

**Scarola Zubatov & Schaffzin, PLLC v  
Rocketfuel Blockchain, Inc.**

2022 NY Slip Op 34043(U)

November 28, 2022

Supreme Court, New York County

Docket Number: Index No. 652887/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

*Justice*

-----X

SCAROLA ZUBATOV & SCHAFFZIN PLLC,

Plaintiff,

- v -

ROCKETFUEL BLOCKCHAIN, INC.,ROCKETFUEL  
BLOCKCHAIN COMPANY

Defendant.

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INDEX NO. 652887/2022

MOTION DATE 11/22/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT .

Plaintiff's motion for summary judgment in lieu of compliant is denied.

**Background**

Plaintiff brings this case for unpaid legal fees that were allegedly received and retained for months without objection. It argues that defendants acknowledged the debt owed in the amount of \$119,846.24.

In opposition, defendants contend that the instruments upon which plaintiff relies for the relief sought are two invoices and that these cannot serve as the basis for relief under CPLR 3213. They attach affidavits from the Chief Financial Officer (NYSCEF Doc. No. 14) and their California counsel (NYSCEF Doc. No. 15) in support of the claim that defendants objected to the invoices.

In reply, plaintiff contends that the objections raised by defendants relate to bills from six months prior to the invoices at issue in this case.

## Discussion

“The prototypical example of an instrument within the ambit of [CPLR 3213] is of course a negotiable instrument for the payment of money—an unconditional promise to pay a sum certain, signed by the maker and due on demand or at a definite time. CPLR 3213 is generally used to enforce some variety of commercial paper in which the party to be charged has formally and explicitly acknowledged an indebtedness, so that a prima facie case would be made out by the instrument and a failure to make the payments called for by its terms. A document does not qualify for CPLR 3213 treatment if the court must consult other materials besides the bare document and proof of nonpayment, or if it must make a more than de minimis deviation from the face of the document” (*PDL Biopharma, Inc. v Wohlstadter*, 147 AD3d 494, 494-95, 47 NYS3d 25 [1st Dept 2017] [internal quotations and citations omitted]).

The Court finds that the invoices do not constitute an instrument for the payment of money only. Invoices from a lawyer to a client are not a client’s unconditional promises to pay a sum certain entitled to CPLR 3213 treatment. “The invoices do not qualify for CPLR 3213 relief because it is necessary to consult extrinsic evidence aside from the invoices and proof of nonpayment in order for plaintiff to establish its entitlement to summary judgment on its account stated claim” (*Peter R. Ginsberg Law, LLC v J&J Sports Agency, LLC*, 181 AD3d 430, 430, 116 NYS3d 902 (Mem)[1st Dept 2020]). That does not mean that, eventually, summary judgment on liability or damages or both may be granted – it just means that a lawyer’s bills are not magically transformed into a check or promissory note or other instrument for the payment of money only.

Here, plaintiff relies, in part, upon an email in which it claims that defendants acknowledged the debt (NYSCEF Doc. No. 11). Of course, the fact that the Court has to consult another document also renders CPLR 3213 inapplicable. Moreover, that email (from defendants’

CFO) seems to suggest that defendants were going to make a partial payment—there is no indisputable acknowledgement of a debt for purposes of a summary judgment in lieu of complaint motion.

Defendants also raised objections to fees charged by plaintiff although plaintiff claims that the objections were lodged prior to the time that the invoices were submitted. As stated above, that requires the Court to consider evidence outside of the invoices themselves and so the Court must deny the instant motion.

Accordingly, it is hereby


ORDERED that plaintiff's motion for summary judgment in lieu of complaint is denied; and it is further

ORDERED that the motion for summary judgment in lieu of complaint is denied; and it is further

ORDERED that plaintiff shall serve a formal complaint upon defendant's attorney within 20 days of service on plaintiff's counsel of a copy of this order with notice of entry and defendant shall answer or otherwise respond to the complaint within 20 days after service thereof; and it is further

ORDERED a preliminary conference shall be scheduled for March 30, 2023 at 11 a.m. By March 23, 2023, the parties are directed to upload 1) a discovery stipulation signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. Based on the submissions, the

Court will determine whether an in-person conference is appropriate. The failure to upload anything will result in an adjournment of the conference.

<u>11/28/2022</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE