer fee from funds from his partners and co-defendants*” (*id.* at ¶ 22 [emphasis added]).

Sanders submits a May 12, 2011 email that he received from Ariola after SLA successfully defended The Production Lounge in the holdover proceeding advising that Ariola and his “partners” were meeting to discuss retaining SLA to sue The Production Lounge’s landlord (*id.* at ¶ 11 and NYSCEF Doc No. 66). In the email, Ariola advises Sanders that:

“I will call and or email you after my meeting tomorrow and if all goes well will send you out a check for \$4,250,00 as soon as my partners deposit the funds for it into our act for it.

“At that time please then let me know what will be needed from my end as for evidence so I have as much time as possible to get it all for you” (*id.*).

Sanders asserts that “Defendants retained SLA . . . by collectively paying off the balance owed on the prior proceeding as well as the new engagement retainer fee of \$4,250.00 to SLA” (NYSCEF Doc No. 62 at ¶ 28 and NYSCEF Doc No. 80 at ¶ 23).

Regarding Crowley’s assertion that he resigned from The Production Lounge before SLA’s retention, Sanders asserts that “his disavowels are without merit” because he “remained on the corporate records maintained by the Secretary of State’s Division of Corporations as the managing agent and agent for service [of The Production Lounge]” and executed a December 2009 settlement stipulation on behalf of The Production Lounge (NYSCEF Doc No. 80 at ¶ 41; *see also* NYSCEF Doc Nos. 93 and 94).

Sanders also argues that the complaint is not time-barred because SLA’s continuous legal services for defendants took place until the final invoice on October 14, 2014, which is when the statute of limitations accrued (NYSCEF Doc No. 62 at ¶¶ 80-81). Sanders asserts that “[a]lthough 6 years after the date of the last invoice is October 20, 2020 . . . Executive Orders were signed [in response to the Covid-19 pandemic] suspending and tolling the statute of limitations for any claims that accrued during the period between March 20, 2020, and November 3, 2020” (*id.* at ¶ 82). Based on this seven-month toll, Sanders asserts that plaintiff timely commenced the instant action on November 23, 2020 (*id.* at ¶ 85).

Additionally, plaintiff cross-moves to strike Curcio and Crowley’s affirmative defenses on the ground that they are “defectively pleaded in a wholly conclusory fashion bereft of any detailed factual support” (*id.* at ¶ 17; NYSCEF Doc No. 80 at ¶ 13).

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering

sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see also *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]).

As a preliminary matter, plaintiff’s claims for legal fees are not time-barred as they accrued when SLA rendered its final account of legal services recorded in an October 14, 2014 invoice (NYSCEF Doc No. 72). Six years after the final invoice is October 20, 2020, at which time the Governor’s Executive Orders were in place tolling the statute of limitations for any claims that accrued during the period between March 20, 2020, and November 3, 2020, due to the Covid-19 pandemic. Based on the Covid-19 toll, this action was timely commenced on November 23, 2020.

Here, summary judgment is not warranted because there are triable issues of fact regarding whether there was an agreement by and between the parties for SLA to render legal services to The Production Lounge *and* its former shareholders, Curcio and Crowley, in connection with litigation regarding The Production Lounge’s lease, under which both Curcio and Crowley were personally liable. There is no dispute that the Engagement Letter was never signed, and thus, to determine whether the parties entered into an enforceable agreement it is necessary to examine “the objective manifestations of the intent of the parties as gathered by their expressed words and deeds[,]” which presents a triable question of fact (*Gallagher v Long Island Plastic Surgical Grp., P.C.*, 113 AD3d 652, 653 [2d Dept 2014] [holding that “where the intent must be determined by disputed evidence or inferences outside the written words of the instrument . . . a question of fact is presented”] [internal quotation marks omitted]).

Plaintiff submitted email correspondence from May 16, 2011, between Sanders and Ariola in which Ariola advised Sanders that “[a]s per my meeting with my partners *who are attached to this email* I am contacting you that we want to go ahead with the Supreme court case and get it filed right away before they have a chance to counter” (NYSCEF Doc No. 66 [emphasis added]). This correspondence contradicts defendant Curcio and Crowley’s claims that they were not involved in retaining SLA to represent The Production Lounge and its shareholders.

Furthermore, without a signed agreement governing the parties’ relationship, plaintiff’s claims for quantum meruit and unjust enrichment are proper (*see Port Auth. of New York & New Jersey v Brooklyn Union Gas Co.*, 179 AD3d 1106, 1108 [2d Dept 2020] [holding that “[t]he theory of unjust enrichment lies as a quasi-contract claim” and “[i]t is an obligation the law creates in the absence of any agreement”]). The cause of action for an account stated is not subject to dismissal, since defendants do not dispute that SLA sent invoices to The Production Lounge for payment by defendants.

Crowley has also raised factual issues regarding his exposure to liability as a former shareholder of The Production Lounge by continuing to take part in its business dealings. While Crowley claims that he forfeited all of his outstanding shares in The Production Lounge on January 1, 2009 (NYSCEF Doc No. 53), Crowley inexplicably remained on the corporate records maintained by the Secretary of State’s Division of Corporations as The Production Lounge’s managing agent and agent for service (*see* NYSCEF Doc No. 93). Additionally, Crowley seemingly executed a December 1, 2009 stipulation in his capacity as “President” of The Production Lounge (NYSCEF Doc No. 94). Thus, according to the record, Crowley may have still been actively involved with business of The Production Lounge more than one year after he purportedly forfeited his shares in the company.

Plaintiff’s cross-motions to strike defendant Curcio and Crowley’s affirmative defenses, pursuant to CPLR 3211 (b), on the ground that they are “general, conclusory, without any factual basis and particularities in support . . .” is denied, with the exception

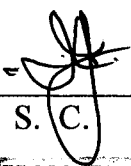
of the statute of limitations defense, because plaintiff failed to demonstrate that the affirmative defenses have no merit. Accordingly, it is hereby

**ORDERED** that defendant Curcio's summary judgment motion (mot. seq. two) and defendant Crowley's summary judgment motion (mot. seq. three) are both denied; and it is further

**ORDERED** that plaintiff's cross-motions (mot. seq. four and five) are only granted to the extent that Curcio and Crowley's affirmative defenses based on the expiration of the statute of limitations are stricken and dismissed; the cross-motions are otherwise denied.

This constitutes the decision and order of the court.

E N T E R,

  
\_\_\_\_\_  
J. S. C.  
**HON. INGRID JOSEPH**