

Protrend Ltd. v Doniger / Burroughs

2025 NY Slip Op 35028(U)

December 23, 2025

Supreme Court, New York County

Docket Number: Index No. 650474/2020

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

PROTREND LTD.

Plaintiff,

- v -

DONIGER / BURROUGHS,

Defendant.

-----X

INDEX NO. 650474/2020

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 15, 16, 17

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14, 18, 19, 20, 21

were read on this motion to/for DISMISS.

Motion sequence numbers 001 and 002 are consolidated for disposition. Plaintiff’s motion (MS001) for a default judgment is denied and defendant’s motion to dismiss is granted as described below.

Background

Before the Court delves into the facts of this case, the Court must address the elephant in the room: the absurd amount of time these motions have been pending. Although this matter was only assigned to this part in the last few days, these motions were fully briefed in 2020 and 2021—they should have been decided a long, long time ago. And it was just discourteous to ignore the perfectly appropriate letters to the prior judge asking for a decision. That delay should never have happened and on behalf of the court system, this Court apologizes.

Plaintiff brings this case to recover \$25,000 that it claims it inadvertently sent to defendant, a law firm, in connection with a federal copyright action. It alleges that as part of the settlement in that action, plaintiff agreed to pay \$25,000 to Dress Barn through an IOLA trust account maintained by defendant – the defendant was never the plaintiff’s lawyer. Plaintiff asserts that, in error, it issued two checks (both for \$25,000) to defendant. It claims it reached out to defendant and, after being told that defendant would look into it, never heard back nor did it receive the money back.

Plaintiff moves for a default judgment on the ground that defendant never answered or otherwise timely responded. Defendant subsequently moved to dismiss the three causes of action.

Default Judgment Motion

The Court denies this motion as defendant appeared and moved to dismiss prior to the return date of the default judgment motion. It is the clear public policy of this state to decide cases on the merits and so the Court will assess the motion to dismiss. Plaintiff suffered no prejudice from defendant’s delay in answering. Plus, the email correspondence between the parties shows that the attorneys were actively communicating about the issue (NYSCEF Doc. No. 17)—which does not evince an effort to willfully ignore this case.

Motion to Dismiss

Plaintiff brings three causes of action: for 1) a violation of Judiciary Law § 487, 2) breach of fiduciary duty and 3) breach of agreement and covenant of good faith and fair dealing. All three causes of action fail and the Court grants defendant’s motion.

Judiciary Law § 487 refers to attorney misconduct and “[a] violation of Judiciary Law § 487 requires an intent to deceive” (*Bill Birds, Inc. v Stein Law Firm, P.C.*, 164 AD3d 635, 637

[2d Dept 2018], *affd*, 35 NY3d 173 [2020] [internal quotations and citations omitted]). The instant dispute includes, at least initially, an oversight by plaintiff and miscommunication between the attorneys. Plaintiff alleges that it was the one who sent the extra check in error. That does not necessarily mean that defendant is entitled to keep it—but it does not rise to the level of deceit required for this cause of action. Nowhere does plaintiff say that defendant tricked it into sending double payment.

Similarly, the Court dismisses the breach of fiduciary duty claim as defendant did not have a fiduciary duty to plaintiff; defendant was not plaintiff's lawyer. And, finally, the Court dismisses the breach of contract/good faith and fair dealing claim as defendant was not a party to any contract with plaintiff nor did plaintiff adequately allege that defendant breached such an agreement.

Summary

Although the Court is dismissing the complaint, this dismissal is without prejudice and nothing prevents plaintiff from seeking to replead (*see Janssen v Inc. Vil. of Rockville Ctr.*, 59 AD3d 15, 26-28 [2d Dept 2008]). The Court acknowledges that defendant also claimed that plaintiff did not properly name it as a party—it seems the proper name is Doniger/Burroughs APC. The Court overlooked that technicality and issued a decision on the merits. Of course, plaintiff can seek to remedy that if it wants to attempt to replead or bring another case.

Or the parties can just save themselves a lot of aggravation and resolve this matter, which could very well have been commenced in Civil Court given it is about \$25,000. After reviewing the affirmation in NYSCEF Doc. No. 16 and the email correspondence in NYSCEF Doc. No. 17, the Court questions the necessity for further litigation. It seems, if these documents are correct, that defendant finally wrote a check to plaintiff for \$25,000 but the parties simply could not


resolve the case (it's not apparent if plaintiff actually received that check). Unfortunately, things only got worse when the case got tied up in the Court system.

It is unclear what has happened in the half-decade this case has been pending. In any event, this is a dispute that should be readily resolved by two experienced law firms—at least on this record, it is not a dispute that should require further court intervention. There is seemingly a clear overpayment. However, the courts are here for people who want to litigate and this Court is ready, willing and able to deal with future motion practice should the parties be unable to work this out.

Accordingly, it is hereby

ORDERED that plaintiff's motion (MS001) for a default judgment is denied and defendant's motion (MS002) to dismiss is granted without prejudice.

12/23/2025
DATE


ARLENE P. BLUTH, J.S.C.

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