

Landy Wolf, PLLC v Sanko

2025 NY Slip Op 33690(U)

September 27, 2025

Supreme Court, New York County

Docket Number: Index No. 651419/2024

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M

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LANDY WOLF, PLLC

Plaintiff,

- v -

ANTON SANKO,

Defendant.

INDEX NO. 651419/2024

MOTION DATE 06/18/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

-----X
HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 were read on this motion to/for DISMISSAL

Upon the foregoing documents, it is

Upon review of the motion by Plaintiff Landy Wolf PLLC (“LW”) to dismiss the counterclaims asserted by Defendant Anton Sanko (“Sanko”) pursuant to CPLR §§ 3211(a)(1), (a)(5), and (a)(7), the Court issues the following decision.

The Plaintiff, LW (or its predecessor Steven Landy & Associates, PLLC), commenced this action seeking to recover \$268,084.33 in unpaid legal fees owed by its former client, Sanko. LW represented Sanko in a complex multi-party action concerning the partition and sale of property located at 801-803 Greenwich Street (the “Property”). LW ceased representing Sanko on January 28, 2020.

Sanko filed his Answer and Counterclaims in this action on May 7, 2024. Sanko asserts counterclaims against LW for Breach of Fiduciary Duty, Unjust Enrichment, and Breach of Contract, arguing that the fees sought by LW arose from representation “marred by unwaivable conflicts of interest.” The core of Sanko’s defense and counterclaims rests upon LW’s representation of Sanko, Sanko’s ex-wife Mary “Tai” Burnette, and Craig Abramowitz (the lender) simultaneously. Specifically, Sanko alleges:

1. LW acted as counsel for Sanko (the borrower), Burnette, and Abramowitz (the lender) in connection with multiple mortgage loans secured by Sanko's interest in the Property, beginning with the \$400,000.00 loan in 2014 and subsequent extensions in 2016 (consolidated amount \$600,000.00) and 2018 (consolidated amount \$1,080,500.00).
2. LW failed to make full disclosures to Sanko regarding its relationship with Abramowitz and did not seek or obtain a waiver of conflicts prior to the simultaneous representation.
3. In July 2019, while allegedly representing both Sanko and Abramowitz, LW wrote a demand letter to Sanko on Abramowitz's behalf.
4. LW engaged in improper billing practices, including systematic overbilling and seeking recovery for services rendered solely on behalf of Burnette or Abramowitz.

Sanko asserts that simultaneous representation of a lender and a borrower is a non-waivable conflict under New York State Bar Association Ethics Opinion 952. LW moves to dismiss these counterclaims, arguing they are time-barred, duplicative of legal malpractice, or fail to meet heightened pleading standards. LW further contends that Sanko executed Conflict Waivers that refute the claims.

In deciding a motion to dismiss pursuant to CPLR 3211(a)(7), the court must assume that the facts as alleged in the complaint are true, accord the plaintiff the benefit of every favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]). On a motion to dismiss based on the claim being barred by the statute of limitations, a defendant bears the initial burden of demonstrating that the time in which to sue has expired (*see Lebedev v Blavatnik*, 144 AD3d 24, 25 [1st Dept 2016]). To meet its burden, the defendant must first establish when the plaintiff's cause of action accrued (*Id.*). Dismissal based on documentary evidence (CPLR 3211(a)(1)) is warranted only if the evidence conclusively establishes a defense as a matter of law.

LW correctly asserts that claims sounding in legal malpractice, regardless of nomenclature (contract or tort), are subject to a three-year Statute of Limitations (SOL), pursuant to CPLR § 214(6). The representation ended on January 28, 2020,

meaning the SOL for professional negligence and/or legal malpractice expired on January 28, 2023. Since Sanko filed his counterclaims on May 7, 2024, any claims seeking affirmative damages or judgment beyond the amount demanded by LW are clearly time-barred.

However, Sanko correctly invokes CPLR § 203(d), which permits a defense or counterclaim arising from the same transactions or occurrences upon which the complaint depends to be maintained as an offset, even if time-barred as an independent action. LW's claims for breach of contract, accounts stated, and quantum meruit all stem from the professional relationship and the billing practices challenged by Sanko. Therefore, LW's motion to dismiss based on the Statute of Limitations is granted only to the extent that Sanko's counterclaims seek affirmative monetary relief (i.e., damages exceeding \$268,084.33, the amount LW demands). The motion is denied as to the remainder of the claims, which are preserved as defenses and offsets against LW's demand for unpaid fees, pursuant to CPLR § 203(d).

A similar result applies to the breach of fiduciary duty counterclaim. LW argues that the BFD claim fails due to lack of particularity (CPLR 3016(b)) and because documentary evidence (Conflict Waivers) refutes the claim. The BFD claim alleges that LW breached its duty by failing to provide services "untainted by divided loyalty" through the simultaneous representation of Sanko (borrower), Burnette, and Abramowitz (lender). Sanko's core argument is that the alleged ethical violation (simultaneous adverse representation) mandates a forfeiture of fees, independent of proving traditional legal malpractice damages. LW concedes that allegations concerning misconduct, billing practices, and divided loyalty, if proven, are a basis for asserting a counterclaim (or defense) related to fee entitlement. This issue of whether the alleged misconduct warrants a forfeiture of fees paid or owed must be resolved through fact-finding.

LW claims Sanko executed Conflict Waivers. Sanko explicitly denies obtaining or receiving a conflict waiver, stating that LW failed to make full disclosures. Furthermore, Sanko argues that, pursuant to New York State Bar Association Ethics Opinion 952, the specific conflict of simultaneously representing a lender and a borrower is non-waivable. This substantial dispute over the existence, sufficiency, and legal validity of any alleged waiver precludes dismissal under CPLR 3211(a)(1) or (a)(7).


Similarly, LW argues the Unjust Enrichment (UE) claim is barred because LW cannot be enriched by fees Sanko allegedly did not pay. This unjust

enrichment claim seeks the disgorgement of fees already paid (believed to be over \$100,000.00). The claim is based on the allegation that LW billed Sanko for services rendered to Burnette and Abramowitz, thereby unjustly retaining money. Sanko alleges that LW concealed the conflicted loyalties and improper dual billing practices. LW's receipt of fees that allegedly violated fundamental principles of justice, equity and good conscience provides a basis for a UE claim. The alleged concealment raises a question of fact regarding whether payments were made and/or agreed upon without full knowledge and disclosure of all of the relevant facts concerning the conflicted representations.

Finally, LW argues that the breach of contract counterclaim fails because Sanko neither pleads the contract provisions breached nor shows performance of his own obligations to pay fee. The Court disagrees. Sanko's verified answer denies a written retainer agreement exists. Sanko explicitly pleads the Breach of Contract counterclaim in the alternative, relying on the same contract (oral or implied) LW uses to sue for fees. If LW can successfully sue Sanko for breach of contract, Sanko must logically be allowed to assert that LW breached the same agreement (e.g., through systematic overbilling and billing for third parties) as a defensive offset.

The Court finds that Sanko's counterclaims survive as defenses and offsets pursuant to CPLR § 203(d) due to pervasive factual disputes concerning the ethical validity of LW's representation, the existence of a waivable conflict (Ethics Opinion 952), the scope of services rendered, and the legitimacy of the fees billed. Therefore, it is hereby ordered that the motion to dismiss the counterclaims is granted only to the extent that the counterclaims asserted by the defendant Anton Sanko seek affirmative monetary relief in excess of the amount demanded in the Complaint; and it is further ordered that the plaintiff's motion is denied in all other respects, and the defendant's counterclaims are retained solely as defenses and offsets against the amounts sought by the Plaintiff; and it is further ordered that all parties are directed to proceed with disclosure.

9/27/2025
DATE


NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

REFERENCE

CHECK IF APPROPRIATE:
651419/2024 LANDY WOLF, PLLC vs. SANKO, ANTON
Motion No. 001