

**Philip F. Alba, P.C. v Jattan**

2025 NY Slip Op 33488(U)

September 16, 2025

Supreme Court, Kings County

Docket Number: Index No. 507470/2017

Judge: Reginald A. Boddie

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At an IAS Term Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 16th day of September 2025.

P R E S E N T:  
Honorable Reginald A. Boddie  
Justice, Supreme Court

-----X  
PHILIP F. ALBA, P.C.,

Index No. 507470/2017

Plaintiff,

**Trial Decision  
and Order**

-against-

SAMUEL JATTAN,

Defendant.  
-----X

The within matter involving a dispute concerning attorneys' fees in the amount of \$167,994.30 was tried before me at a bench trial on September 8 and 9, 2025. The case was commenced by summons and complaint filed on April 17, 2017, in which Plaintiff asserted three causes of action, breach of contract, quantum meruit and account stated, on the grounds of Defendant's alleged failure to pay attorneys' fees for legal services rendered. After an initial default and a Judgment entered on August 25, 2017, the Judgment was vacated by Stipulation dated December 6, 2017. Defendant filed an answer with Counterclaims, alleging fraud, breach of contract and legal malpractice on December 8, 2017. Plaintiff filed a reply to the counterclaims on December 18, 2017 and March 23, 2018. On January 1, 2019, Plaintiff moved for summary judgment. The motion was granted, in part, on September 12, 2019, whereby Defendant's counterclaims alleging fraud and malpractice were dismissed, and dismissal was denied as to the counterclaim for breach of contract.

By motion filed on April 14, 2021, Plaintiff moved to compel Defendant to provide a bill of particulars regarding the remaining breach of contract counterclaim against Plaintiff, or in the alternative, to strike the counterclaim or preclude Plaintiff from presenting evidence at trial. On May 5, 2021, the Court (Knipel, J) issued an order directing Defendant to provide a bill of particulars by June 4, 2021, and granting preclusion from offering evidence without need for a further motion in the event of noncompliance. On January 20, 2022, Defendant's counterclaim was dismissed for failure to comply with the Order.

At trial, Plaintiff moved in limine to preclude Defendant from offering any evidence pursuant to the prior order of preclusion. Defendant opposed the motion. The Court noted it would take notice of the order but would, nonetheless, hear Defendant's contentions, if any, to preserve the record.

On direct examination, Linda Alba testified that her father, Philip F. Alba, Esq., currently deceased, is the founder of Philip F. Alba, P.C. (the Firm), that she has been an attorney with the Firm since 1992, and that she has worked with the Firm in various capacities. She remains at the Firm today. Alba stated she took over the bookkeeping aspects of the firm in 2007 or 2008, and also performed legal work. According to Alba, the Firm is a small family business. She also stated she is fully familiar with the firm's billing procedures and practices, as well as the work the Firm did for Defendant.

Alba testified that Defendant, who also had a prior relationship with the Firm, retained the Firm on October 30, 2010, to represent him as Trustee of the 1992 David Jattan Family Trust (his father's trust) in proceedings to compel Selwyn Jattan, a co-Trustee and Defendant's brother, to pay the balance of a promissory note signed by him to David Jattan in the amount of \$75,000. The relevant retainer agreement was signed by Defendant personally and admitted as Exhibit 1. The

document provides “I agree to pay you a Retainer in the sum of \$7,500 to be credited against any recovery made on my behalf in these proceedings, and any other sums that may be paid by me thereafter.” The retainer agreement also detailed the fees for the services as follows: \$400 hourly for Philip Alba; \$325 hourly for associates; \$145 hourly for paralegals and \$84.50 hourly for clerical.

On October 30, 2010, Defendant signed a second retainer hiring the Firm to represent his real property interests related to the Estate of Lincoln Jattan, his brother, after papers were served upon him by taping to his door. For this matter, he also agreed to pay a deposit of \$7,500, although he paid only one payment of \$7,500 for both retainers (Exhibit 3). The fees for the services were the same as specified in Exhibit 1. This retainer was admitted as Exhibit 2.

Alba next detailed how the billing records of the Firm are recorded, kept and maintained in the ordinary course of business of the Firm, and are made contemporaneously with the time the activities are performed, and that it is the regular practice of the firm to record such activity and provide the clients the bills either every month or every two months. She stated that these procedures were also followed as to the Defendant and none of his Statements were returned as undelivered. The billing details for October 20, 2010 through November 30, 2010 were admitted as Exhibit 3. The billing details for December 2, 2010 through June 20, 2011 were admitted as Exhibit 4. The Statements demanding payment were admitted as Exhibit 5. Alba testified that despite continued demands being made for payment, Defendant failed to make any additional payments except a check in the amount of \$3,000 on May 18, 2011 (Exhibit 6), and \$120 cash on June 20, 2011 (receipt, Exhibit 7). Defendant was also provided a Notice of the Right to Arbitrate (Exhibit 10), which he did not exercise. Plaintiff contended the amount of \$167,994.30 remains due and owing

On cross-examination, Plaintiff denied there was ever an agreement that the money would be paid by the estates and not by the Defendant. Plaintiff however admitted there was an agreement to delay payment until the estates received the funds, but that Defendant and his brother crafted a way to take the money for themselves and exclude their attorneys, including Plaintiff, from receiving payment, as evidenced by the Stipulation of Settlement in the *Matter of Lincoln Jattan*, Exhibit 13, paragraph 5, which specifies “Neither Samuel nor Selwyn’s attorneys will hold any net sales proceeds or other estate funds in escrow, and all net proceeds will be immediately distributed to Samuel and Selwyn at closing.”

Defendant, Samuel Jattan, testified that he visited the office of Plaintiff to retain legal services in 2010 with his friend Yvonne Sharpe. Mr. Alba asked him to return with additional documents which he returned with a month later. He admitted executing the retainer agreement and paying a deposit in the amount of \$7,500 from personal funds. Although both retainer agreements, contained the same date, he testified that Exhibit 1 was signed after Exhibit 2. He did not recall whether he paid any additional deposit after signing Exhibit 1. Jattan denied he ever saw the detailed services list admitted as Exhibit 4, and that he ever met with Linda Alba previously.

Jattan stated he could not recall when he learned of the outstanding bills, but admitted that he had discussed them with Philip Alba and disputed the amount as excessive. He refused to admit or deny the regular mailing of Statements to him, indicating only that mail was often stolen from “mailboxes nearby.” He was unable to state that any of his mail was ever stolen. He stated that Plaintiff agreed to be paid only from proceeds of the estate, and admitted a letter dated January 4, 2011 (Exhibit A). He acknowledged on cross examination that he had eventually terminated the Firm just prior to the money arriving into the estate, but denied that he and Selwyn orchestrated the plan to discharge their attorneys at the same time to deny them payment, as evidenced in the

Stipulation of Settlement referred to above. When further questioned about this tactic, he stated that “the Firm already received enough payment and is entitled to nothing further,” despite all the work allegedly performed.

### Discussion

To establish a breach of contract claim, as here, the plaintiff must allege that 1) a contract exists; 2) plaintiff performed in accordance with the contract; 3) defendant breached its contractual obligations; and 4) defendant’s breach resulted in damages (*34-06 73, LLC v Seneca Insurance Company*, 39 NY3d 44 [2022]; *Friends of Wickers Creek Archeological Site, Inc, v Landing on the Water at Dobbs Ferry Homeowners Association, Inc.*, 198 AD3d 726 [2d Dept 2021]).

The prima facie elements of an account stated are 1) evidence of an account (a bill), based on a prior transaction between the parties, which was presented by one party to the other, 2) the recipient accepted the account (bill) as correct, either expressly or implicitly by failing to object to the amount stated therein within a reasonable timeframe, and 3) evidence the recipient had promised to pay the amount stated (*Santander Bank, N.A. v Rubin Trading Corporation*, 68 Misc. 3d 1013 [Kings Supreme 2020]).

As the Second Department previously articulated, “An essential element of an account stated is that the parties came to an agreement with respect to the amount due regarding the amount due (*Episcopal Health Services, Inc. v POM Recoveries, Inc.*, 138 AD3d 917 [2d Dept 2016] [citations omitted]). Further, mere silence and failure to object alone cannot be construed as an agreement to the correctness of account. However, the factual situation regarding the transactions absent objection made within a reasonable time may permit the finding of an account stated (*id.*).

After hearing and weighing the evidence adduced at trial here, the Court finds the evidence establishes breach of contract, in that Plaintiff and Defendant entered into two contracts, namely,

the retainer agreements, that Plaintiff performed in accordance with the Agreements, that Defendant breached the agreements by not making full payment, and that Plaintiff suffered damages in the form of unpaid attorneys' fees as a result.

In light of the Court's finding of the existence of two valid contracts, the account stated claim is dismissed as duplicative. In the alternative, the account stated claim is denied on the ground Defendant objected to the bills as excessive, and accordingly there was no agreement that he would pay the amounts as stated in the bills (*Episcopal Health Services, Inc. v POM Recoveries, Inc.*, 138 AD3d 917 [2d Dept 2016]). Upon review, the Court also finds the bills to be excessive.

Courts have generally held, "When the terms of a written contract are clear and unambiguous, the intent of the Parties must be found within the four corners of the contract, giving practical interpretation to the language employed and the reasonable expectations, thus a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" *RMP Capital Corp. v Victory Jet, LLC*, 193 AD3d 836 [2<sup>nd</sup> Dept 2016], quoting *Westchester County Corr. Officers Benevolent Assn., Inc. v County of Westchester*, 99 AD3d 998 [2<sup>nd</sup> Dept 2012]). Here, the subject Agreements unambiguously provided for payment upon demand, although Linda Alba credibly testified that the Firm was willing to await payment until the estates received the anticipated funds. However, Defendant and his brother frustrated those efforts by redirecting the funds to themselves as evidenced by the Stipulation of Settlement (Exhibit 13). Accordingly, they should not be rewarded for same.

Nevertheless, the award of attorneys' fees must be reasonable and not excessive (*RMP Capital Corp. v Victory Jet, LLC*, 193 AD3d 836 [2<sup>nd</sup> Dept 2016]). The fee should represent the reasonable value of the services rendered (*id.*).

The factors to be considered in assessing the reasonableness of attorneys' fees include the following:

- 1) the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented;
- 2) the lawyer's experience, ability, and reputation;
- 3) the amount involved and benefit resulting to the client from the services;
- 4) the customary fee charged for similar services;
- 5) the contingency or certainty of compensation;
- 6) the results obtained; and
- 7) the responsibility involved"

(*RMP Capital Corp. v Victory Jet, LLC*, 193 AD3d 836 [2<sup>nd</sup> Dept 2016][citations and quotations omitted]).

Moreover, the determination must be based upon a demonstration of the hours reasonably expended on the litigation and what is reasonable compensation for the attorney based upon the prevailing rate for similar work in the community. The determination of a reasonable attorney's fee is left to the sound discretion of the trial court (*id.*).

Further, pursuant to CPLR 213, an action for attorneys' fees must be commenced within six years from accrual of the claim. Therefore, here all outstanding balances incurred prior to April 17, 2011 are excluded pursuant to the six year statute of limitations, for a total deduction in the amount of \$82,836.24, leaving a balance of \$85,158.12 (*Stewart v Stuart*, 262 AD2d 396 [2d Dept 1999]).

Review of the remaining charges demonstrative excessive billing (see Exhibit 4). For example, on April 17, 2011, Plaintiff billed one hour or \$400 to review a letter and 50 minutes or \$200 to dictate a three-page letter. Telephone conferences were typically billed at a minimum

of fifteen minutes, regardless of the length of the call. On May 3, 2011, dictation of a single affidavit was billed at 2 hours or \$800.00. The same day, two conferences with the client were billed; one at 4 hours or \$975.00, and the second at 1.5 hours or \$600. On May 27, 2021, a conference to discuss status of the litigation was charged at 4 hours or \$1,300.

### Conclusion

Accordingly, the Court finds that the bills were permeated with excessive billing. Further, no credentials were provided to this court relative to Philip Alba or any of the associates with which to assess their credentials and experience. Accordingly, the Court finds Plaintiff is entitled to an award of attorneys' fees in the amount of \$50,000, plus interest from April 17, 2017. Plaintiff shall submit a proposed judgment accordingly on notice.

ENTER:



Hon. Reginald A. Boddie  
Justice, Supreme Court

HON. REGINALD A. BODDIE  
J.S.C.