

Buff v Sarshik

2026 NY Slip Op 31830(U)

April 27, 2026

Supreme Court, New York County

Docket Number: Index No. 654451/2022

Judge: Ashlee Crawford

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ASHLEE CRAWFORD PART 38
Justice
INDEX NO. 654451/2022
CAROLYN BUFF, MOTION DATE 08/04/2023
Plaintiff, MOTION SEQ. NO. 001
- v -
STEVEN SARSHIK, DECISION + ORDER ON MOTION
Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 were read on this motion to/for JUDGMENT - SUMMARY.

Pro se plaintiff Carolyn Buff retained defendant Steven Sarshik, an attorney, to appeal an adverse decision issued by Dutchess County Surrogate’s Court in the underlying estate matter. Plaintiff contends that Sarshik failed to render legal services as agreed in their retainer agreement (Retainer Agmt. [NYSCEF Doc. 8]), and exaggerated his appellate experience to induce plaintiff to retain him. Defendant withdrew from representing plaintiff in the underlying action and, according to plaintiff, has not refunded the \$5,300.00 she paid him.

Plaintiff asserts six causes of action for (1) breach of contract; (2) fraud; (3) fraud in the inducement; (4) fraudulent misrepresentation; (5) constructive fraud; and (6) unjust enrichment, and seeks money damages in excess of \$5,300. Defendant answered the complaint.

Plaintiff now moves for summary judgment on her breach of contract claim (see NYSCEF Docs. 5, 6). She also withdraws her fraud-related causes of action (Buff Aff. in Supp. ¶ 28 [NYSCEF Doc. 6]).

Background

The parties entered into an attorney-client agreement to provide legal services with respect to an appeal of a Surrogate's Court decision and decree dismissing objections to probate of a will filed by plaintiff (Retainer Agmt. ¶ 2). Defendant agreed to provide legal services reasonably required to represent plaintiff, including "legal research, preparing a Brief for the Appellate Division, Second Department, [p]reparing a Reply Brief and appearing for oral argument when scheduled by the Appellate Division" (*id.*). Expressly excluded from the scope of the legal services was the preparation of an appellate record, and finding an appellate printing company to assist with the preparation and filing of the record (*id.*). Plaintiff agreed to timely provide necessary information and documents, and to cooperate fully with defendant in all matters related to the preparation and presentation of her claims before the Appellate Division (*id.* ¶ 3). Plaintiff agreed to pay defendant a flat fee of \$5,000 (*id.* ¶ 4), as well as to "pay for all costs related to preparation of the record or filing the record at the Appellate Division, and to pay all filing fees to the Appellate Division" (*id.* ¶ 5).

Plaintiff states that she performed under the retainer agreement by paying the \$5,000 fee (Buff Aff. in Support ¶¶ 7-8); cooperated with defendant in the prosecution of her appeal (*id.* ¶¶ 9, 11, 13); and paid defendant \$300 to cover printing costs and a motion fee (*id.* ¶ 17). Plaintiff states that defendant breached the agreement by sending drafts with typos and factual errors, and ultimately failing to prepare and submit an appellate brief, or return the deposit and fees, after his withdrawal from representing her in the underlying action (*id.* ¶¶ 10, 18, 19).

Defendant challenges plaintiff's performance under the retainer agreement. According to him, plaintiff's printer withdrew as the appellate printer and plaintiff failed to retain a new printer to compile the appellate record, as required under the retainer agreement (Sarshik Aff. in

Opp. ¶¶ 14, 18); failed to provide specific facts to support her arguments and to provide the underlying documents by e-mail (id. ¶¶ 10, 17-24); and improperly demanded that defendant submit an outline of the facts and law prepared by plaintiff in brief form, so that an attorney would be on the papers (id. ¶ 31). Defendant insists that he did not breach the agreement as he spent ten hours reviewing records; two hours discussing appellate printers with plaintiff; and ten hours researching and drafting the brief (id. ¶ 28). Ultimately, defendant could not submit the brief because plaintiff wanted him to incorporate “inadequate and artlessly drafted” edits, and due to plaintiff’s failure to retain an appellate printer and to provide records (id. ¶¶ 30-34).

Discussion

A party seeking summary judgment “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]). Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to defeat summary judgment (id.). Summary judgment is a drastic remedy and must be denied if there is any doubt as to the existence of a triable issue of material fact (Rotuba Extruders, Inc. v Ceppos, 46 NY2d 223, 231 [1978]).

Plaintiff’s motion is unsupported by a sworn statement (Sharshik Affirm. in Opp ¶¶ 4-5 [NYSCEF Doc. 21]). Even considering the motion on the merits, plaintiff is not entitled to judgment as a matter of law on her breach of contract claim, because defendant has raised an issue of fact concerning plaintiff’s performance.

Further, given the valid and enforceable written agreement, which is not in dispute, the Court searches the record and dismisses plaintiff's claim for unjust enrichment (see ECD NY Inc. v 616 First Ave. Dev. LLC, 187 AD3d 600, 600-601 [1st Dept 2020]).

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment on her breach of contract claim is DENIED; and it is further

ORDERED that plaintiff's second cause of action for fraud, third cause of action for fraud in the inducement, fourth cause of action for fraudulent misrepresentation, and fifth cause of action for constructive fraud are WITHDRAWN; and it is further

ORDERED that plaintiff's sixth cause of action for unjust enrichment is DISMISSED as duplicative of her breach of contract claim; and it is further

ORDERED that within 10 days, defendant shall serve a copy of this order with notice of entry on plaintiff via NYSCEF; and it is further

ORDERED that the parties shall appear for a preliminary conference on June 10, 2026, at 10:00 AM, in room 1166 at 111 Centre Street, New York, New York; and it is further

ORDERED that failure to appear as directed could result in stricken pleadings or other sanctions.

This constitutes the decision and order of the Court.



04/27/2026
DATE

ASHLEE CRAWFORD, J.S.C.

CHECK ONE:

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

APPLICATION:

CHECK IF APPROPRIATE: