

Kasowitz Benson Torres LLP v Siffin

2025 NY Slip Op 34779(U)

December 11, 2025

Supreme Court, New York County

Docket Number: Index No. 158006/2023

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
NEW YORK COUNTY**

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

-----X

KASOWITZ BENSON TORRES LLP,

Plaintiff,

INDEX NO. 158006/2023

MOTION DATE 12/20/2023

MOTION SEQ. NO. 001

- v -

MARK SIFFIN, 20 TSQ LESSEE LLC, 20 TSQ SIGN LLC, 20
TSQ GROUNDSCO LLC

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 60, 61, 62, 63, 64

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

Plaintiff law firm Kasowitz LLP f/k/a Kasowitz Benson Torres LLP,¹ moves for summary judgment on its complaint seeking \$2,006,684.85 unpaid legal fees. The defendants opposed the motion. For the reasons set forth herein below, the motion is granted in part.

Plaintiff and respondents entered into a retention agreement (NYSCEF Doc. No. 18), whereby plaintiff agreed to provide legal services to the defendants and certain of their affiliates in connection with litigation concerning a property at 20 Times Square. Accordingly, plaintiff provided legal services to the defendants, for which plaintiff sent invoices to the defendants (see NYSCEF Doc. No. 19). Plaintiff contends that the defendants breached the parties' contract by failing to pay the fees and disbursements thereunder despite accepting such services without objection; that the defendants received the benefit of plaintiff's services without payment therefore; and that plaintiff's invoices were received by the defendants, and that the defendants did not object to, protest, or reject such invoices.

Prior to the determination of the instant motion, plaintiff and defendant 20 TSQ Groundco LLC settled the matter between themselves, and counsel for the remaining defendants moved to be relieved as counsel, and such motion was granted.

¹ Plaintiff filed a Notice of Change of Firm Name on July 9, 2025 (NYSCEF Doc. No. 63).

Summary Judgment

“The proponent of a summary judgment motion 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. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of any material issues of fact or where the issue is arguable (*Glick & Dolleck, Inc. v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]). “If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion” (CPLR § 3212[b]). “In considering a summary judgment motion, evidence should be analyzed in the light most favorable to the party opposing the motion” (*Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997]). “In opposing a motion for summary judgment, once a prima facie showing has been made, it is incumbent upon a defendant to come forward with matters of an evidentiary nature to demonstrate the presence of triable issues. General averments do not suffice. The defendant is required to assemble, lay bare, and reveal his proofs in order to show that his defenses are real and capable of being established upon a trial” (*Steingart Assoc., Inc. v Sandler*, 28 AD2d 801, 802-03 [3d Dept 1967]). “Where competent evidence is presented by a defendant in support of a motion for summary judgment, the burden shifts to plaintiff to produce proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*IDX Capital, LLC v Phoenix Partners Group*, 83 AD3d 569, 570 [1st Dept 2011], *affd sub nom. IDX Capital, LLC v Phoenix Partners Group LLC*, 19 NY3d 850 [2012]).

The plaintiff has made a prima facie showing of entitlement to judgment as a matter of law. As set forth in the affidavit of Gavin D. Schryver, Esq. (NYSCEF Doc. No. 13), plaintiff Kasowitz performed legal services on behalf of the defendants in connection with litigation concerning the property located at 20 Times Square. Such services were performed pursuant to a written retainer agreement (the “retention agreement”) (*Id.*). The Schryver affidavit further states that Kasowitz issued thirty detailed invoices to the defendants for services rendered and related expenses; that the defendants received, retained, and accepted all of the invoices; that at no time did defendants instruct Kasowitz to stop working on their behalf; Kasowitz made multiple demands for payment and, in response, the defendants made partial payments; that Kasowitz made additional demands for payment, informing Siffin that it would withdraw as counsel if the outstanding balances were not paid, and that Siffin – on behalf of the defendants – promised to make additional payments yet failed to do so (*Id.* at ¶¶ 8-17). Accordingly, plaintiff has demonstrated that they had a contract with the defendants, that they performed under the contract, and that the defendants breached the contract by failing to pay them. Additionally, plaintiff has established an account stated in that the defendants received and retained the bills and rather than object to them, promised to make additional payments on the bills. Accordingly, the burden shifts to the defendants to establish admissible issues of fact which require a trial of the action.

20 TSQ Groundco LLC

Subsequent to the filing of the instant motion and the opposition thereto, plaintiff and defendant 20 TSQ Groundco LLC entered into a Stipulation of Discontinuance Without prejudice as to defendant 20 TSQ Groundco LLC only (NYSCEF Doc. No. 44). Accordingly, the motion is denied as to defendant 20 TSQ Groundco LLC. As part of the settlement, 20 TSQ Groundco LLC agreed to pay plaintiff \$850,000 (see NYSCEF Doc. No. 51). In its reply memorandum of law, the plaintiff acknowledges that any judgment against the remaining defendants should be reduced by the \$850,000 agreed to be paid by 20 TSQ Groundco LLC.

20 TSQ Lessee LLC and 20 TSQ Sign LLC

Pursuant to a decision and order dated July 12, 2024 (NYSCEF Doc. No. 60), the court granted the Order to Show Cause of Andrew Bluestone, Esq. to be relieved as counsel for defendants Mark Siffin, 20 TSQ Lessee LLC, and 20 TSQ Sign LLC. As set forth in said order, “if the corporate defendants do not appoint new counsel within 60 days of the date of this order, then they shall be in default” (*Id.*). The remaining corporate defendants (20 TSQ Lessee LLC and 20 TSQ Sign LLC) have failed to appoint new counsel. Pursuant to CPLR § 321(a), “a corporation or voluntary association shall appear by attorney.” “An LLC, like a corporation or voluntary association, is created to shield its members from liability and once formed is a legal entity distinct from its members. Accordingly, like a corporation or a voluntary association, the LLC may only be represented by an attorney and not by one of its members who is not an attorney admitted to practice in the State of New York” (*Michael Reilly Design, Inc. v Houraney*, 40 AD3d 592, 593-94 [2d Dept 2007]). Accordingly, as they failed to retain new counsel, 20 TSQ Lessee LLC and 20 TSQ Sign LLC (the “corporate defendants”) failed to appear for argument of the instant motion in September of 2024. Therefore, plaintiff is entitled to judgment against the corporate defendants pursuant to 22 NYCRR § 202.27(a), and pursuant to this court’s July 12, 2024 decision and order. A “defendant whose answer is stricken as a result of a default admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff’s conclusion as to damages” (*Rokina Opt. Co., Inc. v Camera King, Inc.*, 63 NY2d 728, 730 [1984]). However, in the instant matter, the damages are for a sum certain. Therefore, a damages judgment may be entered against them.

Mark Siffin

Defendant Mark Siffin opposes the motion for summary judgment. In his affidavit, Mr. Siffin affirms that he objected to the bills and invoices that were sent by plaintiff (Siffin Aff. ¶ 5, NYSCEF Doc. No. 29). Siffin states that he sought a discount on the fees given the large amount of fees generated (*Id.* at ¶ 8). In his affirmation, Siffin sets forth a table showing the fees billed by Kasowitz and paid by him or his entities. This table indicates that Kasowitz billed \$3,012,990.53 for 20 TSQ legal work, gave a discount of \$273,931.20, and that \$732,374.48 was paid, leaving a balance of \$2,006,684.85 – the amount sought in the complaint (*Id.* at ¶ 9). The same table shows

that \$12,191,574.04 were billed and paid with regard to legal work for MDC Energy and MTE Holdings Oil Bankruptcy, which refer to billing charged on the MDC Energy and MTE Holdings bankruptcy cases (*Id.* at ¶¶ 8-9). Siffin goes on to state that at an April 17, 2020 board meeting of non-parties MDC Energy/MTE Holdings, Kasowitz offered a 20% discount of the legal fees billed, that the matter was discussed at various times in 2020-2023, and that additional settlement conversations were held on September 27, 2023 (*Id.* at ¶ 12). He indicates that this discount was offered for prompt payment (*Id.* at ¶ 14). It is Siffin's contention that had the offered 20% discount been applied to all legal fees, that there would be no balance and that he would instead be owed a credit (*Id.* at ¶ 14).

Siffin has not established the existence of material issues of fact which require a trial of the action. At best, the Siffin affirmation demonstrates that the parties engaged in settlement discussions. The purported offer of a 20% discount on legal fees was made at a board meeting of MDC Energy and MTE Holdings, entities which are not parties to the instant lawsuit, and which were billed substantially more than the defendants in the instant matter. The Siffin affirmation does not seem to distinguish between the legal fees and billing in this matter and the MDC and MTE matters, as is evident by the statement that the "credit should amount to \$3,095,191.90, which is 20% of the total fees billed on this work; to date only \$611,631 has been discounted" (*Id.* at ¶ 13), which credit would be greater than the total amount billed to the defendants in the instant matter. As such, the defendant has failed to rebut the plaintiff's prima facie showing of entitlement to summary judgment on the complaint. Accordingly, it is hereby

ORDERED that the motion is denied as to defendant 20 TSQ Groundco LLC; and it is further

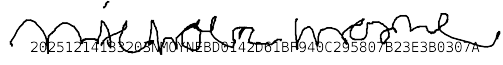
ORDERED and ADJUDGED that the plaintiff's motion for a default judgment is granted; and it is further

ORDERED and ADJUDGED that the plaintiff is to serve a copy of this order with notice of entry upon the Office of the County Clerk, who is directed to enter judgment in favor of plaintiff, Kasowitz LLP f/k/a Kasowitz Benson Torres LLP, and against defendants, Mark Siffin, 20 TSQ Lessee LLC, and 20 TSQ Sign LLC, who shall be jointly and severally liable, in the amount of \$1,156,684.85, plus interest at the rate of 9% per annum from the date of June 30, 2023, and costs and disbursements, as taxed by the Clerk of the Court upon the submission of proper proof thereof, and that plaintiff have execution therefor; and it is further

ORDERED that plaintiff shall submit judgment directly to the Clerk of the Court, not chambers or the Part, unless otherwise directed by the Clerk of the Court; and it is further

ORDERED that any such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "efiling" page on this court's website).

This constitutes the decision and order of the court.


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12/11/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: