

Morrison Cohen LLP v Dearborn Capital Group LLC
2026 NY Slip Op 31895(U)
May 5, 2026
Supreme Court, New York County
Docket Number: Index No. 156608/2025
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

-----X

MORRISON COHEN LLP,

Plaintiff,

- v -

DEARBORN CAPITAL GROUP LLC, DCG 131 HOLDINGS
LLC, DEARBORN CAPITAL MEMBER LLC, OREN
RICHLAND

Defendant.

-----X

INDEX NO. 156608/2025

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to DISM ACTION/INCONVENIENT FORUM.

Defendants DCG 131 Holdings LLC, Dearborn Capital Member LLC, and Oren Richland move, pre-answer, pursuant to CPLR § 3211(a)(1), CPLR § 3211(a)(5), and CPLR § 3211(a)(7), for an order dismissing the amended complaint as against them, and striking plaintiff Morrison Cohen LLP’s demand for attorneys’ fees. Plaintiff opposes the motion.

For the reasons set forth below, the motion is granted solely to the extent that plaintiff’s demand for attorneys’ fees incurred in this action is stricken, and is otherwise denied.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Morrison Cohen LLP is a law firm that commenced this action to recover unpaid legal fees and disbursements allegedly incurred in connection with legal services rendered to defendants. The amended complaint asserts causes of action sounding in breach of contract, account stated, and quantum meruit, and seeks recovery of \$164,378.43, together with interest, costs, disbursements, and attorneys’ fees.

The dispute arises from a July 22, 2020 retainer agreement prepared by Morrison Cohen. The agreement was addressed to Oren Richland (“Richland”) at Dearborn Capital Group LLC and provided that Morrison Cohen would be “representing and advising you (‘Dearborn’) in connection with negotiating a recap/restructure of 131 South Dearborn Street Chicago and certain other matters which may arise from time to time.” The agreement further provided that Dearborn would be billed on a time basis for Morrison Cohen’s services and for out-of-pocket disbursements. The signature block states that the agreement was “understood, agreed, accepted and consented to” by Dearborn Capital Group LLC “on behalf of itself and its affiliated entities.” Richland signed the agreement; plaintiff emphasizes that no title appears beneath his signature.

According to plaintiff, Morrison Cohen thereafter performed legal services not only for Dearborn Capital Group LLC, but also for DCG 131 Holdings LLC, Dearborn Capital Member LLC, and Richland personally. Plaintiff alleges that it commenced actions on behalf of DCG 131 Holdings LLC and Dearborn Capital Member LLC, entered appearances for those entities, and defended Richland personally in a federal action in which he was named as a defendant. Plaintiff further alleges that Morrison Cohen sent numerous invoices between October 2020 and March 2023, that the invoices reflected the balance ultimately sought in this action, and that defendants failed to object within a reasonable time.

The moving defendants dispute that they are liable for the unpaid fees. Richland avers that he signed the retainer agreement only in a representative capacity for Dearborn Capital Group LLC; that Dearborn Capital Group LLC paid the initial retainer and other payments; that no separate retainer was executed by him or by the affiliated entities; that the invoices were sent under a Dearborn Capital client number; and that the moving defendants never agreed to be separately responsible for Dearborn Capital Group LLC's obligations.

ARGUMENTS

Defendants DCG 131 Holdings LLC, Dearborn Capital Member LLC, and Oren Richland move to dismiss the amended complaint as against them, contending that the claims asserted cannot, as a matter of law, be sustained. In support of their application, defendants principally rely upon the July 22, 2020 retainer agreement, which they assert constitutes documentary evidence conclusively establishing that Dearborn Capital Group LLC alone is responsible for the legal fees at issue in this action. From this premise, defendants argue that any attempt to impose liability upon the moving defendants for the obligations of Dearborn Capital Group LLC is barred by the Statute of Frauds. They further maintain that the amended complaint fails to state viable causes of action for breach of contract, account stated, and quantum meruit as against them, emphasizing that they were not signatories to the retainer agreement, that no clear and explicit intention exists to impose personal liability upon Richland as an individual, and that the affiliated entities cannot be held liable merely by virtue of their relationship to Dearborn Capital Group LLC or the fact that legal services may have been performed in matters involving them. Defendants additionally argue that the account stated claim is defective because the statements of account were directed solely to Dearborn Capital Group LLC and cannot create liability where none otherwise exists, and that the quantum meruit claim is foreclosed by the existence of a written agreement governing the subject matter and is, in any event, impermissibly pleaded in a collective and conclusory manner. Finally, defendants contend that plaintiff has failed to plead any contractual, statutory, or rule-based basis for the recovery of attorneys' fees.

Plaintiff opposes the motion in its entirety, asserting that defendants' arguments improperly seek factual determinations that are not appropriately resolved on a pre-answer motion to dismiss. Plaintiff maintains that the retainer agreement, when read in conjunction with the parties' course of conduct, does not conclusively dispose of the claims, but rather supports the imposition of liability upon all defendants. In particular, plaintiff emphasizes that the retainer agreement expressly provides that Dearborn Capital Group LLC executed the agreement "on behalf of itself and its affiliated entities," and notes that Richland himself acknowledges that DCG 131 Holdings LLC and Dearborn Capital Member LLC are such affiliated entities. Plaintiff further contends that

Morrison Cohen rendered legal services directly for those entities, as well as for Richland personally—including representation in a federal action—and that those services were accepted without objection, thereby giving rise to liability that cannot be disclaimed simply by reference to the form of the retainer agreement.

With respect to Richland individually, plaintiff argues that personal liability is adequately pleaded, pointing to the absence of any title beneath his signature on the retainer agreement and to the fact that Morrison Cohen performed legal services on his behalf in his personal capacity. As to the account stated claim, plaintiff asserts that invoices were sent to and received by Richland, both personally and as a representative of the entity defendants, and that defendants' failure to object within a reasonable time constitutes assent to the stated balance. Finally, plaintiff contends that, at a minimum, it is entitled at this stage to plead quantum meruit in the alternative, particularly in light of defendants' contention that the retainer agreement does not govern the obligations of the moving defendants, thereby preserving plaintiff's right to recover for the reasonable value of services rendered and accepted.

DISCUSSION

On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court must afford the pleading a liberal construction, accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; *Nonnon v City of New York*, 9 NY3d 825, 827 [2007]). The court's role at this stage is not to determine whether the plaintiff will ultimately prevail, but whether the pleading states a legally cognizable claim (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]).

A motion to dismiss pursuant to CPLR § 3211(a)(1) may be granted only where the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Leon v Martinez*, 84 NY2d at 88). To qualify as documentary evidence, the evidence must be unambiguous, authentic, and essentially undeniable (*Fontanetta v John Doe I*, 73 AD3d 78, 86 [2d Dept 2010]). Dismissal under CPLR § 3211(a)(1) is not warranted where the documentary evidence is susceptible to competing interpretations or fails to dispose of all factual issues (*see Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431, 432 [1st Dept 2014]).

Applying these standards, the retainer agreement does not conclusively dispose of plaintiff's claims against the moving defendants. Defendants correctly observe that, under New York law, an agent who signs an agreement on behalf of a disclosed principal is generally not personally bound unless there is clear and explicit evidence of the agent's intention to substitute or superadd personal liability (*Salzman Sign Co. v Beck*, 10 NY2d 63, 67 [1961]; *Savoy Record Co. v Cardinal Export Corp.*, 15 NY2d 1, 4 [1964]; *Stamina Prods., Inc. v Zintec USA, Inc.*, 90 AD3d 1021, 1022 [2d Dept 2011]). That principle is important, but it is not dispositive on this record. The agreement here was addressed to Richland, refers to "you ('Dearborn')," states that Dearborn Capital Group LLC accepted the agreement "on behalf of itself and its affiliated entities,"

and was signed by Richland without a title beneath his name. In addition, plaintiff alleges that it rendered legal services directly for DCG 131 Holdings LLC, Dearborn Capital Member LLC, and Richland personally, including appearances and litigation work undertaken for those parties' benefit. At this procedural juncture, those allegations cannot be rejected as a matter of law.

A careful reading of *Salzman* and, more importantly, the way it has been applied by the Court of Appeals and the Appellate Division, First Department, reveals that it is not the categorical bar defendants suggest, but rather a rule of construction grounded in intent, one that must yield where the record supports a different inference.

Defendants' reliance on *Salzman* is therefore overstated. *Salzman* stands for the unremarkable proposition that, in ordinary commercial practice, an officer who signs an agreement on behalf of a disclosed principal is not personally bound absent clear and explicit evidence of an intent to assume personal liability (*Salzman*, 10 NY2d at 67). The Court of Appeals described the "nearly universal practice" of dual signatures not as a rigid prerequisite, but as evidence typically used to demonstrate such intent (*id.*). Critically, *Salzman* did not hold that the absence of a second signature is dispositive in all cases; rather, it emphasized that liability turns on whether the agreement and surrounding circumstances evince a clear intention to bind the individual.

Subsequent Court of Appeals authority confirms that the inquiry is one of intent, not formalism (*see Savoy*, 15 NY2d at 4 [personal liability depends on clear and explicit evidence of intent to assume it]). The Appellate Division, First Department, has likewise treated *Salzman* as a guiding principle, not an inflexible rule, holding that courts must examine the totality of the circumstances, including the language of the agreement and the parties' course of conduct, to determine whether individual liability was intended.

Against that backdrop, this case is readily distinguishable from *Salzman*. Here, the retainer agreement was addressed directly to Richland, contains language extending the engagement to affiliated entities, and, as alleged, was followed by a course of performance in which plaintiff rendered legal services not only to the corporate entity but also to Richland personally, including representation in a federal action. Those allegations, which must be accepted as true at this stage, support a reasonable inference that the engagement and the attendant payment obligation were not confined to a single corporate entity.

Moreover, the absence of a title beneath Richland's signature further distinguishes this case from the paradigm contemplated in *Salzman*. While not dispositive in itself, the lack of any designation of representative capacity is a factor that the Appellate Division, First Department, has deemed relevant in assessing intent (*see Mintz & Gold LLP v. Daibes*, 125 AD3d 488, 489 [1st Dept 2015] [finding personal liability where the defendant signed without indicating representative capacity and personally benefitted from the legal services]). Defendants' attempt to cabin *Mintz & Gold* to its facts ignores the broader principle it reflects, namely, that where the agreement and surrounding circumstances support an inference of personal undertaking, the absence of a second signature does not foreclose liability as a matter of law.

Nor is this a case in which the documentary evidence utterly refutes plaintiff's claims, as would be required for dismissal under CPLR § 3211(a)(1) (*see Leon*, 84 NY2d at 88). At most, the

retainer agreement is susceptible to competing interpretations, one favoring defendants' position, and another consistent with plaintiff's allegations that the engagement extended beyond Dearborn Capital and that Richland personally accepted and benefitted from the services. Where such ambiguity exists, dismissal is inappropriate (*see Amsterdam Hospitality Group, LLC v. Marshall-Alan Assoc., Inc.*, 120 AD3d 431, 432 [1st Dept 2014]).

In sum, *Salzman* does not impose a mechanical two-signature requirement, nor does it mandate dismissal wherever such formality is absent. Rather, it requires a searching inquiry into intent, an inquiry that, on this record, cannot be resolved as a matter of law at the pleading stage.

Nor does the Statute of Frauds require dismissal. General Obligations Law § 5-701(a)(2) requires a signed writing for a special promise to answer for the debt, default, or miscarriage of another. However, plaintiff does not merely plead that the moving defendants guaranteed Dearborn Capital Group LLC's debt. Plaintiff alleges that the moving defendants were themselves clients or beneficiaries of the legal services, that the retainer agreement extended to affiliated entities, and that Richland personally received and accepted services. Where the pleading alleges a defendant's own obligation rather than a collateral promise to pay another's debt, General Obligations Law § 5-701(a)(2) does not conclusively bar the claim at the pleading stage (*see Martin Roofing, Inc. v Goldstein*, 60 NY2d 262, 264-265 [1983]; *Carey & Assoc. v Ernst*, 27 AD3d 261, 263 [1st Dept 2006]). Whether plaintiff can ultimately prove that the moving defendants were primary obligors, rather than non-liable affiliates or agents of Dearborn Capital Group LLC, is a question for a later stage of the litigation.

Plaintiff has also adequately pleaded breach of contract. The elements of a breach of contract claim are the existence of a contract, plaintiff's performance, defendant's breach, and resulting damages (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). The amended complaint alleges that defendants retained Morrison Cohen pursuant to a written retainer agreement, that Morrison Cohen performed legal services, that defendants failed to pay the outstanding balance, and that plaintiff sustained damages. Defendants' argument that only Dearborn Capital Group LLC was bound presents a substantial defense, but the retainer agreement's reference to affiliated entities, together with the alleged services performed for DCG 131 Holdings LLC and Dearborn Capital Member LLC, prevents dismissal of the contract claim at this stage (*see Leon v Martinez*, 84 NY2d at 88; *EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d at 19).

The account stated claim likewise survives. An account stated is an agreement between parties to an account based upon prior transactions between them with respect to the correctness of the account items and the balance due (*Ryan Graphics, Inc. v Bailin*, 39 AD3d 249, 250 [1st Dept 2007]). A law firm may recover on an account stated where it establishes that invoices were received and retained without objection within a reasonable time (*Morrison Cohen Singer & Weinstein, LLP v Brophy*, 19 AD3d 161, 162 [1st Dept 2005]; *Ruskin, Moscou, Evans & Faltischek, P.C. v FGH Realty Credit Corp.*, 228 AD2d 294, 295 [1st Dept 1996]). While an account stated cannot create liability where none otherwise exists, it may confirm an existing obligation arising from services rendered and accepted (*Martin H. Bauman Assoc., Inc. v H & M Intl. Transp., Inc.*, 171 AD2d 479, 485 [1st Dept 1991]).

Here, plaintiff alleges that invoices were sent for legal services rendered to defendants and that defendants failed to object within a reasonable time. Defendants deny that invoices or statements were sent to the moving defendants in a manner sufficient to bind them, and Richland asserts that objections were made orally. Those contentions raise factual issues that cannot be resolved on a CPLR § 3211 motion (*see Abbott, Duncan & Wiener v Ragusa*, 214 AD2d 412, 413 [1st Dept 1995]; *Mintz*, 125 AD3d at 489). At this stage, the amended complaint states a cognizable claim for account stated.

The quantum meruit claim also survives, although only as an alternative theory of recovery. To state a cause of action for quantum meruit, plaintiff must allege the performance of services in good faith, acceptance of those services by the person to whom they were rendered, an expectation of compensation, and the reasonable value of the services (*Soumayah v Minnelli*, 41 AD3d 390, 391 [1st Dept 2007]; *Fulbright & Jaworski, LLP v Carucci*, 63 AD3d 487, 489 [1st Dept 2009]). Defendants correctly state that the existence of a valid and enforceable contract governing the same subject matter generally precludes recovery in quasi contract (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]). However, where there is a bona fide dispute as to whether a contract governs the parties or the scope of the services at issue, a plaintiff may plead quasi-contractual relief in the alternative (*Sabre Intl. Sec., Ltd. v Vulcan Capital Mgt., Inc.*, 95 AD3d 434, 438 [1st Dept 2012]; *Foster v Kovner*, 44 AD3d 23, 29 [1st Dept 2007]).

That is precisely the posture here. Defendants argue that the retainer agreement binds only Dearborn Capital Group LLC, while plaintiff alleges that legal services were rendered to and accepted by the moving defendants, including affiliated entities and Richland personally. Because the parties dispute whether the retainer agreement governs the moving defendants' obligations, plaintiff may maintain quantum meruit as an alternative theory at this pleading stage (*see Winick Realty Group LLC v Austin & Assoc.*, 51 AD3d 408, 408 [1st Dept 2008]).

Defendants' reliance on authorities dismissing impermissible group pleading does not compel a different result. CPLR § 3013 requires that statements in a pleading be sufficiently particular to give the court and parties notice of the transactions or occurrences intended to be proved and the material elements of each cause of action. CPLR § 3013. A complaint that merely lumps defendants together without identifying the conduct attributed to each may be dismissed where the pleading fails to provide notice of the claims asserted (*Principia Partners LLC v Swap Fin. Group, LLC*, 194 AD3d 584, 584 [1st Dept 2021]). However, the amended complaint and the motion record identify the legal services allegedly performed for the affiliated entities and for Richland personally, including the prosecution of lawsuits on behalf of DCG 131 Holdings LLC and Dearborn Capital Member LLC and the defense of Richland in the federal action. This is sufficient to provide notice of the transactions and occurrences underlying plaintiff's claims.

The branch of the motion seeking to strike plaintiff's demand for attorneys' fees is granted. Under the American Rule, attorneys' fees are incidents of litigation and may not be recovered from the opposing party unless authorized by statute, court rule, or an agreement between the parties (*Sage Sys., Inc. v Liss*, 39 NY3d 27, 30-31 [2022]; *Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989]). Plaintiff has not identified a contractual provision, statute, or court rule authorizing recovery of attorneys' fees incurred in prosecuting this fee action. Nor does the mere fact that plaintiff is a law firm seeking unpaid fees entitle it to recover fees incurred in collecting

those fees (*see Gotham Partners, L.P. v High Riv. Ltd. Partnership*, 76 AD3d 203, 204 [1st Dept 2010]). Accordingly, plaintiff’s demand for attorneys’ fees is stricken, without prejudice to any claim for taxable costs and disbursements otherwise recoverable by law.

Accordingly, it is hereby

ORDERED that the motion of defendants DCG 131 Holdings LLC, Dearborn Capital Member LLC, and Oren Richland to dismiss the amended complaint is granted solely to the extent that plaintiff’s demand for attorneys’ fees incurred in this action is stricken; and it is further

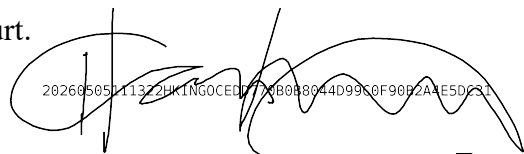
ORDERED that the motion is otherwise denied; and it is further

ORDERED that defendants shall serve and file an answer to the amended complaint within twenty days after service of this decision and order with notice of entry; and it is further

ORDERED that counsel shall appear for a preliminary conference on Tuesday June 9, 2026, at 2:15 PM in Part 65 of the courthouse located at 80 Centre Street, Room 308; and it is further

ORDERED that, in lieu of appearing for the preliminary conference, the parties may submit a proposed preliminary conference order, on consent, to the court via email at SFC-Part65@nycourts.gov no later than forty-eight (48) hours prior to the scheduled conference, and, upon the court’s review and approval of such proposed order, the parties’ personal appearance may be waived.

This constitutes the decision and order of the court.


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HASA A. KINGO, J.S.C.

5/5/2026
DATE

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