JMW 75 LLC v Belkin Burden Wenig & Goldman, LLP
2018 NY Slip Op 31945(U)
August 10, 2018
Supreme Court, New York County
Docket Number: 156352/2017
Judge: Shlomo S. Hagler

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

----------X

JMW 75 LLC,

Index No. 156352/2017

Plaintiff,

-against-

BELKIN BURDEN WENIG & GOLDMAN, LLP,

DECISION/ORDER

Defendant.

----------X

HON. SHLOMO S. HAGLER, J.S.C.:

In this action sounding in legal malpractice, plaintiff JMW 75 LLC ("JMW 75" or "plaintiff") seeks damages from defendant law firm Belkin Burden Wenig & Goldman, LLP ("Belkin Burden" or "defendant") for defendants' alleged failure to properly represent plaintiff in seeking to discontinue a landlord-tenant holdover proceeding in the Housing Part of Civil Court of the City of New York ("Housing Court").

In motion sequence number 001, defendant moves, pursuant to CPLR 3212, for summary judgment to dismiss the complaint and on its first and second counterclaims for account stated and breach of contract.

In motion sequence number 002, plaintiff moves to admit Jay J. Rice as counsel *pro hac vice* to represent JMW 75 in this matter.

For the reasons stated below, defendant's motion for summary judgment, seeking dismissal of the complaint and judgment on its counterclaims, is granted; and plaintiff's *pro hac vice* motion is granted.

I. Factual Background

Plaintiff is the owner and landlord of a building located at 166 West 75th Street, New York, New York 10023 ("the Building") where tenants Claude Debs ("Debs") and Violaine Galland ("Galland") (collectively, "the tenants or the respondents") reside.

In 2008, plaintiff's predecessor-in-interest, 166 West 75th Street LLC ("the Prior Owner"), commenced a summary holdover proceeding in Housing Court against the tenants (*166 West 75th Street LLC v Claude Debs Galland a/k/a Claude Debs and Violaine Debs Galland a/k/a Violaine Galland*, Civ Ct, Housing Part, NY County, Nov. 10, 2008, Lebovits, J., Index No. L&T 91914/08). The parties settled the litigation, pursuant to a stipulation dated November 10, 2008, which was "so-ordered" by Hon. Gerald Lebovits ("the Stipulation") (NYSCEF Doc. No. 9, exhibit C). The Stipulation established Debs and Galland as rent stabilized single room occupancy ("SRO") tenants (*id.*, ¶¶ 3-4), and provided the landlord with an option to terminate the tenancy in exchange for the payment of $3.5 million (*id.*, ¶¶ 5-7). In addition, the parties stipulated to include a liquidated damages clause under the following circumstances:

> "8. In the event that Landlord brings an action under paragraph 7 [for nonpayment of rent, nuisance or breach of the lease] and fails, the Landlord will pay the Tenant $250,000, irrespective of whether Tenant chooses to vacate the apartment for the Payment. The Payment shall be as and for liquidated damages, it being agreed that Tenants' damages in such event, would be impossible to ascertain, and that the Payment constitutes a fair and reasonable amount under the circumstances and is not a penalty.
>
> * * *
>
> "12. This Stipulation shall be binding against and shall inure to the benefit of the parties, their agents and successor in interest and shall survive any transfer of title."

(*Id.* at 3 and 4).

In 2016, plaintiff commenced a holdover summary proceeding ("the Underlying Holdover Proceeding") against Debs and Galland seeking possession of one of respondents' SRO units based upon a claim that respondents were violating a substantial obligation of the lease and the Housing Maintenance Code by allowing the premises to be occupied by two children (*JMW 75 LLC v Claude Debs and Violaine Galland, and "John Doe" and "Jane Doe,"* Civ Ct, Housing Part, NY County, Oct. 11, 2016, Schreiber, J., Index No. L&T 61276/16). Simultaneously, JMW 75 commenced two non-primary residence holdover proceedings with respect to other SRO units occupied by respondents.

At the time of the commencement of this proceeding in Housing Court, plaintiff was represented by Kaplain & Duval LLP. On May 18, 2016, a Consent to Change Attorney form was filed with the Housing Court substituting Belkin Burden as attorneys of record for petitioner in place and stead of Kaplain & Duval LLP (NYSCEF Doc. No. 9, Exhibits P and 2).

On October 11, 2016, the Hon. Michelle D. Schreiber granted, in relevant part, respondents' motions for summary judgment and counterclaim for liquidated damages in the sum of $250,000, pursuant to the Stipulation (NYSCEF Doc. No. 9, Exhibit E).

On March 12, 2018, referring to the Stipulation, the Appellate Term, First Department affirmed the Housing Court's decision, and ruled in pertinent part:

> "Among other things, the agreement acknowledged tenants' rent stabilized tenancy in five contiguous SRO units and provided landlord with an option to terminate the tenancy in exchange for payment of $3,500,000. The stipulation further provided that in the event landlord terminated the tenancy for nonpayment of rent, nuisance or breach of the lease, and obtained possession, tenants were not entitled to the $3,500,000 payment; however, if landlord attempted to terminate the lease on such grounds and failed, landlord was required to pay tenants the liquidated sum $250,000."

(*JMW 75 LLC v Debs*, 59 Misc 3d 32, 32 [App Term, 1st Dept 2018]).

II. Motion Sequence Number 001

A. Contentions

Defendant contends that there is no material factual dispute that plaintiff purchased the Building without defendant's advice or counsel and that, at the time of plaintiff's purchase, the "so-ordered" Stipulation was in existence and publicly filed.

Defendant argues that plaintiff lost a holdover proceeding against another tenant on identical grounds on the basis that there was no agency-issued violation (*JMW 75 LLC v Wielaard*, 47 Misc 3d 133[A], 2015 NY Slip Op 50473 [U] [App Term, 1st Dept 2015]). Notwithstanding the foregoing, plaintiff engaged prior counsel to commence a holdover proceeding against Debs and Galland, which seemingly lacked factual or legal basis.

Defendant emphasizes that plaintiff was represented by other counsel at the time of the commencement of the Underlying Holdover Proceeding, and that defendant was substituted into that proceeding after its commencement and service of tenants' motions seeking dismissal of said proceeding, and a judgment against plaintiff for the liquidated damages.

Defendant argues that, upon being substituted into the Underlying Holdover Proceeding, Belkin Burden immediately advised plaintiff to discontinue the holdover proceeding pursuant to CPLR 3217. Defendant also claims it was unaware of the Stipulation until its existence was raised by tenants in their motions.

Finally, defendant argues that plaintiff's Verified Response to Counterclaims acknowledges and concedes the existence of an attorney-client relationship; that plaintiff executed a retainer agreement; that plaintiff never objected to defendant's legal invoices and confirmed on at least four occasions that the bills would be paid.

In opposition, plaintiff makes several arguments. Plaintiff argues that defendant did not meet its prima facie burden to warrant summary judgment as it failed to submit an expert affidavit in support of the motion. Plaintiff claims that defendant's motion is premature as no discovery has occurred. Plaintiff argues that there are material issues of fact, which preclude summary judgment on plaintiff's legal malpractice claim. Plaintiff claims that the issue is whether defendant breached the standard of care required in failing to make necessary equitable and legal arguments in support of plaintiff's application to voluntary discontinue the holdover petition against the tenants.

Specifically, plaintiff claims that plaintiff's lack of knowledge or notice regarding the Stipulation and the unique rights granted to tenants thereby warrant that plaintiff should not be bound by the Stipulation, or that it should not be enforceable. Plaintiff stresses that it was not able to obtain the types of due diligence documents normally provided by the seller, including the Stipulation and the tenants' 2008 lease, because the building was bought at a foreclosure sale. Plaintiff argues that standard due diligence does not include searches of closed court cases; that tenants have unclean hands as they actively concealed the existence of the aforementioned documents, and that these materialized at a suspicious time, namely only seven days after the Prior Owner's holdover proceeding was filed and six months before the foreclosure proceeding against that owner was commenced.

In addition, plaintiff argues that defendant's legal analysis relies on the wrong standard of review. Defendant filed a motion for summary judgment, pursuant to CPLR 3212, not a motion to dismiss based on CPLR 3211. Finally, plaintiff argues that defendant's motion on its counterclaims is premature and should not be adjudicated until after the issue of defendant's malpractice is determined.

In reply, defendant argues that the sole issue to be determined by this Court is a question of law as to whether defendant engaged in legal malpractice which was the proximate cause of plaintiff's injury and, but for the alleged malpractice, plaintiff would have been successful in the Underlying Holdover Proceeding.

Defendant states that plaintiff makes numerous concessions, including that plaintiff purchased the Building without defendant's advice and counsel; that plaintiff failed to undertake due diligence by searching court records for litigation involving the tenants, prior to and after the purchase of the Building and before commencing the Underlying Holdover Proceeding, and that, at the time of plaintiff's purchase, the Stipulation was in existence and publicly filed.

Defendant re-emphasizes the argument that plaintiff was represented by other counsel, not Belkin Burden, and the Underlying Holdover Proceeding was commenced on a flawed legal basis even though plaintiff had actual knowledge of the *Wielaard* case in which the Appellate Term ruled against plaintiff on the very same legal theory.

Plaintiff admits that defendant was substituted into the Underlying Holdover Proceeding after it was commenced and after service of the tenants' motions seeking dismissal and an award of damages, and then defendant immediately advised plaintiff to discontinue, pursuant to CPLR 3217, with an offer to pay the tenants' reasonable attorney's fees.

Plaintiff also concedes that defendant was unaware of the Stipulation until its existence was raised by the tenants in their motions, and that plaintiff never objected to defendant's legal invoices, and in fact, confirmed on at least four occasions that the bills would be paid.

Defendant highlights that plaintiff does not address or respond to, and thus admits, that it should never have commenced the fatally defective Underlying Holdover Proceeding, in light of an identical holdover proceeding, to which it was a party, that was dismissed in the absence of an

agency-issued violation. Indeed, notwithstanding plaintiff's knowledge of the *Wielaard* case, it engaged prior counsel to commence the legally and factually flawed holdover proceeding and but for the commencement thereof, no claim for damages under the Stipulation would have arisen.

Defendant argues that there are no issues of fact with respect to the legal services provided by defendant. Plaintiff's claim that defendant's failure to present or argue certain legal positions, which defendant deems untenable, does not create a genuine issue of fact. Indeed, plaintiff's arguments of lack of knowledge, belief that tenants actively concealed the existence of the Stipulation, claim that due diligence does not include searching public court files, and suggestion of a conspiracy theory as to the timing of the Stipulation and lease, were never viable and are irrelevant to this inquiry.

Defendant claims that there is no requirement for an expert's affidavit, as the facts herein are not disputed, and the ordinary experience of the fact-finder is sufficient to determine the adequacy of the professional services provided. Moreover, defendant alleges that but for the insufficient consultation with prior counsel and plaintiff's and/or prior counsel's failure to conduct due diligence and the subsequent commencement of an unviable holdover proceeding, there would have been no claim for damages.

Finally, defendant argues that plaintiff's overbroad discovery request doesn't create an issue of fact that would change the outcome of this action as the facts are undisputed.

B. Summary Judgment Legal Standard

The party seeking summary judgment under CPLR § 3212 has the initial burden of proving entitlement to relief by showing that there are no issues of fact needing to be determined

at trial (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once this burden is met, the opposing party defeats summary judgment by laying bare "his [or her] proofs in order to show his [or her] defenses are real and capable of being established on trial ... and it is insufficient to merely set forth averments of factual or legal conclusions" (*Schiraldi v U.S. Min. Products*, 194 AD2d 482, 483 [1st Dept 1993] [internal quotation marks and citation omitted]). If the opposing party fails to submit evidentiary facts to controvert the facts set forth in the movant's papers, the movant's facts may be deemed admitted and summary judgment granted since no triable issue of fact exists (*Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539, 544 [1975]). The court deciding a summary judgment motion must construe the evidence in favor of the party arguing against the motion (*Mullin v 100 Church LLC*, 12 AD3d 263, 264 [1st Dept 2004]).

C. Discussion

1. Legal Malpractice Cause of Action

a. Standard of Law

"An action for legal malpractice requires proof of three elements: (1) that the attorney was negligent; (2) that such negligence was a proximate cause of plaintiff's losses; and (3) proof of actual damages" (*Global Bus. Inst. v Rivkin Radler LLP*, 101 AD3d 651, 651 [1st Dept 2012]). To recover damages, "a plaintiff must demonstrate that the attorney failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession and that the attorney's breach of this duty proximately caused plaintiff to sustain actual and ascertainable damages" (*Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 442 [2007] [internal quotation marks and citation omitted]). "An attorney's 'selection of

one among several reasonable courses of action does not constitute malpractice'" (*Rodriguez v Lipsig, Shapey, Manus & Moverman*, 81 AD3d 551, 552 [1st Dept 2011]) quoting *Rosner v Paley*, 65 NY2d 736, 738 [1985]; *see Boye v Rubin & Bailin, LLP*, 152 AD3d 1, 9 [1st Dept 2017]).

"To establish causation, a plaintiff must show that he or she would have prevailed in the underlying action . . . but for the lawyer's negligence" (*Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d at 442). "[C]onclusory allegations of proximately caused damages cannot serve as a basis for a legal malpractice claim" (*Freeman v Brecher*, 155 AD3d 453, 453 [1st Dept 2017].

In the event the loss is due to an intervening cause, summary judgment will be granted to the defendant (*Brooks,* 21 AD3d at 734; *see also D.D. Hamilton Textiles v Estate of Mate,* 269 AD2d 214, 215 [1st Dept 2000]).

b. The Holdover Proceeding

On or about February 10, 2016, JMW 75 served a Notice to Cure on respondents, which provided in relevant part:

> "1. That you are allowing two (2) children over the age of one (1) year but under the age of 16 years to occupy the unit in violation of the Housing Maintenance Code, Article 4, §2076(b);
> "2. That the total square footage of the unit exceeds 130 sq. ft. and you have allowed the SRO unit to be occupied by more than two (2) persons in violation of the Housing Maintenance Code, Article 4, §27-2075(a)(2);"

(Ten [10] Day Notice to Cure; NYSCEF Doc. No. 9, Exhibit D).

A ten day Notice of Termination dated March 14, 2016 was served thereafter based on respondents' alleged failure to comply with the Notice to Cure. Paragraph 4 of the Petition sets

forth that "Termination is based upon the grounds enumerated in the Thirty (30) [sic] Day Notice of Termination" (*id.*).

The record reveals that the foregoing predicate notices as well as the Notice of Petition and Petition in the Underlying Holdover Proceeding dated April 4, 2016 were prepared by the law offices of Kaplain & Duval LLP, as attorneys for petitioner, JMW 75.

c. Applicable Statutory Provisions and Relevant Case Law

In support of its holdover proceeding, JMW 75 relied on two separate sections of the New York City Housing Maintenance Code (Administrative Code §§ 27–2001 et seq.). Specifically, Section 27-2075(a)(2), which governs the "Maximum Permitted Occupancy," provides in pertinent part:

> "a. No dwelling unit shall be occupied by a greater number of persons than is permitted by this section.
>
> * * *
>
> "(2) A living room in a rooming unit may be occupied by not more than two persons if it has a minimum floor area not less than one hundred ten square feet in a rooming house, or one hundred thirty square feet in a single room occupancy."

Section 27-2076(b) of the Housing Maintenance Code [Prohibited Occupancies] prohibits, in relevant part, families with children under the age of 16 from residing in SRO units, which are defined as "rooming units" that lack either an in-unit kitchen or an in-unit bathroom.

According to well-established jurisprudence, in order to maintain an eviction proceeding by reason of the aforementioned occupancy regulations, evidence is required that a violation of the available space requirements has been placed against the premises, or the proceeding will be deemed to be premature.

It is significant that, prior to the commencement of this holdover proceeding, plaintiff initiated the *Wielaard* case, a similar proceeding against respondents' neighbor, which was dismissed by the Housing Court. In *Wielaard*, the Appellate Term, First Department, affirmed the Housing Court's decision, holding that:

> "This illegal occupancy holdover proceeding (*see* Rent Stabilization Code [9 NYCRR] §2524[c]), based upon the allegation that "a minor child of approximately six or seven years of age" was residing in the Single Room Occupancy hotel unit in violation of Housing Maintenance Code (Administrative Code of City of NY) § 27–2076(b), was correctly dismissed on tenant's motion. In the absence of any showing that a violation has been placed against the premises or that landlord was actually "subject to civil or criminal penalties," the proceeding is premature (see *210 W. 94 LLC v Concepcion*, 2003 NY Slip Op 50612[U] [App Term, 1st Dept 2003]; *625 W. End Inc. v Howard*, 2001 NY Slip Op 40496[U] [App Term, 1st Dept 2001])."

(47 Misc 3d 133[A], 2015 NY Slip Op 50473 [U], *1).

d. Analysis

In the Underlying Holdover Proceeding, the Hon. Michelle D. Schreiber, J.H.C., quoting the *Wielaard* decision, granted the tenants' motion and denied landlord's cross-motion as follows:

> "The petitioner claims that the respondents are violating a substantial obligation of their tenancy based upon having two children in the subject premises in violation of the Housing Maintenance Code; it does not allege a violation has been issued. The petitioner previously commenced a similar case against a neighbor, *JMW 75 LLC v Wielaard*; the case was dismissed. On appeal the Appellate Term affirmed the dismissal stating, "[i]n the absence of any showing that a violation has been placed against the premises or that landlord was actually 'subject to civil or criminal penalties,' the proceeding is premature (citations omitted)." *JMW 75 LLC v Wielaard*, 47 Misc 3d 133(A) (AT 1st Dept 2015). Based upon the foregoing, the respondents' motions for summary judgment dismissing the petition are granted."

(NYSCEF Doc. No. 9, Exhibit E at 6).

The common thread in both *Wielaard* and the Underlying Holdover Proceeding is one simple fatal flaw in plaintiff's cause of action. Plaintiff is missing evidence of a violation having been placed against the premises necessary to warrant any likelihood of success of its argument. As such, it is beyond cavil that plaintiff knowingly commenced the meritless Underlying Holdover Proceeding against Debs and Galland which directly precipitated the adverse determination and ultimately resulted in the triggering of its liability to pay the liquidated damages of $250,000.00. Simply stated, if plaintiff had not pursued the fatally flawed claims in the Underlying Holdover Proceeding, plaintiff would not have faced any liability whatsoever. It was plaintiff's actions, and not the defendant's, that caused its own damages.

If plaintiff possessed viable grounds for Underlying Holdover Proceeding, it would not have subjected itself to liability under the Stipulation's liquidated damages clause. It is not so much the alleged ignorance of the existence of the Stipulation and the provision relating to the trigger of the liquidated damages language as the lack of viability of the proceeding itself that caused injury to plaintiff. Any argument claiming ignorance would not have changed the course of the proceeding. Plaintiff would not have prevailed in the Underlying Holdover Proceeding with the proposed alterative arguments.

Here, defendant's alleged negligence was not the proximate cause of the injury suffered by plaintiff. Indeed, the successor law firm had no responsibility for commencing the Underlying Holdover Proceeding, which was not viable from its inception. In any event, "allegations concerning [an attorney's] conduct of litigation itself are simply dissatisfaction with strategic choices and . . . do not support a malpractice claim as a matter of law" *(Bernstein v Oppenheim & Co.,* 160 AD2d 428, 431 [1st Dept 1990]). "An attorney's 'selection of one among several reasonable courses of action does not constitute malpractice'" (*Rodriguez v*

Lipsig, Shapey, Manus & Moverman P.C., 81 AD3d 551, 552 [1st Dept 2011] quoting *Rosner v Paley*, 65 NY2d 736, 738 [1985]). Contrary to plaintiff's contentions, there is no need for discovery or expert testimony under these circumstances (*see Wo Yee Hing Realty Corp. v Stern*, 99 AD3d 58, 63 [1st Dept 2012] [defendant not required to submit expert testimony to resolve the issue of proximate cause as "[h]ere, by contrast [with *Suppiah v Kalish*, 76 AD3d 829 (1st Dept 2010)], the mechanics of the governing legal framework are undisputed, and the issue of proximate cause turns on the discrete factual question of whether plaintiff took the requisite actions to identify and purchase a suitable replacement property in the required time frame"]; *compare Suppiah*, 76 AD3d at 832-833 [expert opinion required to determine proximate cause in legal malpractice case concerning an immigration matter involving issues so "byzantine" that they were "beyond the ordinary experience of a factfinder"]).

Therefore, defendant's motion for summary judgment seeking dismissal of the complaint sounding in legal malpractice must be granted.

2. Account Stated Counterclaim

a. Legal Standard

"'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 that balance due, if any, in favor of one party or the other'" (*Paul, Weiss, Rifkind, Wharton & Garrison v Koons,* 4 Misc 3d 447, 450 [Sup Ct, NY County 2004], quoting *Chisholm-Ryder Co. v Sommer & Sommer*, 70 AD2d 429, 431 [4th Dept 1979]). In that regard, the rule is clear, a showing that defendant received monthly statements coupled with either the retention of bills without objection within a reasonable time or partial payment will give rise to

an account stated *(Morrison Cohen Singer & Weinstein, LLP v Waters*, 13 AD3d 51, 52 [1st Dept 2004]).

b. Analysis

In support of its motion, defendant submits a copy of its executed retainer agreement with plaintiff in connection with its representation in the Underlying Holdover Proceeding (NYSCEF Doc. No. 9, Exhibit B).

Defendant also presents a copy of the invoices for professional legal services rendered (*id.*, Exhibit K), which it asserts were received by plaintiff every month (Brian Y. Epstein affirmation, ¶ 66). Defendant's affiant, partner Brian Y. Epstein ("Epstein"), who asserts that he has personal knowledge of the underlying facts, relates that plaintiff "never objected to any of the attorneys' fees, charges, costs or expenses set forth on the invoices" (*id.*). Defendant states that it consulted with plaintiff about its unpaid fees and that plaintiff not only retained defendant's invoices without objection, but also "regularly promised to pay the monthly invoices in full without dispute" (*id* at ¶ 67).

Defendant's monthly invoices range from October 2016 through and including May 2017 and include an "Accounts Receivable by Invoice Report," which runs through June 2017 and amounts to defendant's account stated of $55,885.82.

The e-mail exchanges between the parties in the record (NYSCEF Doc. No. 9, Exhibits L-O) corroborate that assertion, and demonstrate that plaintiff promised on several occasions in writing to pay the account. Indeed, in connection with the foregoing period of time, the court notes that, in January 2017, plaintiff's associate, Brian Hart ("Hart"), responds to a payment request for October through December 2016 with: "I am approving these in our new payment system right now. Will get you payment schedule" (NYSCEF Doc. No. 9, Exhibit N). In

response to Epstein's request for payment of past-due invoices ranging from October 2016 through May 2017, plaintiff's Chief Operating Officer responds via e-mail: "Brian we are working on it as we speak" (NYSCEF Doc. No. 9, Exhibit O at 1).

Defendant asserts that, notwithstanding the foregoing statements, plaintiff failed to make any payment and that plaintiff started objecting to the invoices only after commencement of this action.

Other than plaintiff's legal malpractice claim which has been dismissed, plaintiff fails to provide any substantive opposition to defendant's motion for summary judgment on its account stated counterclaim. In fact, plaintiff's president does not dispute defendant's account and admits that no objection was raised to payment of the invoices:

> "While, during the time the Holdover Action was pending and shortly thereafter, JMW did communicate to Defendant that it was JMW's then intention to pay its bills, as Simon Baron and its affiliates had in the past, at the time JMW was unaware of the gross mistake Defendant had made in its representation of JMW."

(Matthew Baron aff, ¶ 30).

Based on the foregoing, an account stated has been established (*Mintz & Gold LLP v Daibes*, 125 AD3d 488, 489-490 [1st Dept 2015]). Accordingly, defendant's motion for summary judgment is granted in favor of defendant and against plaintiff in the amount of $55,885.82, with interest thereon from August 21, 2017, together with costs and disbursements (*Lapidus & Assoc., LLP v Elizabeth St., Inc.*, 92 AD3d 405, 405-406 [1st Dept 2012]).

3. Breach of Contract Counterclaim

This Court need not address the breach of contract counterclaim in light of the foregoing conclusion.

III. Motion Sequence Number 002

Plaintiff seeks admission of Jay J. Rice, managing partner and co-founder of Nagel Rice LLP, pro hac vice. This application was granted without opposition in accordance with plaintiff's proposed order on March 12, 2018.

IV. Conclusion

Accordingly, it is

ORDERED that defendant's motion for summary judgment is granted and the complaint is dismissed; and its further

ORDERED that defendant's motion for summary judgment on its counterclaim is granted and the Clerk is directed to enter judgment in favor of defendant on its counterclaims and against plaintiff in the amount of $55,685.82, together with interest thereon from August 21, 2017, at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff's motion seeking admission of Jay J. Rice pro hac vice is granted.

The foregoing constitutes the decision and order of this Court.

Dated: August 10, 2018

ENTER:

J. S. C.

SHLOMO S. HAGLER, J.S.C.