

**Davidoff Hutcher & Citron LLP v Giuliani**

2025 NY Slip Op 33496(U)

September 16, 2025

Supreme Court, New York County

Docket Number: Index No. 654558/2023

Judge: Arthur F. Engoron

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARTHUR F. ENGORON PART 37**

*Justice*

-----X

DAVIDOFF HUTCHER & CITRON LLP, ROBERT J.  
COSTELLO,

Plaintiffs,

- v -

RUDOLPH W. GIULIANI,

Defendant.

-----X

INDEX NO. 654558/2023

MOTION DATE 05/06/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103,

were read on this motion for

SUMMARY JUDGMENT

Upon the foregoing documents, and for the reasons stated hereinbelow, plaintiff Davidoff Hutcher & Citron LLP’s motion for summary judgment is granted, and the cross-motion of defendant, Rudolph W. Giuliani, to lift the CPLR 3214(b) automatic stay of disclosure is denied.

Background

From approximately November 2019 through July 2023, at all of which times plaintiff Robert Costello, Esq., was a partner of plaintiff Davidoff Hutcher & Citron LLP (“DHC”), Mr. Costello performed legal work for defendant. Plaintiffs are suing defendant for breach of contract, account stated, and quantum meruit. NYSCEF Doc. No. 61.

Plaintiff DHC, only, now moves, pursuant to CPLR 3212, for summary judgment in the amount of \$1,360,196.10 on its breach of contract and account stated claims; or, alternatively, for summary judgment on liability only on DHC’s breach of contract claim. Plaintiff also seeks summary judgment on liability on its claim for contractual attorney’s fees for making the instant motion. NYSCEF Doc. No. 59. Defendant cross-moves to lift the stay of disclosure that CPLR 3214(b) automatically imposes. NYSCEF Doc. No. 81.

In support of DHC’s motion, Raul Batista, DHC’s accounts receivable manager, submits an affidavit explaining plaintiff’s arithmetic: DHC, in its regular course of business, sent defendant bills totaling \$1,574,196.10; defendant initially paid \$194,000, leaving a balance of \$1,380,196.10; at around the time plaintiff commenced suit, defendant paid another \$20,000 (two checks of \$10,000 each), leaving a balance of \$1,360,196.10, the amount for which DHC is seeking. NYSCEF Doc. Nos. 63, 64, 65, 66.

In further support of the motion, Mr. Costello, formerly a DHC partner, submits an affidavit explaining, in detail, that: he did all DHC's work for defendant; that such work was in civil, criminal, and administrative proceedings; and that the subject retainer agreement was on his personal letterhead, but that all of his work was on behalf DHC. He states that defendant never objected to Mr. Costello's work being on behalf of DHC and that defendant paid \$194,000 directly to DHC for the subject legal work. Mr. Costello states that every invoice was itemized as to who did the work; that attorney's billing rates; what services that attorney rendered; the dates thereof; the amount of time spent; and any out-of-pocket expenses. NYSCEF Doc. No. 67.

In opposition defendant argues that he is entitled to further discovery and that the motion should be denied because, inter alia: he never signed an engagement letter, retainer agreement, or contract with DHC; there was no assignment of claims from Mr. Costello to DHC; and, despite a retainer agreement with Mr. Costello saying he would be billed on a monthly basis, defendant "did not receive any bills or invoices on a monthly basis," and "[a]t a minimum, [he] never received the March 15, 2023 invoice" for \$679,272.50. NYSCEF Doc. No. 83.

### Discussion

Account stated causes of action are a powerful tool in collection cases, including collection cases by law firms to recover unpaid fees from clients. "An account stated claim is an independent cause of action that is not duplicative of a claim for breach of contract," and courts have repeatedly granted summary judgment for account stated despite the existence, or not, of "a retainer agreement entered into by the parties that could have been the basis for a breach of contract claim." Aronson Mayefsky & Sloan, LLP v Praeger, 228 AD3d 182, 185 (1st Dept 2024) citing Mintz & Gold LLP v Daibes, 125 AD3d 488 (1st Dept 2015); Berkman Bottger & Rodd, LLP v Moriarty, 58 AD3d 539 (1st Dept 2009); Morrison Cohen Singer & Weinstein, LLP v Waters, 13 AD3d 51 (1st Dept 2004); Marchi Jaffe Cohen Crystal Rosner & Katz v All-Star Video Corp., 107 AD2d 597 (1st Dept 1985); Glazer v Falberg, 85 AD2d 938 (1st Dept 1981).

### Account stated

has long been defined as an 'account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance.' It 'is an agreement, independent of the underlying agreement, regarding the amount due on past transactions.' A 'defendant's receipt and retention of the plaintiff law firm's invoices seeking payment for professional services rendered, without objection within a reasonable time, [gives] rise to an actionable account stated, thereby entitling the plaintiff to summary judgment in its favor.' When a law firm is asserting an account stated claim, it 'does not have to establish the reasonableness of its fee' because the client's act of retaining the invoice without objection will be considered acquiescence as to its correctness.

Aronson Mayefsky & Sloan, LLP v Praeger, 228 AD3d 182, 184-85 (1st Dept 2024) (internal citations omitted).

Whether or not there was a retainer agreement is immaterial to an account stated cause of action. Anderson Kill, P.C. v Bd. of Managers of Honto 88 Condominium, 192 AD3d 551, 551 (1st Dept 2021) (“Defendant’s argument that the retainer agreement was not valid ... is irrelevant to the account stated claims.”).

Here, as in Davidoff Hutcher & Citron LLP v Bannon, 2023 NY Slip Op 32291[U], 3 (Sup Ct, NY County 2023) (Bluth, J.), DHC has met its prima facie burden on its account stated claim, in part, because Mr. Batista’s affidavit included the relevant invoices and asserted that the invoices were mailed by plaintiff’s accounting department to defendant as part of DHC’s regular course of business.

Defendant’s multiple payments directly to DHC further buttress plaintiffs’ claims. Additional support comes from the uncontroverted claim that when, in May of 2023, Mr. Costello notified defendant via text message that he owed over \$1,000,000 in legal fees, instead of claiming that he did not receive bills or questioning the amount, defendant merely replied, “Any news?” NYSCEF Doc. No. 70.

Defendant’s claim that he never received DHC’s bills fails for two reasons. First, he provides no details to support this denial, such as his mailing address and how often and when he checks his mail. Second, and more tellingly, one of his checks references his DHC file number (“14856-001M”) and one references an invoice number (“304250”). NYSCEF Doc. No. 66 at 3.

Defendant’s reliance on the argument that DHC did not send bills monthly and, in one instance included some 18 months of work, for the period from September 2021 to March 2023, on one \$679,272.50 invoice is misplaced. Aside from the fact that this clearly did not prejudice defendant (and essentially is intended to provide protection for DHC), and so could be considered de minimis and/or ancillary, it is not a defense to plaintiffs’ account stated claim. See Weil v Newton, 211 AD3d 516, 517 (1st Dept 2022) (“Defendant’s argument that plaintiff did not provide invoices consistently or contemporaneously with the services is insufficient to defeat summary judgment based on the invoices, summary bill, and text message in the record.”).

Accordingly, defendant has failed to raise a material issue of fact in opposition and so the Court should grant DHC’s motion.

DHC can prevail here whether viewed as the contracting party or whether viewed as a third-party beneficiary of a contract between Costello and defendant. “A third party seeking to recover on a contract must establish that a binding contract exists between other parties; that this contract was intended for his benefit; and that the benefit to him was direct rather than incidental.”

Internationale Nederlanden (U.S.) Capital Corp. v Bankers Trust Co., 261 AD2d 117, 123 (1st Dept 1999). Here, Mr. Costello’s work for defendant was clearly “intended” to benefit DHC, which sent all of the bills and received all of the payments. See White Plains Plaza Realty, LLC v Cappelli Enterprises, Inc., 108 AD3d 634, 637 (2d Dept 2013) (“Where performance is

rendered directly to a third party, it is presumed that the third party is an intended beneficiary of the contract.”).

Finally, having served 98 document requests and 50 interrogatories, defendant vociferously argues that he is entitled to disclosure before having to respond to the instant motion. However, disclosure is not automatic, and a court should lift the automatic disclosure stay only if the opponent can point to specific evidence that is material and only in the movant’s control. “A grant of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence.” Bailey v New York City Tr. Auth., 270 AD2d 156, 157 (1st Dept 2000) (citations omitted); West-Park Presbyterian Church of New York City v Center at West Park, Inc., 232 AD3d 521, 522 (1st Dept 2024) (“[M]ere hope that somehow [a party] will uncover evidence that will prove [its] case, provide[s] no basis for postponing a decision on a summary judgment motion.”).

Here, defendant has failed to state what evidence in plaintiffs’ possession and control would aid in defense of DHC’s motion, nor do defendant’s affirmative defenses contain factual assertions that would defeat summary judgment. Thus, defendant’s cross-motion should be denied.

Conclusion

The motion for summary judgment is granted to the extent that the clerk is hereby directed to enter judgment in favor of plaintiff Davidoff, Hutcher & Citron and against defendant, Rudolf W. Giuliani, in the amount of \$1,360,196.10, plus interest from October 18, 2023 (one month after plaintiffs commenced suit) on plaintiffs’ account stated claim, and summary judgment on DHC’s claim for legal fees for making the instant motion. Plaintiffs’ claim for breach of contract is denied without prejudice as success would result in a double recovery.

Defendant’s cross motion to lift the stay of discovery is denied as without merit and moot.

It is further ordered that plaintiff’s request, pursuant to the subject retainer agreement, for prevailing party attorney’s fees is hereby severed, and plaintiff may obtain an inquest into said fees by presenting the Clerk with a Note of Issue with Notice of Inquest, a copy of this Decision and Order, and any necessary fees. Plaintiff is further directed to contact chambers at SFC-Part37@nycourts.gov, within 15 days of filing the Note of Issue, to schedule the inquest.

  
**HON. ARTHUR F. ENGORON**  
ARTHUR F. ENGORON, J.S.C.

9/16/2025  
DATE

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"/>	GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/>	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE