

Walsh v Braunstein Law Firm, PLLC
2025 NY Slip Op 35389(U)
February 10, 2025
Supreme Court, Rockland County
Docket Number: Index No. 031887/2023
Judge: Rachel E. Tanguay
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
NEIL WALSH

Plaintiff,

-against-

THE BRAUNSTEIN LAW FIRM, PLLC, and
MICHAEL L. BRAUNSTEIN,

Defendants.
-----X

Rachel E. Tanguay, J.S.C.

DECISION & ORDER

Index No.: 031887/2023

Motion #1

The following papers, NYSCEF documents numbered 17-23 were considered in connection with Plaintiff’s Notice of Motion for an Order, pursuant to CPLR § 3212, (i) granting summary judgment to Plaintiffs against Defendant as to Defendant’s liability, and setting the matter down for an inquest, pursuant to CPLR § 3212(c) to determine the damages, and for any such other and further relief as is requested in this Motion.

Upon the foregoing papers, the Court now rules as follows:

By way of background, this action was commenced by Plaintiff on April 27, 2023 with the filing of a Summons and Complaint which alleges that Defendant failed to file Plaintiff’s personal injury lawsuit in a timely fashion and within the statute of limitations, as a result of which the matter was dismissed. NYSCEF Doc. 1. This legal malpractice action arises out of Defendant’s representation of Plaintiff with respect to a lawsuit for a slip and fall accident that occurred on March 17, 2017. On August 18, 2023, Defendant filed an Answer which consisted of general denials and affirmative defenses. NYSCEF Doc. 4.

On October 23, 2025, Plaintiff filed the instant motion for an Order, pursuant to CPLR § 3212, granting summary judgment against Defendant on the issue of liability and scheduling the

matter for an inquest to determine damages. NYSCEF Doc. 17. Plaintiff alleges that the following facts are not in dispute:

- On or about April 2017, Plaintiff hired Defendant to represent him in connection with the March 17, 2017 accident.
- On March 17, 2020, the date the Statute of Limitations was to expire on Plaintiff's case relating to the accident, Defendant filed a Summons with Notice in Rockland County Supreme Court against Jekyll Associates, LLC for negligence (the "Underlying Suit," Index No. 031710/2020).
- On August 26, 2020, Defendants in the Underlying Suit, filed a Notice of Appearance and Demand for a Complaint.
- Thereafter, Defendants in the Underlying Suit served five letters requesting that Plaintiff file a Complaint; however, no Complaint was ever filed in the Underlying Suit.
- Defendants in the Underlying Suit filed a Notice of Motion to Dismiss on November 5, 2021, for want of prosecution.
- Plaintiff in the Underlying Suit failed to oppose the Motion to Dismiss or serve a Complaint.
- On December 17, 2021, the Honorable Thomas P. Zugibe, J.S.C. granted Defendants unopposed Motion to Dismiss in the Underlying Suit.

On November 9, 2024, Defendant filed an Affirmation in connection with the instant motion which stipulates to liability on the legal malpractice claim. The Affirmation states that based on his stipulation as to liability, only the underlying claim remains. In Reply, Plaintiff argues that they met their burden as to summary judgment on the underlying claim which Defendants fail to oppose. It is unclear as to why Plaintiff submitted further argument in reply as to summary judgment on liability. The only relief sought in the instant motion is for summary judgment on liability and for it to be set down for an inquest on damages. Since Defendants fully stipulated to being liable on the issues in the instant matter, such stipulation is sufficient to grant summary judgment.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. *Giuffrida v. Citibank Corp., et al.*, 100 N.Y.2d 72, 760 N.Y.S.2d 397 (2003), citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 508

N.Y.S.2d 923 (1986). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. *Lacagnino v. Gonzalez*, 306 A.D.2d 250, 760 N.Y.S.2d 533 (2d Dept. 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. *Gonzalez v. 98 Mag Leasing Corp.*, 95 N.Y.2d 124, 711 N.Y.S.2d 131 (2000), citing *Alvarez, supra*, and *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 508 N.Y.S.2d 923 (1985). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980), 427 N.Y.S.2d 595.

It is this Court's position that with Defendants stipulation to liability on the instant matter there are no issues of material fact. As such, Plaintiff has met its burden and has established entitlement to summary judgment, as a matter of law.

Plaintiff's motion for Summary Judgment is granted in its entirety.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment on liability is granted; and it is further

ORDERED, that the parties are directed to appear for an inquest on damages on March 17, 2025 at 10:00 a.m.; and it is further

ORDERED, that within ten (10) days of the date of this Decision and Order, Plaintiff shall serve same upon Defendants, along with Notice of Entry, and shall file proof of such service with the Court.

Dated: New City, New York
 February 10, 2025



HON. RACHEL E. TANGUAY
Justice of the Supreme Court

TO: All counsel via NYSCEF