

Estate of Walling v Karlstein
2026 NY Slip Op 30483(U)
February 9, 2026
Supreme Court, New York County
Docket Number: Index No. 158656/2017
Judge: Hasa A. Kingo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO PART 65M

Justice

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THE ESTATE OF ALEXANDER R.H. WALLING, BY ITS EXECUTOR, EMILY SOLWAY, EMILY SOLWAY INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE ALEXANDER LEGACY TRUST A/K/A THE ALEXANDER R.H. WALLING LEGACY TRUST, THE ALEXANDER LEGACY TRUST,

Plaintiffs,

- v -

IRA S. KARLSTEIN, KARLSTEIN LAW OFFICE, FRANCIS A. COFFEY, HEIBERGER & ASSOCIATES, P.C., ZIA HASSAN SHAIKH, AMERICA'S RETIREMENT PLANNING PARTNER'S LLC, PROGRESSIVE EQUITY PARTNERS LLC

Defendants.

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INDEX NO. 158656/2017
MOTION DATE 08/13/2025,
08/28/2025
MOTION SEQ. NO. 016, 017

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 016) 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 303, 312

were read on this motion for RENEWAL.

The following e-filed documents, listed by NYSCEF document number (Motion 017) 304, 305, 306, 307, 308, 309, 310, 313

were read on this motion to ENTRY OF JUDGMENT ON ARREARS.

Defendant Zia H. Shaikh moves (Seq. 16) to dismiss the complaint (and/or for summary judgment) and (Seq. 17) to renew or reargue that motion. Plaintiffs cross-move (Seq. 16) to dismiss or strike defendant’s counterclaims and to dismiss the claims of the named LLC defendants. In sum, plaintiffs seek dismissal of defendant’s counterclaims and of the putative LLC defendants for lack of standing, and defendant seeks dismissal of the complaint or alteration of a prior order (Seq. 17). Each party also seeks attorney’s fees and sanctions. For the reasons below, defendant’s motions (Seq. 16, 17) are denied and plaintiffs’ cross-motion (Seq. 16) is granted.

BACKGROUND

This action arises from a dispute over a business-services contract involving the late Alexander R.H. Walling (“Walling”). Walling purportedly entered into an agreement with defendants Zia H. Shaikh (an individual) and certain LLC entities he controlled, to render consulting and brokerage services in connection with commercial real estate transactions. The Estate of Alexander R.H. Walling (represented by the named plaintiffs, the Estate’s executor and

beneficiaries) alleges that defendants breached that contract by, among other things, failing to obtain sales or leases and misappropriating funds. The complaint asserts causes of action against Zia Shaikh and the LLCs for breach of contract, conversion, and related claims (The parties' papers disclose that one or more LLC defendants have since been administratively dissolved, though they remain on the caption).

Defendant Zia Shaikh answered the complaint and asserted counterclaims for *quantum meruit* and unjust enrichment, contending that he performed substantial services under the contract and is entitled to compensation. He also demanded prejudgment interest and attorney's fees. Plaintiffs did not move against the pleading at that time.

In Seq. 16, defendant Shaikh moved to dismiss the complaint or for summary judgment in his favor. Plaintiffs opposed and cross-moved, *inter alia*, to dismiss defendant's counterclaims (for failure to state a cause of action and for lack of authorization to bring them) and to strike or dismiss the claims of the dissolved LLCs on the ground they lack counsel. In Seq. 17, defendant Shaikh moved to reargue and renew the Seq. 16 motion. All briefing and relevant exhibits have been reviewed, and the motions are decided herein.

ARGUMENTS

Defendant Shaikh argues that he is entitled to relief both on the complaint and on his counterclaims. He contends that the complaint fails to state valid claims, and that dismissal (Seq. 16) or alteration (Seq. 17) is warranted under CPLR § 2221(e) on grounds of new arguments not previously considered. Shaikh also asserts that he and his LLCs have standing and proper representation: he notes that the LLCs are defendant-parties (despite dissolution) and that he is the authorized representative (arguing, for example, that BCL § 103(c) allows a dissolved corporation to litigate winding-up suits). He maintains that his counterclaims are adequately pleaded (citing CPLR § 3019 and claiming the Estate is a mere trustee of the contract) and that he should be allowed both contract and quasi-contract recovery. In particular, Shaikh asserts he performed services for plaintiffs and is owed the reasonable value of those services (*quantum meruit*) or restitution (unjust enrichment), even if a written contract exists. He argues that no service or performance was delivered by the Estate to relieve his duties, so he has earned compensation in any event. Shaikh also insists he is entitled to prejudgment interest under New Jersey law (N.J.S.A. 4:42-11) because the contract or work was performed in New Jersey.

Defendant further relies on various procedural rules: he contends that the motion should have been treated as a renewal under CPLR § 2221(e) and that any refusal to consider his new arguments was error. He cites CPLR § 103(c) (apparently meaning Business Corporation Law § 103[c]) as providing that a dissolved corporation may continue or maintain actions, and he claims CPLR § 3019(c) permits counterclaims against nominal plaintiffs. He also seeks sanctions against plaintiffs for alleged frivolity and has moved under the court's inherent powers and 22 NYCRR § 130-1.1.

Plaintiffs oppose all relief sought by defendant. First, they argue that the claims of the dissolved LLCs (and any appearance by Shaikh on their behalf) must be disregarded. Under CPLR § 321(a), plaintiffs note, a corporation or LLC cannot appear *pro se* and must be represented by an

attorney; here, the LLC defendants have no counsel and some are dissolved, so their claims (and any defenses they purport to assert) are nullities (*see Knobel v. Wei Group, LLC*, 160 AD3d 409 [1st Dept 2018]; *Jimenez v. Brenillee Corp.*, 48 AD3d 351 [1st Dept 2008]). Plaintiffs argue that even BCL §103(c) does not allow a dissolved LLC to proceed without counsel, and any purported appearance by Shaikh for them violates CPLR § 321(a).

Second, plaintiffs contend that Shaikh's counterclaims are legally deficient. They assert that he never properly pleaded a counterclaim in accordance with CPLR §§ 3019 and 3017; he simply asserted causes of action in his answer without separate process. In any event, plaintiffs argue, the Estate is not a "nominal plaintiff" lacking interest such that a counterclaim against it would be disallowed under CPLR § 3019(c) (*see* CPLR § 3019[c]). Here the Estate, as decedent's representative, has the actual interest in the contract, so Shaikh's claims cannot proceed as counterclaims if he is not entitled to them.

Third, plaintiffs dispute any entitlement to New Jersey prejudgment interest. This action is in New York Supreme Court and governed by New York law; CPLR § 5001 provides for interest in a contract action. N.J.S.A. 4:42-11 is a New Jersey statute that has no application to this New York suit (and the contract here contains no express NJ-interest provision). Thus, plaintiffs contend that defendant cannot invoke N.J.S.A. 4:42-11 as a basis for interest.

Fourth, plaintiffs vigorously deny Shaikh's *quantum meruit*/unjust enrichment claims. They assert no enforceable contract exists or that, at minimum, Shaikh performed nothing under it. If the contract covers the dispute, New York law bars any quasi-contract recovery (*Mid-Hudson Catskill Rural Migrant Ministry, Inc. v. Fine Host Corp.*, 418 F.3d 168 [2d Cir. 2005]). Even if the contract is silent on some obligations, the additional services Shaikh claims are not "so distinct" from the contract that he can recover independently (*id.*). Indeed, according to plaintiffs, Shaikh's own invoices show no actual work was done under any binding agreement, so his attempt to recast his claim in *quantum meruit* must fail.

Finally, plaintiffs reject Shaikh's procedural arguments. The attempted renewal under CPLR § 2221(e) was improper because defendant presented no new evidence – only new legal theories on facts already known (*Lax v. Design Quest NY, Ltd.*, 118 AD3d 490 [1st Dept 2014]). Nor can CPLR § 3019(c) save his counterclaims, since that statute merely bars counterclaims against plaintiffs who are trustees without interest, which is not the case here. Plaintiffs also deny all requests for sanctions, noting that neither the record nor the law warrants punitive relief.

DISCUSSION

I. Lack of Counsel/Standing of LLC Defendants

As a matter of law, a corporation or LLC must appear by counsel (CPLR § 321[a]); it cannot litigate in propria persona. "[A] corporate plaintiff's claims [are] null and void if brought without licensed counsel" (*Knobel*, 160 AD3d at 409). The same principle applies to defendant LLCs. Here, at least two LLC defendants are administratively dissolved and have no counsel of record. Any papers filed on their behalf – including those filed by Shaikh – violate CPLR § 321(a). Defendants' failure to retain counsel is fatal to those LLCs' participation in this suit. Under CPLR

§ 321(a), such an appearance is a “nullity.” This is not merely a technicality; it ensures that a corporate entity is always bound by an attorney who is “answerable to the court...for his or her own conduct.” Here, because the LLCs lack any attorney, the court treats their claims and defenses as a nullity. For similar reasons, Business Corporation Law §103(c) (which allows dissolved corporations to wind up affairs) does not excuse compliance with CPLR § 321(a). Even if a dissolved entity may continue a winding-up action, it must do so through counsel. Thus, plaintiffs’ motion to dismiss or strike the LLC defendants succeeds: all claims against the dissolved LLCs are dismissed as void, and any arguments advanced by those LLCs are disregarded. Defendant Shaikh cannot cure this defect by purporting to represent the LLCs himself.

II. Counterclaim Pleading and CPLR § 3019(c)

Plaintiffs also move to dismiss defendant’s counterclaims. As an initial matter, the counterclaims were not properly asserted. CPLR § 3019 requires that any counterclaim in a contract action be pleaded in the answer or in a verified counterclaim (CPLR § 3017) and that service on plaintiffs of such claims be by summons and answer. In this case, Shaikh’s purported counterclaims appear only in his answer and are not separately served on plaintiffs as CPLR § 3019 envisions. In any event, under CPLR § 3019(c), if the action is brought by a trustee or in the name of a party with no interest, a counterclaim against that plaintiff is disallowed. Here, the Estate of Walling stands as the real party in interest. Even if one were to characterize the Estate as a “nominal plaintiff” carrying on for the decedent, CPLR § 3019(c) would bar counterclaims against it and allow only claims against the beneficially interested person (the decedent, now represented by the Estate) to the extent of the claim. There is no separate beneficial party on whom Shaikh can rely. Thus, under CPLR § 3019(c), Shaikh’s counterclaims are not allowable as pleaded.

As a matter of law, plaintiffs’ cross-motion to dismiss Shaikh’s counterclaims is granted. Even giving Shaikh the benefit of the doubt that he intended to pursue these causes of action, the counterclaims are “indistinguishable” from the contract claim and do not assert new facts beyond the complaint. New York law is clear that “a valid enforceable contract” covering the same subject matter precludes recovery in quasi-contract. In *Clark-Fitzpatrick*, for example, the Court of Appeals held it “is impermissible...to seek damages in an action sounding in quasi contract where the suing party has fully performed on a valid written agreement” (70 NY2d 382, 389 [1987]).¹ Here, to the extent the Estate’s complaint is based on an enforceable written agreement with defendants (and Mr. Shaikh in his capacity as agent or principal), Shaikh cannot now pursue a parallel *quantum meruit* or unjust enrichment theory. In fact, *Joseph Sternberg, Inc. v. Walber 36th St. Assocs.* (187 AD2d 225 [1st Dept 1993]) reaffirmed that when a contract does not explicitly grant relief, courts will not require a plaintiff to elect remedies; but that only applies where the contract is silent and there is a genuine ambiguity. In *Joseph Sternberg* the Appellate Division,

¹ In this decision, the Court of Appeals addressed the relationship between express contracts and quasi-contractual claims. The court held that it is impermissible to seek damages under a quasi-contract theory—such as unjust enrichment or *quantum meruit*—when the suing party has already fully performed under a valid, undisputed written agreement that clearly covers the scope of the dispute.

The Court emphasized that a quasi-contract is not an actual contract, but rather a legal obligation imposed to prevent unjust enrichment in the absence of an express agreement. Consequently, the existence of a valid and enforceable written contract governing a particular subject matter precludes recovery in quasi-contract for events arising out of that same subject matter.

First Department, noted that *Clark-Fitzpatrick* involved a contract fully detailing all terms, whereas in that case the contract was silent on certain commission issues (*id.*). Here, by contrast, the parties' agreement explicitly covers the obligations at issue, so *Clark-Fitzpatrick* governs. Shaikh cannot unilaterally transform the same facts into a *quantum meruit* claim once a contract exists.

III. *Quantum Meruit* and Unjust Enrichment (Zia Shaikh's Individual Claims)

In any event, Shaikh's claims for *quantum meruit* and unjust enrichment fail as a matter of fact. Plaintiffs aver that no services were rendered under the contract to the Estate after Walling's death; indeed, there was no ongoing duty owed by the Estate to perform for Shaikh. If plaintiffs are correct that Shaikh provided no services under any binding agreement, then Shaikh's contract claim would fail for lack of performance. That same lack of performance undermines *quantum meruit*. To recover on *quantum meruit* under New York law, a claimant must prove that it actually rendered services in good faith and with an expectation of payment, and that the other party accepted the benefits. There is no independent legal duty to pay for services not requested or performed. If, as plaintiffs contend, Shaikh did not in fact earn any commissions or provide any deliverables under the Agreement, he has no basis for recovery.

Even assuming *arguendo* that Shaikh did perform something, the claim is barred by the contract. Under *Clark-Fitzpatrick* and its progeny, a valid contract that "clearly covers the dispute" precludes a quasi-contract claim (*see Clark-Fitzpatrick*, 70 NY2d 382). The contract here (an exclusive brokerage/service agreement) appears to obligate plaintiffs to use Shaikh's services and to pay certain commissions or fees. Shaikh thus availed himself of that bargain, and the law will not permit him to go behind it. As the Second Circuit explained, once a jury or court has found an enforceable contract, "plaintiff is barred from seeking duplicative relief in *quantum meruit*" (*Mid-Hudson Catskill Rural Migrant Ministry, Inc.*, 418 F.3d at 175) Shaikh may not have it both ways. If he claims the contract was invalid or incomplete, then no *quantum meruit* claim can stand if the contract was performed; if he claims the contract exists and governs, then *Clark-Fitzpatrick* bars his quasi-contract claim. For these reasons, the individual claims for *quantum meruit* and unjust enrichment by defendant Shaikh fail as a matter of law.

The Appellate Division, First Department's decisions support this outcome. In *Curtis Properties Corp. v. Greif Cos.* (236 AD2d 237, 237 [1st Dept 1997]), the court held that "[a] party is not precluded from proceeding on both breach of contract and quasi-contract theories where... the contract does not cover the dispute in issue." Implicitly, this means the opposite: if the contract does cover the dispute, the party is precluded from quasi-contract. Here the dispute – payment for services – is squarely within the contract's scope, so *Curtis* cuts against Shaikh's claims. Likewise, in *Joseph Sternberg*, 187 AD2d 225, *supra*, the court affirmed that a plaintiff need not choose remedies when the contract is silent; but if, as here, the contract "clearly covers the dispute," then one cannot circumvent it. Accordingly, Shaikh's quasi-contract claims cannot survive the cross-motion.

IV. Prejudgment Interest (N.J.S.A. 4:42-11)

Defendant's demand for prejudgment interest under N.J.S.A. 4:42-11 is meritless. New York law controls interest on damages in this action, and CPLR § 5001 *et seq.* govern the rate and computation. No New York authority permits application of a New Jersey prejudgment-interest statute in a New York court absent a specific contractual choice of New Jersey law for interest. Here, the contract (to the extent it applies) does not invoke New Jersey interest, and in any event, plaintiffs would be entitled only to New York statutory interest (currently 9%) on any awards. Courts have repeatedly held that a foreign state's prejudgment interest statute cannot be applied unless the parties expressly agreed to it, which is not the case here. Thus Shaikh's reliance on N.J.S.A. 4:42-11 is unfounded, and no relief on that basis may be granted.

V. CPLR § 2221(e) (Renewal/Renew Motion), 103(c), and 3019(c)

CPLR §§ 2221(e) (Renewal/Renew Motion), 103(c), and 3019(c): Defendant's procedural arguments also fail. CPLR § 2221(e) strictly limits renewal motions to newly-discovered facts or evidence obtained after the prior determination (and not previously presented). Here, Shaikh proffers nothing newly discovered; he merely advances new legal theories and rehashes arguments based on evidence already before the court. As the Appellate Division, First Department, recently emphasized, invoices or documents already in the party's possession cannot form the basis of a renewal motion under CPLR § 2221(e) (Lax, 118 AD3d 490). Accordingly, any request to "renew" Seq. 16 under CPLR § 2221(e) was properly denied.

As noted above, BCL § 103(c) (cited as CPLR § 103[c] by defendant) does not entitle a dissolved LLC to self-representation. To the contrary, even when a dissolved corporation is permitted to continue a pending action to wind up, it must do so through its attorney or authorized corporate representative. Here, none was provided, so BCL § 103(c) does not save the LLCs from dismissal. Nor does CPLR § 3019(c) allow Shaikh's counterclaims. That provision only limits counterclaims against trust or nominal plaintiffs, and is inapplicable if the plaintiff (the Estate) has actual interest. In any case, CPLR § 3019(c) does not create any new cause of action for the defendant; it only restricts counterclaims in special situations. Shaikh's citation of these statutes cannot undo the fundamental pleading and standing defects identified above.

VI. Sanctions

Both parties have sought sanctions. On the present record, sanctions are unwarranted. Neither Shaikh nor the Estate has shown any bad-faith conduct or frivolousness rising to sanctionable levels. The motions deal with disputed issues of contract performance and pleading; neither side has ignored or abused any court order or rule. Accordingly, all requests for sanctions – by either plaintiffs or defendant – are denied.

Accordingly, it is hereby

ORDERED, ADJUDGED and DECREED that defendant Zia H. Shaikh's motions (Seq. 16 and Seq. 17) are denied; and it is further

ORDERED that plaintiffs' cross-motion (Seq. 16) is granted; and it is further

ORDERED that defendant’s counterclaims are dismissed; and it is further

ORDERED that the claims of the dissolved LLC defendants (all appearing *pro se*) are dismissed as nullities; and it is further

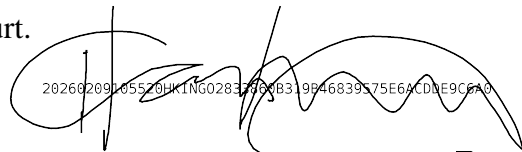
ORDERED that all requests for sanctions are denied; and it is further

ORDERED that counsel for plaintiffs shall serve a copy of this decision and order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to amend their records to reflect the orders set forth herein; and it is further

ORDERED that service of this order upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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 “E-Filing” page on the court's website); and it is further

ORDERED that the Clerk is directed to enter judgment in accordance with this decision and order and to close motion sequences 16 and 17.

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

2/9/2026

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE