

**Leech Tishman Robinson Brog, PLLC v Hakimian**

2025 NY Slip Op 34170(U)

October 28, 2025

Supreme Court, New York County

Docket Number: Index No. 160693/2024

Judge: James G. Clynes

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

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LEECH TISHMAN ROBINSON BROG, PLLC,

Plaintiff,

- v -

MONIKA HAKIMIAN,

Defendant.

-----X

INDEX NO. 160693/2024

MOTION DATE 03/27/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion by plaintiff LEECH TISHMAN ROBINSON BROG, PLLC, "pursuant to CPLR 3016 (f) and 3212 (e), for partial summary judgment granting the Second Cause of Action for an Account Stated in the amount of \$7,810.23 plus interest from February 15, 2020, together with costs and disbursements," and "pursuant to CPLR 3013 and 3211 (b), dismissing Defendant's Affirmative Defenses," is decided as follows.

Plaintiff seeks recovery for unpaid invoices for legal fees and disbursements in the amount of \$7,810.23 owed by Defendant to law firm Robinson Brog, P.C. (Robinson Brog) for legal services rendered and disbursements made from June 2019 to 2021 pursuant to a June 2019 legal services agreement between Robinson Brog and Defendant. Plaintiff contends that on May 16, 2022, it purchased certain assets of Robinson Brog, including Robinson Brog's accounts receivable which included the amount owed by Defendant to Robinson Brog, and that Plaintiff is therefore entitled to recover the amount sought. Plaintiff's submission does not include the 2019 legal services agreement between Robinson Brog and the Defendant and does not include the May 2022 asset purchase agreement between plaintiff and Robinson Brog. Attached to the Verified Complaint are copies of Robinson Brog invoices addressed to Defendant and relating to file number 101479 dated April 24, 2024 in the amount \$7,810.23 and prior invoices dated June 11, 2019 in the amount of \$129.65; July 9, 2019 in the amount of \$330.66; August 13, 2019 in the amount of \$3,917.53; September 11, 2019 in the amount of \$1,614.23; October 17, 2019 in the

amount of \$1,790.30; November 19, 2019 in the amount of \$9.28; December 11, 2019 in the amount of \$10.44; and January 16, 2020 in the amount of \$8.12.

**Plaintiff's motion for Partial Summary Judgment based upon the account stated claim**

Plaintiff contends that it is entitled to summary judgment on its Second Cause of Action for Account Stated in the amount of \$7,810.23 plus interest from February 15, 2020 with costs and disbursements pursuant to a legal services agreement entered into between Robinson Brog and Defendant. Plaintiff's submission includes an attorney affirmation by Yosef F. Weintraub, Esq., and exhibits, including the Verified Complaint, which was verified by a partner from the Plaintiff law firm. Plaintiff contends that it is entitled to summary judgment on its claim of account stated because defendant's answer (NYSCEF DOC NO 4) does not address and therefore admits by omission all of the allegations set forth in the complaint relating to Plaintiff's Second Cause of Action for Account Stated. In Opposition to the motion, Defendant, who is unrepresented, alleges that she was promised by her Robinson Brog attorney that her last credit card payment would be the last payment and that the account was paid in full (NYSCEF DOC NO 18). Defendant attaches an October 19, 2021 email from a partner at Robinson Brog stating that the case was closed, without mention of any outstanding unpaid invoices. (NYSCEF DOC NO 19).

A movant seeking summary judgment pursuant to CPLR 3212 in its favor "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The evidentiary proof tendered must be in admissible form (*see Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067 [1979]). "This burden is a heavy one and on a motion for summary judgment, 'facts must be viewed in the light most favorable to the non-moving party' " (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013] [citation omitted]), "and every available inference must be drawn in the [non-moving party's] favor" (*De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]). Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If the existence of an issue of fact is even arguable, summary judgment must be denied (*Phillips v Kantor & Co.*, 31 NY2d 307, 311 [1972]; *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572, 573 [2d Dept 1989]). Indeed, "[w]here different conclusions can reasonably be drawn from the evidence, the motion should be denied" (*Sommer v*

*Federal Signal Corp.*, 79 NY2d 540, 555 [1992]; accord *Jaffe v Davis*, 214 AD2d 330, 330 [1st Dept 1995] [denial required where conflicting inferences may be drawn]).

A party suing on an Account Stated must establish that it prepared and sent invoices to defendant in the ordinary course of its business and that those invoices were received and retained by defendant without objection made in a reasonable period of time. (See *Morrison Cohen Singer & Weinstein, LLP v Brophy*, 19 AD3d 161, 161-162 [1st Dept 2005]; *EPF Intl. Ltd. v Lacy Fashions Inc.* 170 A.D.3d [1st Dept 2019]; *575 LD Exch., Inc. v Orion Telcoms. Corp.*, 302 AD2d 565, 565 [2d Dept 2003])

Plaintiff's submission fails to establish prima facie entitlement to summary judgment under the account stated claim because it does not establish that the invoices attached to the compliant were prepared and mailed to Defendant in the ordinary course of business and that Defendant did not object to the invoices within a reasonable period of time. Plaintiff's complaint merely states that Robinson Brog "rendered invoices" for legal services and disbursements and that Defendant failed to object to any of the accounts stated and acknowledged her obligation copies of the Statement of Account and Robinson Brog's unpaid invoice were sent to defendant, were retained and defendant did not object (NYSCEF DOC NO 1). Plaintiff's submission does not include a copy of the retainer agreement between the Defendant and Robinson Brog and does not include any evidence that the allegedly unpaid invoices were sent to defendant in the ordinary course of business and were unchallenged by Defendant prior to the commencement of this action.

Plaintiff's argument that it is entitled to summary judgment on its claim of account stated based upon the purported failure of the unrepresented Defendant in her Answer to deny the Complaint's allegations relating to the account stated claim also fails. The Answer of the unrepresented Defendant objects to Plaintiff's claim of account stated, when Defendant alleges "parties agreed in 2019-2020 that all matters were settled and paid in full. I never received further invoice or statements." (NYSCEF DOC NO 2).

Plaintiff failed to establish prima facie entitlement to summary judgment in its favor on the Second Cause of Action account stated. Therefore that portion of the motion is denied.

### **Motion to Dismiss Defendants Affirmative Defense**

A party may move under CPLR 3211 (b) to dismiss one or more affirmative defenses "on the ground that a defense is not stated or has no merit." The movant "bears the burden of demonstrating that the defenses are without merit as a matter of law." (*534 E. 11th St. Hous. Dev.*

Fund Corp. v Hendrick, 90 AD3d 541, 541, 935 N.Y.S.2d 23 [1st Dept 2011].) The movant may satisfy this burden by showing that affirmative defenses "either do not apply under the factual circumstances of [the] case, or fail to state a defense." (Bank of Am., N.A. v 414 Midland Ave. Assoc., LLC, 78 AD3d 746, 748, 911 N.Y.S.2d 157 [2d Dept, 2010].) If, however, "there is any doubt as to the availability of a defense, it should not be dismissed." (Warwick v Cruz, 270 AD2d 255, 255, 704 N.Y.S.2d 849 [2d Dept 2000].)


The Answer of the unrepresented Defendant includes, in a section marked "Affirmative Defenses," the statement "Parties agreed in 2019-2020 that all matters were settled and paid in full. I never received further invoice or statement." Here, Plaintiff's submission fails to establish it is entitled to dismissal of defendant's affirmative defenses. The portion of Plaintiff's motion seeking dismissal of Defendant's Affirmative Defenses is denied. Accordingly, it is

ORDERED the motion by plaintiff LEECH TISHMAN ROBINSON BROG, PLLC for an Order granting partial summary judgment in its favor and against Defendant MONIKA HAKIMIAN on the Plaintiff's Second Cause of Action alleging Account Stated and dismissal of Defendant's Affirmative Defenses is denied; and it is further; and it is further

ORDERED that both parties are directed to appear for a Preliminary Conference in Part 39 (60 Centre Street, Room 335) at 9:30am on Wednesday, December 3, 2025.

This constitutes the Decision and Order of the Court.

10/28/2025  
DATE

  
JAMES G. CLYNES, J.S.C.

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