

Law Off. of Mark S. Helwell v Karambelas
2019 NY Slip Op 32308(U)
August 1, 2019
Supreme Court, New York County
Docket Number: 159060/2018
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION-----X
THE LAW OFFICE OF MARK S. HELWEIL, MARK
HELWEIL

INDEX NO. 159060/2018

Plaintiffs,

MOTION DATE 12/14/2018

- v -

MOTION SEQ. NO. 001

ANDREA KARAMBELAS,

Defendant.

**DECISION + ORDER ON
MOTION**-----X
HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71

were read on this motion for

SUMMARY JUDGMENT

Plaintiffs (collectively, "Helweil") represented Defendant Andrea Karambelas ("Karambelas") in her divorce proceeding. Karambelas paid some of Helweil's bills for legal services rendered but has refused to pay others. Helweil moves for summary judgment on his claim for account stated, in the amount of \$644,947.21 plus interest.

For the reasons set forth below, Helweil's motion for summary judgment is granted.

Factual Background

The basic facts are undisputed. Helweil, an attorney, represented Karambelas in a divorce action pursuant to a written retainer letter (the

“Retainer”). Karambelas paid Helweil \$35,000 pursuant to the Retainer to be applied to initial fees and expenses. Karambelas agreed to pay outstanding bills issued thereafter upon receipt, and Helweil reserved the right to withdraw as counsel if bills were not paid within thirty (30) days. (NYSCEF 1 at 4).

After receiving her second bill, Karambelas requested that all future bills be sent by mail rather than email. (NYSCEF 14). Helweil’s administrative assistant began mailing itemized billing statements from August 2016 through September 2018 to the address Karambelas provided. (NYSCEF 26).

Karambelas made partial payments amounting to \$121,575.44 while the divorce action proceeded. (NYSCEF 7). Trouble developed after the divorce action was abated. Helweil demanded payment for the outstanding bills. A back and forth began between the parties, which concluded with Karambelas refusing to pay the outstanding bills on the ground that she had not received the bills. (NYSCEF 41, 42).

Helweil commenced this suit on October 1, 2018 seeking the outstanding balance of \$644,947.21, as set forth on bills sent to Karambelas. (NYSCEF 1). Karambelas answered the Complaint on October 18, 2018, denying Helweil’s allegations and stating a number of

conclusory affirmative defenses. (NYSCEF 7). On December 13, 2018, Helweil moved for summary judgment, seeking the full amount of \$644,947.21. (NYSCEF 9). Karambelas opposed, claiming again that she had not received Helweil's bills.

Legal Analysis

For the movant to succeed on a motion for summary judgment she or he "must establish its entitlement to such relief as a matter of law by submitting proof in admissible form demonstrating the absence of triable issues of fact." *Argento Const. Corp. v Jacob & Co. Watches, Inc.*, No. 156322/13, 2014 WL 4430350 (N.Y. Sup. Ct. Sep. 05, 2014) (citing *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980)). If the movant carries that burden, "[t]o defeat summary judgment the opponent must present evidentiary facts sufficient to raise a triable issue of fact, and averments merely stating conclusions, of fact or of law, are insufficient." *Mallad Const. Corp. v. County Fed. Sav. & Loan Ass'n*, 31 N.Y.2d 285, 290 (1973).

"An account stated is an agreement between the parties to an account based upon prior transactions between them with respect to the correctness of the separate items composing the account and the balance due, if any, in favor of one party or the other." *Shea & Gould v. Burr*, 194

A.D.2d 369, 370 (1st Dep't 1993) (quoting *Chisholm–Ryder Co. v. Sommer & Sommer*, 70 A.D.2d 429, 431 (4th Dep't 1979)). “[R]eceipt and retention of plaintiff's accounts, without objection within a reasonable time, and agreement to pay a portion of the indebtedness, [gives] rise to an actionable account stated, thereby entitling plaintiff to summary judgment in its favor.” *Rosenman Colin Freund Lewis & Cohen v. Edelman*, 160 A.D.2d 626, 626 (1st Dep't 1990).

Helweil is entitled to summary judgment on its claim for \$644,947.21 in unpaid amounts accrued by Karambelas between May 4, 2016 and September 12, 2018. First, although Karambelas claims not to have received Helweil's bills, the documentary record shows otherwise. Karambelas admitted in writing to receiving billing statements from Helweil from May 2017 to January 2018. (NYSCEF 15). Karambelas points to other purported instances in her affidavit where on multiple occasions she sent emails to Helweil requesting that bills be sent to her because she had not received them. However, the undisputed evidence shows that Helweil promptly responded and attached copies of the bills by return email. (NYSCEF 15, 16, 25, 41). In each instance that Karambelas claimed she had not received any bills, Helweil responded with copies. *Id.* Karambelas

offers no rebuttal to the documentary evidence and no substantive grounds for refusing to pay Helweil's bills.

Proof that detailed bills are mailed on a regular basis in the course of business establishes prima facie entitlement to summary judgment.

Stephanie R. Cooper, P.C. v. Robert, 78 A.D.3d 572, 573 (1st Dep't 2010).

Here, Helweil has presented evidence of detailed monthly invoices prepared for Karambelas's divorce action. (NYSCEF 13). After Karambelas requested that her bills be mailed to her rather than emailed, (NYSCEF 14), Helweil's administrative assistant affirms that she mailed each subsequent bill to Karambelas's home by first class mail after personally addressing the envelopes, applying the postage, and placing them in the outgoing mail bin. (Somwaru Aff., ¶ 6).

Karambelas provides no evidence to suggest that she objected to Helweil's bills within a reasonable time, which is required to rebut a prima facie claim for account stated. *Liddle, O'Connor, Finkelstein & Robinson v. Koppelman*, 215 A.D.2d 204, 204 (1st Dep't 1995). In *Liddle*, as in this case, "plaintiff established an 'account stated' for legal services rendered on behalf of defendant in light of the fact that the parties executed a written retainer agreement enumerating the fees, plaintiff performed the services, and defendant made substantial payments." *Id.* There is no evidence that

Karambelas objected to any billing for work that Helweil conducted. Any objection to billing must also be specific and contemporaneous. *LePatner & Assoc., v. Horowitz*, 81 A.D.3d 472, 472 (1st Dep't 2011). Even now, Karambelas presents no legitimate basis for failing to pay Helweil's invoices.

Finally, Karambelas's partial payment of Helweil's bills supports an account stated claim. See, e.g., *Shaw v. Silver*, 95 A.D.3d 416 (1st Dep't 2012); *Kramer Levin Naftalis & Frankel LLP v. Canal Jean Co., Inc.*, 73 A.D.3d 604 (1st Dep't 2010); *Zanani v. Schvimmer*, 50 A.D.3d 445, 856 N.Y.S.2d 65 (1st Dep't 2008); *LePatner*, 81 A.D.3d 472. Here, Karambelas acknowledged her obligation pay Helweil's bills upon receiving invoices. Specifically, Karambelas made a payment of \$35,000 in accordance with the Retainer and admits in her Answer that she "paid the plaintiff at least \$121,575.44." (NYSCEF 7 ¶ 4).¹ Karambelas's partial payments are an acknowledgement of her obligation to pay Helweil's bills.

For the reasons set forth above, it is:

¹ Karambelas' partial payment also calls into question her unsupported contention that subsequent bills were not received.

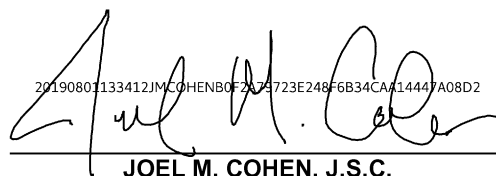
ORDERED that Plaintiffs' motion for summary judgment on the claim for account stated in the amount of \$644,947.21, plus interest at the statutory rate of 9% per annum, is **Granted**; and it is further

ORDERED that the Clerk of the Court is directed to enter a judgment in favor of Plaintiffs and against Defendant in the sum of \$644,947.21, together with interest, costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the Decision and Order of the Court.

8/1/2019

DATE

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JOEL M. COHEN, J.S.C.

CHECK ONE:

☒

CASE DISPOSED

☒

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

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SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE