

Paramount Mgt. Group, LLC v Tareb

2025 NY Slip Op 33182(U)

August 20, 2025

Supreme Court, New York County

Docket Number: Index No. 653218/2021

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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PARAMOUNT MANAGEMENT GROUP, LLC,

Plaintiff,

- v -

FARWAZ TAREB, WAFAZ CORP.,

Defendant.

INDEX NO. 653218/2021

MOTION DATE 01/22/2025

MOTION SEQ. NO. 012

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 012) 324, 325, 326, 327, 328, 330, 332

were read on this motion to/for ATTORNEY - DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW .

APPEARANCES:

Sipsas, P.C., Queens, New York (Ioannis Sipsas, Esq., of counsel), non-party movant.

HON. EMILY MORALES-MINERVA, J.S.C.

In this action, non-party Sipsas, P.C. (movant) moves, by notice of motion (mot. seq. no. 012), for an order, pursuant to CPLR § 321(b), permitting withdrawal as counsel of record for defendants Fawaz Tareb and Wafaz Corp (defendants). Further, movant seeks a temporary stay of proceedings for 30 days, a charging lien in the amount of \$9,016.15 pursuant to Judiciary Law § 475, and a retaining lien over the client file and papers. Neither plaintiff nor defendants appear or submit opposition to the motion. For the reasons set forth below, the application is granted in part and denied in part.

An attorney seeking an order for permission to withdraw from representing their client, shall make such application "upon motion on such notice to [a] the client of the withdrawing attorney, to [b] the attorneys of all other parties in the action or, [c] if a party appears without an attorney, to the person, and to any other person, as the court may direct" (see CPLR § 321 [b] [2] see also Bok v Werner, 9 AD3d 318 [1st Dept 2004]). Further, the attorney shall serve the client, pursuant to CPLR § 2103 (c).

Pursuant to Rule 2103 (c) of the CPLR, if a "party's attorney cannot be served, as here, service shall be upon the party" as it would be made on the party's counsel.¹ Where a party

¹ CPLR 2103 (c) provides, in full: "If a party has not appeared by an attorney or the party's attorney cannot be served, service shall be upon the party by a method specified in paragraph one, two, four, five or six of subdivision (b) of this rule." Paragraphs one, two, four, five and six of subdivision (b) provide, service on an attorney shall be made:

"1. by delivering the paper to the attorney personally; or

"2. by mailing the paper to the attorney at the address designated by that attorney for that purpose or, if none is designated, at the attorney's last known address; service by mail shall be complete upon mailing; where a period of time prescribed by law is measured from the service of a paper and service is by mail, five days shall be added to the prescribed period if the mailing is made within the state and six days if the mailing is made from outside the state but within the geographic boundaries of the United States; or

. . . .
"4. by leaving it at the attorney's residence within the state with a person of suitable age and discretion. Service upon an attorney shall not be made at the attorney's residence unless service at the attorney's office cannot be made; or

"5. by transmitting the paper to the attorney by facsimile transmission, provided that a facsimile telephone number is designated by the attorney for that purpose. Service by facsimile transmission shall be complete upon the receipt by the sender of a signal from the equipment of the attorney served indicating that the transmission was received, and the mailing of a copy of the paper to that attorney. The designation of a facsimile telephone number in the address block subscribed on a paper served or filed in the course of

is a corporation, personal service includes delivery of process "upon an officer, director, managing or general agent, or . . . any other agent authorized by appointment or by law to receive service" (CPLR § 311 [a] [1]), including the "[t]he secretary of state" as agent of the corporation (BCL § 304 [a]; see also CPLR § 2103 [b] [1] [permitting the option of delivering the papers to a party's attorney "personally"]).

To obtain permission to withdraw as counsel, the attorney seeking such withdrawal shall, among other possible grounds not raised herein, establish that "the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively" (generally 22 NYCRR [Rules of Professional Conduct] § 1200.0, rule 1.16 [c] [7]).

The determination of whether such cause exists lies within the sound discretion of the Court (Ferdico v Zweig, 82 AD3d

an action or proceeding shall constitute consent to service by facsimile transmission in accordance with this subdivision. An attorney may change or rescind a facsimile telephone number by serving a notice on the other parties; or

"6. by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose or, if none is designated, at the attorney's last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Where a period of time prescribed by law is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period. "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address in the state" (CPLR § 2013 [b]).

1151, 1153 [2d Dept 2011]). However, "[t]he courts of this state routinely grant motions to withdraw as counsel" if a client makes it "unreasonably difficult" for counsel to effectively represent them (Dillon v Otis El. Co., 22 AD3d 1, 5 [1st Dept 2005] [citations omitted]).

Necessarily addressing the issue of service first, the Court finds that movant improperly served defendant Farwaz Tareb, in purported compliance with CPLR § 2103 (b) (2), by delivering the motion papers via FedEx Overnight delivery to his alleged last known address (see NYSCEF Doc No. 330, Affidavit of Service). Under CPLR § 2103 (b) (2), service of motion papers on a party may be made "by mailing the paper to the party at the party's last known address." Nevertheless, it is well established that an affidavit of service relying on a "last known address" must identify the address used and set forth a good faith basis for treating it as such.

In Deutsche Bank Nat'l Tr. Co. v Ferguson, the First Department held that an affidavit of service is insufficient where it merely states that "the summons and complaint were mailed to defendant's 'last known address,' without identifying that address" (156 AD3d 460, 461 [1st Dept 2017]). In Roc-Lafayette Assocs., LLC v Reuter, the First Department similarly held that service was improper where no showing was made that the address was valid, reiterating that failure to satisfy the

requirements of CPLR § 308(4)² rendered the affidavit defective (183 AD3d 465, 466 [1st Dept 2020], citing Feinstein v Bergner, 48 NY2d 234 [1979]).

In Feinstein, the Court of Appeals made clear that “notice received by means other than those authorized by statute cannot serve to bring a defendant within the jurisdiction of the court” (48 NY2d at 241). That rule applies with equal force to CPLR § 2103 service. When the statute requires mailing to a party’s last known address, a conclusory reference to such an address, without naming it or substantiating its accuracy, is insufficient. Courts require the affidavit of service or any other supporting affirmation to not only specify the address used, but to also establish a good faith basis for its designation as the party’s last known address (see generally Deutsche Bank Nat’l Tr. Co., 156 AD3d at 461; see also Matter of William A., 192 AD3d 1474 [4th Dept 2021]).

Here, the affidavit of service fails to specify or substantiate the “last known address” used, and the supporting affidavit likewise fails to cure the deficiency. As such, the

²While CPLR § 308(4) is not directly applicable to service under CPLR 2103(b)(2), the Court relies on the First Department’s reasoning in Roc-Lafayette Assocs., LLC (183 AD3d at 465) and Deutsche Bank Nat’l Tr. Co. (156 AD3d at 460), which, although addressing original service of process under CPLR § 308, underscore the necessity of particularized proof when invoking a “last known address” as the basis for service. The Court finds this reasoning instructive in evaluating whether an affidavit of service under CPLR § 2103 is facially sufficient.

Court finds that movant did not properly serve the notice of motion on Farwaz Tareb. Without effective service, Farwaz Tareb has not been afforded the notice or opportunity to respond that due process requires. Therefore, movant's application to withdraw as counsel for defendant Farwaz Tareb and request for imposition of a charging lien and retaining lien is dismissed without prejudice.

In contrast, movant provides proof of service that it effectuated proper service upon defendant Wafaz Corp. by delivering the papers to the New York Secretary of State, pursuant to BCL § 304 and CPLR § 2103(b)(1) (see NYSCEF Doc No. 331, Affidavit of Service; see also NYSCEF Doc. No. 332, Affidavit of Service). Therefore, the Court proceeds to address the merits of Sipsas, P.C.'s application to withdraw from representation of Wafaz Corp.

In this regard, movant established that defendant Wafaz Corp. has failed to communicate with counsel of record, providing no response to requests to meet and to discuss the litigation, making representation unreasonably difficult (see e.g. Bok, 9 AD3d at 318 [finding "[n]onparty . . . counsel established that the client's conduct, namely [client's] failure to respond to any communication from counsel, made it unreasonably difficult for appellant to represent him

effectively)).³ Therefore, the Court grants movant's request to be relieved as counsel for Wafaz Corp.

The Court now turns to movant's request for imposition of a charging lien in the amount of \$9,016.15 against defendant Wafaz Corp. "It has long been held that attorneys [as here] who terminate their representation for just cause continue to be entitled to enforce their [charging] lien" (Klein v Eubank, 87 NY2d 459, 662 [1996]; see also Upfront Megatainment, Inc. v Thiam, 217 AD3d 595, 596 [1st Dept 2023]). Further,

"from the commencement of an action, special or other proceeding in any court . . . the attorney who appears for a party has a lien upon [their] client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, award, settlement, judgment or final order in [their] client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien"

(Judiciary Law § 475).

³ see NYSCEF Doc No. 326, Letter from Sisipas P.C. to defendant Farwaz Tareb, dated July 26, 2024 [providing, among other things, "[w]e have asked you multiple times by phone and email to come to our office and discuss the case which will be scheduled for trial. You have failed to appear multiple times" and informing defendant of movant's intention to withdraw representation]; see also NYSCEF Doc No. 327, Final Letter to defendant Fawaz Tareb, dated September 25, 2024 [stating: "We have asked you multiple times by phone and email to come to our office and discuss the case which will be scheduled for trial. You have failed to appear multiple times" and providing notice of movant's intent to seek permission to withdraw]).

Pursuant to this statute, "a charging lien automatically comes into existence, without notice or filing, upon commencement of the action, and is measured by the reasonable value of the attorney's services in the action, unless fixed by agreement" (Resnick v Resnick, 24 AD3d 238, 239 [1st Dept 2005] [emphasis added], citing LMWT Realty Corp. v Davis Agency, 85 NY2d 462, 467 [1995] [explaining, under common law, counsel was "only entitled to a lien upon judgment, but" Judiciary Law § 475 extended the lien "upon the client's cause of action as well"]; see also Banque Indosuez v Sopwith Holding Corp., 98 NY2d 34, 37-39 [2002] [explaining that section 475 of the judiciary law governs an attorney's charging lien in New York state and discussing the common law history of such lien]).

Thus, while movant asks the court for such a lien, it is black letter law that the Court's role is not to grant one, but to "determine and enforce the lien" (Judiciary Law § 475). A hearing is ordinarily required to determine the reasonable value of services rendered in support of a charging lien (see Raff & Becker LLP v Kaiser Saurborn & Mair, P.C., 160 AD3d 479, 479 [1st Dept 2018] [remanding for a hearing on reasonableness of attorneys' fees in support of a charging lien]). Further, there can be no enforcement unless there are "proceeds from the litigation upon which the lien can affix" (Chadbourne & Parke, LLP v AB Recur Finans, 18 AD3d 222, 223 [1st Dept 2005]).

Therefore, to the extent that movant moves seeks a determination of the value of its charging lien, the Court shall hold a hearing to determine the amount of the lien as against defendant Wafaz Corp.

Finally, the Court addresses movant's application for a retaining lien against Wafaz Corp. A "retaining lien" gives an attorney the right to keep, with certain exceptions [not alleged here], all of the papers, documents and other personal property of the client which have come into the lawyer's possession in [their] professional capacity as long as those items are related to the subject representation" (Schneider, Kleinick, Weitz, Damashek & Shoot v City of New York, 302 AD2d 183, 186 [1st Dept 2002] [citation omitted]). This type of lien "generally lasts 'until [the attorney's] disbursements have been fully paid and, as a general rule, [their] fee has been determined" (id. at 187; see also American Stevedoring, Inc. v Red Hook Container Term, LLC, 134 AD3d 419 [1st Dept 2015]).

Again, the Court need not "impose" such a lien. It is founded upon "upon physical possession, and an attorney may forfeit its retaining lien by voluntarily giving away any of the items to which it may have attached" (Schneider, 302 AD2d at 186). Wafaz Corp. has failed to submit any opposition to this application and makes no demand for return of any materials in movant's possession. Therefore, no apparent reason exists to

interfere with movant's possession of any documents and other personal property of Wafaz Corp. related to movant's legal representation of said defendant in this action.

Accordingly, it is hereby

ORDERED that the motion (seq. no. 012) of non-party SIPSAS, P.C. (movant), is granted, in part, to the extent that counsel of record is permitted to withdraw and is relieved as counsel of defendant WAFAZ CORP.; it is further

ORDERED that this action is stayed for a period of 60 days from the date of entry of this order to allow defendant WAFAZ CORP. sufficient time to retain new counsel; it is further

ORDERED that defendant WAFAZ CORP. shall notify this court, in writing, on or before the end of the 60-day period as to incoming counsel's name and address; it is further

ORDERED that non-party movant, and defendant WAFAZ CORP. shall appear for a hearing to determine the amount of attorneys' fees due on the following return date: October 14, 2025, at 11:30 A.M.; it is further

ORDERED that the motion (seq. no. 012) of non-party movant, is otherwise dismissed in its entirety, including as against defendant FARWAZ TAREB, without prejudice, for lack of proper service; and it is further

ORDERED that non-party movant shall serve this order with notice of entry on all parties within ten days of such entry and

file with the Court an affidavit(s) of service and e-mail a courtesy copy of such to the clerk of Part 42.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

8/20/2025
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE