Kasowitz Benson Torres LLP v Liddle
2018 NY Slip Op 31957(U)
August 13, 2018
Supreme Court, New York County
Docket Number: 150623/2018
Judge: Robert D. Kalish
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Robert D. KALISH **PART 29**
Justice

KASOWITZ BENSON TORRES LLP,

Plaintiff,

- v -

JEFFREY L. LIDDLE and LIDDLE & ROBINSON LLP,

Defendants.

INDEX NO. 150623/2018

MOTION DATE 7/3/18

MOTION SEQ. NO. 001

NYSCEF Doc Nos. 7–30 were read on this motion for summary judgment.

Motion by Plaintiff Kasowitz Benson Torres LLP ("Kasowitz") pursuant to CPLR 3212 for summary judgment in favor of Plaintiff and against Defendants Jeffrey L. Liddle ("Liddle") and Liddle & Robinson LLP ("L&R"), jointly and severally, is granted in part and denied in part.

BACKGROUND

Plaintiff commenced the instant action on January 22, 2018, by e-filing a summons and complaint. (Siegel affirmation, exhibit A [Complaint].) The Complaint alleges that Defendants retained Kasowitz, pursuant to two engagement letters, dated February 7, 2016, to represent them in *Signature Bank v Liddle & Robinson LLP et al.*, index no. 651223/2016 (the "Signature Bank Action"). The Complaint further alleges that, pursuant to the engagement letters and to certain invoices, Defendants agreed to pay Kasowitz's customary fees and expenses for certain related professional legal services. The Complaint then alleges that Kasowitz provided Defendants with invoices for services rendered but that Defendants have only made partial payment, with $159,597.00 currently due and owing to Kasowitz from Defendants, jointly and severally. The Complaint also alleges that Defendants did not object to, protest, or reject Kasowitz's unpaid or partially paid invoices. The Complaint alleges three causes of action, sounding in breach of contract, quantum meruit, and account stated, respectively.

After filing two stipulations extending Defendants' time to answer or move in response to the Complaint, on March 23, 2018, Defendants interposed their answer. (Siegel affirmation, exhibit B [Answer].) The Answer denies most of the allegations in the Complaint. The Answer admits that Liddle is the founding partner, and a current member, of L&R. The Answer further admits, upon information and belief, that this Court's personal jurisdiction over Defendants is proper and that venue is proper in New York County. The Answer further admits that the February 7, 2016 engagement letters constitute a valid and enforceable contract between the parties. The answer asserts two affirmative defenses: that the Complaint fails to state a cause of

action; and that Plaintiff has significantly overcharged Defendants an unreasonable amount for its services.

On April 5, 2018, Plaintiff filed the instant motion pursuant to CPLR 3212 for summary judgment. In support of its motion, Plaintiff has annexed executed copies of two engagement letters, each dated "As of February 7, 2016." (Siegel affirmation, exhibit C [Retention Agreements or Retainer Agreements].) The first of the Retention Agreements is addressed to Liddle and states that it "confirms the terms and conditions of the engagement by you and by [L&R] of Kasowitz." (Retention Agreements at 1.) It provides that, "[i]n consideration of [Kasowitz]'s provision of services to [Defendants], [Defendants] agree to pay [Kasowitz] its reasonable fees for professional services rendered and to reimburse [Kasowitz] for its reasonable disbursements and ancillary charges[,]" to be billed at least monthly pursuant to an annexed fee schedule—subject to change—and "payable upon receipt". (*Id.*) It then states that, "[u]pon execution of this letter, [Defendants] will provide us with an advance retainer in the amount of $50,000." (*Id.*) It further provides that "[Defendants] may terminate this letter agreement at any time and for any reason. If [Defendants] terminate this letter agreement, [Defendants] remain obligated to pay [Kasowitz's] outstanding fees." (*Id.* at 2.)

The second of the Retention Agreements is addressed to Defendants and additional L&R partners Marc A. Susswein, Blaine H. Bortnick, Christine A. Palmieri, David M. Marek, and James R. Hubbard (together with Liddle, the "Partners"). It states that it "confirms the terms and conditions of the engagement by [L&R and the Partners] of Kasowitz." (*Id.* at 6.) It provides that, "[i]n consideration of [Kasowitz]'s provision of services to [L&R and the Partners], "*L&R* agrees to pay [Kasowitz] for its reasonable fees for professional services rendered and to reimburse the Firm for its reasonable disbursements and ancillary charges." (*Id.* [emphasis added].) It further states that "[Kasowitz] confirm[s] that *L&R* has provided [Kasowitz] with an advance retainer in the amount of $50,000 and that *L&R* is responsible for payment of [Kasowitz's] fees and reimbursement of [Kasowitz's] expenses." (*Id.* [emphases added].) It further provides that "[Defendants and the additional partners] may terminate this letter agreement at any time and for any reason. If [Defendants and the additional partners] terminate this letter agreement, [they] remain obligated to pay [Kasowitz's] outstanding fees . . . . However, if a Partner terminates this agreement, it will not result in any personal obligation on the part of that Partner to pay our fees." (*Id.* at 7–8.)

The Retention Agreements both state that David Rosner, a Kasowitz partner, and Thomas Kelly, a Kasowitz associate, would be billing at the rates of $1,050 per hour and $495 per hour, respectively. The Retention Agreements provide that other Kasowitz lawyers may bill to the matter, per the hourly billing ranges for attorneys and staff detailed in Schedule I.

Plaintiff has annexed copies of three invoices, dated March 22, 2016, July 22, 2016, and August 11, 2016, in the amounts of $25,191.30, $164,528.23, and $99,877.47, respectively. (Siegel affirmation, exhibit D [Invoices].) The Invoices indicate that the $50,000.00 retainer was applied toward the full amount due on the March 22, 2016 invoice, with the remainder applied toward the amount due on the July 22, 2016 invoice, leaving a total amount due of $239,597.00 as of August 11, 2016. The Invoices are on Kasowitz letterhead and are addressed to L&R, on

the first line of the address block, and Liddle, on the second line of the address block. The Invoices indicate that they relate to the Signature Bank Action. The Invoices include billing entries primarily from Mr. Rosner and Mr. Kelly, although there are several other billers on the July 22, 2016 invoice—and there is one other biller on the August 11, 2016—who collectively billed $15,631.00 to the matter.

Plaintiff has annexed copies of emails and letters allegedly between the parties and/or their counsel. (Siegel affirmation, exhibits E–I. [Correspondence].) The first Correspondence submitted is an email thread indicating that, on October 17, 2016, Mr. Rosner emailed Liddle regarding "Signature Bank" and requested payment of the $239,587.00 then due to Kasowitz, as the billing was over 60 days old. (Siegel affirmation, exhibit E, at 3.) Later that day, Liddle emailed Mr. Rosner indicating that he had called and spoken with "Tom" after the bill was sent. (*Id.*) Liddle further stated, "I'm out of town for two weeks, except this Thursday pm and Friday. I need to discuss the bill with you. Can we do it then or on or after the 31st?" (*Id.*) Four days later, on October 21, 2016, Mr. Rosner emailed Liddle back and said, "Following up Jeff." (*Id.*)

Next, on December 28, 2016, Mr. Rosner emailed Liddle regarding "Outstanding Invoice" and stated, "We still have not received payment. Please Confirm that it will be wired by tomorrow. Thank you." (*Id.* at 2.)

After that, on December 30, 2016, Mr. Rosner emailed Liddle regarding "A/R" and stated, "Jeff, I'm told that we received no payment from *L&R*. Please confirm that you made the wire as agreed." (*Id.* at 1. [emphasis added].) Later that day, Liddle replied, "Pls listen to vm I just left you. Can't send it all today but did authorize wire for $75k. Happy new year." (*Id.*)

On January 3, 2017, Mr. Rosner emailed Liddle regarding "Two things" and said, "please let me know when I may expect payment on the remainder of our outstanding invoices." (Siegel affirmation, exhibit F, at 3.) On February 27, 2017, Mr. Rosner emailed Liddle regarding "a/r" and said, "I am checking in on the $165,000 still owed for our work last year." (*Id.* at 2.) On May 30, 2017, Mr. Rosner emailed Liddle regarding "Unpaid Invoices" and said, "I'm following up on this again, can you please advise when we can expect payment." (*Id.* at 1.)

On November 28, 2017, Mr. Joshua A. Siegel, a Kasowitz partner and the affirmant in the instant motion, sent a letter to Liddle, as Managing Partner of L&R, stating that "*L&R* is in default of its contractual obligation to Kasowitz by failing to pay our firm's long-outstanding invoices in the total amount of $159,597.00." (Siegel affirmation, exhibit G [emphasis added].) The letter continues, "Demand is hereby made upon *L&R* to immediately pay the amount of $159,597.00. In the event that we do not hear from you to arrange for payment by Friday, December 1, 2017, we will assume that *L&R* has no intention of fulfilling its obligations." (*Id.* [emphases added].)

An email, dated November 28, 2017, regarding "Kasowitz / Liddle & Robinson," indicates that the November 28, 2017 letter was sent from Mr. Siegel to Liddle as an attachment. (Siegel affirmation, exhibit I, at 3.) A subsequent email in the same thread, dated November 29,

2017, indicates that Mr. Siegel emailed Liddle and said, "Thank you for calling this morning. As discussed, we will expect payment in full by Dec 15." (*Id.* at 2.)

On November 29, 2017, Mr. Leslie D. Corwin sent a letter to Mr. Siegel indicating that Blank Rome represents L&R and asking Mr. Siegel to contact him to resolve the issues raised in the November 28, 2017 letter. (Siegel affirmation, exhibit H.) A few hours later, in the "Kasowitz / Liddle & Robinson" email thread, Mr. Siegel emailed Mr. Corwin and said, "I just received your letter. In case you are not aware, Jeff Liddle called me this morning and assured me that we would receive payment in full by Dec 15. My follow-up email is below. Please let me know if there is anything else we need to discuss." (*Id.*)

In the same thread, on December 15, 2017, Mr. Siegel emailed Mr. Corwin and said, "I received your voicemail and just tried calling your office. Please find attached another copy of our wire instructions. I would appreciate your confirming today when the $159,957 payment is made by Mr. Liddle." (*Id.*) Later that day, Mr. Corwin replied, "Please call me to discuss-thanks." (*Id.* at 1.) Within minutes, Mr. Siegel replied, "Apologies, I am in the middle of the filing. Is there an issue with *your client* making full payment today as promised?" (*Id.* [emphasis added].) Mr. Corwin then replied a minute later, "Yes – needs another 2 weeks." (*Id.*) Minutes later, Mr. Siegel replied, "This will be our final accommodation to Mr. Liddle. Payment must be received in full no later than Friday, December 29, 2017. All rights reserved." (*Id.*) Two minutes later, Mr. Corwin replied, "I will let him know that-thanks." (*Id.*)

Mr. Rosner submits an affidavit in support of the instant motion. (Aff of Rosner.) Mr. Rosner states that Defendants engaged Plaintiff pursuant to the Retention Agreements and that Plaintiff performed legal services for Defendants and billed Defendants accordingly. Mr. Rosner further states that L&R advanced the $50,000.00 retainer deposit to Kasowitz on February 22, 2016. Mr. Rosner then states that Kasowitz issued the Invoices to Defendants, who received them without objection, protest, or rejection.

Mr. Rosner cites to the Correspondence and states that he made repeated requests for payment to Defendants. Mr. Rosner states that, "[o]n December 30, 2016, *Defendants* made a partial payment to Kasowitz in the amount of $75,000. However, Defendants still owed a remaining balance due to Kasowitz of $164,597. (*Id.* ¶ 13 [emphasis added].) Mr. Rosner then states that "[i]t was not until July 31, 2017 that *Defendants* made another partial payment—their last payment—in the amount of only $5,000, leaving the total outstanding balance due to Kasowitz of $159,157." (*Id.* ¶ 15 [emphasis added].) Mr. Rosner further states that, "[o]n November 28, 2017, Kasowitz sent Defendants a final letter demanding that *Defendants* pay its outstanding invoices in the total amount of $159,157." (*Id.* ¶ 16 [emphasis added].) Mr. Rosner then states that "Liddle called Kasowitz and promised to pay the outstanding balance by December 15, 2017, which promise was confirmed in writing." (*Id.* ¶ 17.)

Plaintiff argues in its papers, in sum and substance, that Kasowitz is entitled to summary judgment in its favor on its first and third causes of action, sounding in breach of contract and

account stated, respectively.[1] As to the alleged breach of contract, Plaintiff argues that "[t]he Retainer Agreements are valid and enforceable contracts," on which Kasowitz fully performed, "that Defendants breached by virtue of its non-payment of Kasowitz's Invoices." (Memo of law in support at 5–6.) As to an alleged account stated, Plaintiff argues that Defendants received the Invoices, did not object to them in a reasonable time, made partial payment on them, and assured Plaintiff that they would pay the remaining balance. Plaintiff further argues that Defendants' objections in their Answer as to the Invoices are vague, untimely, and insufficient as a matter of law to raise a genuine issue of fact as to whether Defendants timely objected to the Invoices.

Defendants' entire opposition submitted on the instant motion consists of a three-page affidavit by Liddle on behalf of Defendants and e-filed by Mr. Corwin on June 15, 2018—after the parties stipulated, on four different occasions, to adjourn the return date of the motion. (Aff of Liddle.) Defendants argue, in sum and substance, that "Plaintiff's motion should be denied because of the rampant overbilling/overcharging by the Plaintiff in connection with its representation of the Defendants in [the Signature Bank Action]." (*Id.* ¶ 2.) Liddle's affidavit also states the following:

> "When Kasowitz's final bill arrived, amounting to just under $300,000, I asked Rosner how the final bill could have been so large, and offered to discuss the line items (there were many) that I had questions about but I was brushed off, and offered a small discount. I was never given the opportunity to speak with Rosner again even though I tried to discuss Kasowitz's excessive billing."

(*Id.* ¶ 5.)

Plaintiff argues in reply, in sum and substance, that Defendants' affidavit in opposition is self-serving and is the first time that Defendants complained of overbilling. Plaintiff then argues that, as Defendants' objections are untimely and unsupported by documentary evidence, they are insufficient as a matter of law to raise an issue of fact.

Plaintiff states in its reply papers that Blank Rome sought to adjourn the return date of the instant motion to make time for a global resolution of claims against Defendants by multiple creditors, including Kasowitz. Plaintiff annexes an email thread from May 2018, regarding adjourning the return date of the instant motion. (Siegel reply affirmation, exhibit A.) The thread includes an email, dated May 30, 2018, from Rachel Sims, a Blank Rome associate, to Mr. Corwin. In the internal Blank Rome email, Ms. Sims states, "Liddle's opposition is due today, but as we discussed, he doesn't have an opposition." (*Id.* at 2.) Next, Mr. Corwin emails Mr. Siegel, includes the internal May 30, 2018 Blank Rome email, and indicates to Mr. Siegel that that he is "truly trying to get this matter resolved and . . . need[s] till [J]une 15th to get this resolved." (*Id.* at 1.)

---

[1] Plaintiff's moving papers do not address the merits of Plaintiff's cause of action sounding in quantum meruit.

DISCUSSION

"To obtain summary judgment it is necessary that the movant establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in his favor, and he must do so by tender of evidentiary proof in admissible form." (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [internal quotation marks and citation omitted].) "The proponent of a summary judgment motion 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 University Medical Center*, 64 NY2d 851, 853 [1985].) "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." (*Id.*) "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution." (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003].) "On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted].) In the presence of a genuine issue of material fact, a motion for summary judgment must be denied. (*See Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002].)

Breach of Contract

Kasowitz is entitled to judgment as a matter of law on the first cause of action, alleging breach of contract, as against L&R, but not as against Liddle. "The essential elements of a breach of contract cause of action are the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and resulting damages." (*Liberty Equity Restoration v Maeng-Soon Yun*, 160 AD3d 623, 626 [2d Dept 2018].) Here, Kasowitz has annexed the Retention Agreements, both of which are dated "As of February 7, 2016." The first of the Retention Agreements as annexed to the motion papers states that both L&R and Liddle will be responsible for paying Kasowitz in connection with its representation of Defendants and that Kasowitz is expecting to receive its $50,000.00 retainer from them. The second of the Retention Agreements as annexed to the motion papers states that L&R, only, will be responsible for paying Kasowitz in connection with its representation of L&R and the six enumerated partners who signed it, and further states that L&R, not Liddle in his individual capacity or any other partner signatory, made the $50,000.00 retainer payment to Kasowitz.

The Court finds that Plaintiff's own submission of not one, but two signed engagement letters raises an issue of fact as to whether the first, the second, or both are the operative "contract" or "agreement" and whether the second superseded the first as a novation or quasi-novation. Ordinarily, where a retainer agreement is addressed to both an entity and individual and signed by that individual in his individual capacity, the individual signatory can be held liable for the legal fees. (*See Mintz & Gold LLP v Daibes*, 125 AD3d 488, 489 [1st Dept 2015].) The same is true where, as here, the individual signs on behalf of both the entity and he himself, and no separate personal guaranty is required. (*See Epstein Becker & Green, P.C. v Amersino Marketing Group, LLC*, 111 AD3d 428, 429 [1st Dept 2013].) Nevertheless, where "the retainer agreement, which supplemented a prior agreement, is ambiguous as to who may be liable for

attorneys' fees . . . it is not sufficient to look only at the signature line in isolation. What is written on a signature line must be understood in the light of the entire agreement." (*Wormser, Kiely, Galef & Jacobs, LLP v Frumkin*, 125 AD3d 516, 517 [1st Dept 2015].)

In reviewing the Retention Agreements, it appears to the Court that the first called for a retainer to be paid to Kasowitz, while the second confirms that the payment was made. As the second of the Retention Agreements confirms L&R's performance of an obligation under the first of the Retention Agreements—to send Kasowitz the $50,000.00 retainer—it appears to the Court that the second of the Retention Agreements as annexed to the motion papers was drafted and signed after the drafting and signing of the first of the Retention Agreements. Mr. Rosner's own affidavit submitted in support of the instant motion states that, while the Retention Agreements are dated "As of February 7, 2016," it was not until February 22, 2016, that L&R advanced the $50,000.00 retainer deposit to Kasowitz.

As such, in the light of the entirety of the Retention Agreements, the Court finds that Kasowitz has shown prima facie that a contract existed between Kasowitz, on one side, and L&R and Liddle, on the other side, by means of, among other things, Defendants' Answer, which admitted that the contract between the parties was valid and enforceable. The Court finds further that Kasowitz has shown prima facie that Kasowitz performed its obligations under the contract by means of Mr. Rosner's affidavit, the Invoices, and the Correspondence. Further, while Kasowitz has shown prima facie that, under either of the Retention Agreements, L&R was obligated to pay Kasowitz's reasonable fees, costs, and expenses, Kasowitz has failed to show prima facie that Liddle is liable to Kasowitz for such payments in his individual capacity. While the first of the Retention Agreements does state that Defendants are liable for such payments, the second of the Retention Agreements states that L&R, only, agrees to pay for the representation of both L&R and the partners. Moreover, the second of the Retention Agreements states that no partner who terminates the agreement will be personally obligated to pay Kasowitz's fees. Further, subsequent statements by Mr. Rosner and Mr. Siegel in the Correspondence and in Mr. Rosner's affidavit indicate that L&R had made prior payments and demand that L&R make subsequent payments. The totality of these statements, viewed in the light most favorable to the non-moving parties, raises a genuine issue of material fact as to whether Liddle is individually liable for such fees under the contract, and the Court need not consider the sufficiency of Defendants' papers as to Liddle.

The burden having shifted to L&R upon Kasowitz's prima facie showing of entitlement to judgment as a matter of law as against L&R on its first cause of action, Defendants fail to raise a genuine issue of material fact in response. Liddle's affidavit states that Kasowitz overbilled and overcharged Defendants in connection with the Signature Bank Action. To be sure, the Retention Agreements constitute an agreement to pay Plaintiff's "reasonable" fees, costs, and expenses. Nevertheless, where a plaintiff has established prima facie entitlement to judgment as a matter of law on a breach of contract cause of action, and where the same plaintiff establishes its entitlement to summary judgment on an account stated, the court is not required to hold a hearing, even where the defendant requests it. (*See Epstein Becker & Green, P.C. v Amersino Marketing Group, Inc.*, 2012 NY Slip Op 32882[U] [Sup Ct, NY County 2012, Kern, J.], *affd* 111 AD3d 428 [1st Dept 2013].) For the reasons stated *infra*, Kasowitz has shown prima facie

entitlement to judgment as a matter of law on its third cause of action on an account stated as against both L&R and Liddle. As such, the issue of reasonableness is moot, and, as the issue only affects Kasowitz's damages on the first cause of action, it will not preclude the entry of judgment in Kasowitz's favor and against L&R as to the first cause of action.

Quantum Meruit

Recovery in quantum meruit is barred where, as alleged by Plaintiff and admitted by Defendants, there exists a valid and enforceable contract, and where, as here, the limited exceptions to this longstanding rule are inapplicable. (*See Empire State Fuel Corp. v Warbasse-Cogeneration Tech. Partnership, L.P.*, 58 AD3d 534, 534 [1st Dept 2009], citing *Whitman Realty Group, Inc. v Galano*, 41 AD3d 590, 592–593 [2d Dept 2007].) Indeed, nowhere in Kasowitz's motion papers does it argue that summary judgment is warranted in quantum meruit. Rather, Kasowitz merely has moved for summary judgment on a sum certain and argues that it is entitled to judgment as a matter of law on its first and third causes of action. As such, Kasowitz is not entitled to recover in the instant motion on its second cause of action as to Defendants.

Account Stated

In the first instance, as the Court has already found that certain express terms in the second of the Retention Agreements and other statements by Plaintiff raise a genuine issue of material fact as to whether the parties intended for Liddle to be individually liable to Kasowitz for the subject fees, costs, and expenses, the same issue of fact precludes summary judgment for Kasowitz against Liddle on Plaintiff's third cause of action on an account stated. As such, the Court will analyze whether Kasowitz may prevail on its motion for summary judgment on its third cause of action as against L&R.

As the Appellate Division, First Department, has said:

> "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. In this regard, receipt 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. Further, an attorney may contract with his client on the cost of his past or future services, and an account stated may exist between them."

(*Shea & Gould v Burr*, 194 AD2d 369, 370 [1st Dept 1993].) "Where an account is rendered showing a balance, the party receiving it must, within a reasonable time, examine it and object, if he disputes its correctness. If he omits to do so, he will be deemed by his silence to have acquiesced, and will be bound by it as an account stated, unless fraud, mistake or other equitable considerations are shown." (*Shaw v Silver*, 95 AD3d 416, 416 [1st Dept 2012].) "It is not necessary to establish the reasonableness of the fee since the client's act of holding the statement

without objection will be construed as acquiescence as to its correctness." (*Id.* at 416–417; *see also Emery Celli Brinckerhoff & Abady, LLP v Rose*, 111 AD3d 453, 454 [1st Dept 2013], *lv denied* 23 NY3d 904 [2014].)

"The very meaning of an account stated is that the parties have come together and agreed upon the balance of indebtedness so that an action to recover the balance as upon an implied promise of payment may thenceforth be maintained." (*Herrick, Feinstein LLP v Stamm*, 297 AD2d 477, 478 [1st Dept 2002].) An account stated is "independent of the underlying agreement," such as a retainer agreement. (*Duane Reade v Cardinal Health, Inc.*, 21 AD3d 269, 269–270 [1st Dept 2005].) Indeed, even where a plaintiff attorney or law firm fails to comply with the rules on retainer agreements and has no cause of action sounding in breach of contract, the plaintiff is not precluded from seeking to recover legal fees for the services provided on the bases of quantum meruit or an account stated. (*See* 22 NYCRR 1215.1, *Frechtman v Gutterman*, 140 AD3d 538 [1st Dept 2016].)

A plaintiff may show prima facie entitlement to summary judgment on an account stated theory by demonstrating that a defendant either retained plaintiff's bills without objection or made partial payment on them. (*See Morrison Cohen Singer & Weinstein, LLP v Waters*, 13 AD3d 51, 52 [1st Dept 2004] [reiterating that "either retention of bills without objection or partial payment may give rise to an account stated"]; *cf. Shea & Gould*, 194 AD2d at 370; *Morrison Cohen Singer & Weinstein, LLP v Ackerman*, 280 AD2d 355, 356 [1st Dept 2001].) Here, Kasowitz has submitted the Invoices and the Correspondence, which show that L&R received, retained, and made partial payment on the Invoices without objection. Liddle's sole direct statement in movant's papers coming anywhere close to an objection to the Invoices comes from his email to Mr. Rosner, on October 17, 2016, where Liddle stated that he spoke to a "Tom" after Kasowitz sent a bill and further stated that he needed to discuss the bill with Mr. Rosner. Liddle's October 17, 2016 statement makes no mention of any objection and is belied by his only other direct statement in movant's papers, on December 30, 2016, where Liddle told Mr. Rosner, in response to Mr. Rosner's request for a confirmation that Liddle "made the wire as agreed," that he "[c]an't send it all today but did authorize wire for $75k."

Moreover, Defendants' Answer, filed over two years after Kasowitz sent its first bill to Defendants regarding the Signature Bank Action, merely challenges the reasonableness of the charges with respect to the services rendered. Nowhere does it assert that Defendants ever objected to the billing in the prior two years, "a sufficient length of time as a matter of law to establish [a] defendant's liability on [an] account stated cause of action. (*See Morrison Cohen Singer & Weinstein*, 13 AD3d at 52.) Rather, Mr. Siegel indicated in his November 29, 2017 email to Mr. Corwin that Liddle orally assured him that Kasowitz would receive payment in full by December 15, 2017. The reply from Mr. Corwin did not dispute this account, but rather indicated that Blank Rome's client, L&R, needed another two weeks to make the payment in full. As such, viewing the facts in the light most favorable to Defendants, the Court finds that Kasowitz has shown prima facie entitlement to judgment as a matter of law as against L&R on its third cause of action on an account stated.

The burden having again shifted to L&R, Defendants again fail to raise a genuine issue of material fact in response. "A client's self-serving, bald allegations of oral protests are insufficient to raise a triable issue of fact as to the existence of an account stated." (*Duane Morris LLP v Astor Holdings Inc.*, 61 AD3d 418, 419 [1st Dept 2009]; *see also Kucker & Bruh, LLP v Sendowski*, 136 AD3d 475, 475–476 [1st Dept 2016]; *Berkman Bottger & Rodd, LLP v Moriarty*, 58 AD3d 539, 539–540 [1st Dept 2009].) Where a defendant's submission on a plaintiff's motion for summary judgment on an account stated does not assert that the defendant specifically objected to the billing, but, rather, asserts that the defendant only discussed, or wished to discuss, a plaintiff's outstanding fees, such a showing is insufficient to raise an issue of fact. (*See Zanani v Schvimmer*, 50 AD3d 445, 446 [1st Dept 2008].) Similarly, a defendant's belated statement on a motion for summary judgment that, when the defendant received the bills from the plaintiff, the defendant raised to the plaintiff a belief that the bills contained overcharges is insufficient to raise an issue of fact as to the existence of an account stated. (*See Bartning v Bartning*, 16 AD3d 249, 250 [1st Dept 2005].) Further, where a defendant's affidavit on a plaintiff's motion for summary judgment on an account stated asserts that the defendant advised the plaintiff that its invoices were incorrect, such a showing is, likewise, insufficient to raise a triable issue of fact. (*See Mintz & Gold LLP*, 125 AD3d at 489.)

Liddle's affidavit in opposition primarily argues that the motion should be denied because Kasowitz overbilled L&R for its representation of Defendants. Liddle's other argument is that he asked Mr. Rosner how the final bill could have been so large but was "brushed off, [] offered a small discount[]" and never "given the opportunity" to speak with Mr. Rosner again to discuss Kasowitz's "excessive billing." Not only are these arguments insufficient as a matter of law to raise a genuine issue of material fact on this motion, but also they are belied by the months of unanswered emails from Mr. Rosner to Liddle regarding the outstanding balance. At best, "defendants' generally phrased objections to plaintiff law firm's billings do not constitute the specified, contemporaneous objections to bills required to defeat an account stated cause of action." (*LePatner & Assocs., LLP v Horowitz*, 81 AD3d 472, 472 [1st Dept 2011], citing *Zanani*.)

Assuming for the sake of argument that Defendants showed that they sufficiently and timely objected to the Invoices—which they have not—such objection would still be insufficient to raise a genuine issue of material fact. (*See Boulanger, Hicks, Stein & Churchill, P.C. v Jacobs*, 235 AD2d 353, 353 [1st Dept 1997].) As indicated in the record, L&R paid a $50,000.00 retainer to Kasowitz on February 22, 2016. The entire $25,191.30 due from the March 22, 2016 invoice was paid out of the retainer, as indicated on the March 22, 2016 invoice, and the remainder went toward the amount due from the July 22, 2016 invoice, as indicated on the July 22, 2016 invoice. Both applications of the retainer constituted partial payment to Kasowitz for services rendered, and both were made without objection. These partial payments to Kasowitz, together with the December 30, 2016 payment of $75,000.00 and the July 31, 2017 payment of $5,000, together with the statements by Liddle and Mr. Corwin regarding future payment to Kasowitz of the outstanding balance on the Invoices, contradict Liddle's contention in his affidavit in opposition that he protested the invoices. (*See Kramer Levin Naftalis & Frankel LLP v Canal Jean Co., Inc.*, 73 AD3d 604, 605 [1st Dept 2010]; *see also Brunelle & Hadjikow, P.C. v O'Callaghan*, 126 AD3d 584, 584 [1st Dept 2015]; *Zanani*, 50 AD3d at 445.)

CONCLUSION

Accordingly, it is

ORDERED that the motion by Kasowitz Benson Torres LLP ("Kasowitz") pursuant to CPLR 3212 for summary judgment in favor of Plaintiff and against Defendants Jeffrey L. Liddle ("Liddle") and Liddle & Robinson LLP ("L&R"), jointly and severally, is granted in part and denied in part, to the extent that it is

ORDERED that Kasowitz's motion for summary judgment is granted in favor of Kasowitz and against L&R, only, on the first and third causes of action in the complaint, and the motion is otherwise denied; and it is further

ORDERED that the second cause of action is dismissed without prejudice as against L&R, as moot; and it is further

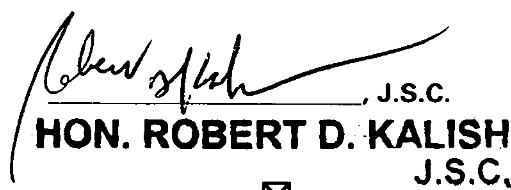
ORDERED that the action is severed and shall continue as against Liddle; and it is further

ORDERED that, within 20 days of entry, Plaintiff shall serve a copy of this order with notice of entry upon Defendants and upon the Clerk, who is directed to enter judgment in favor of Plaintiff and against L&R, only, in the sum of $159,597.00, with interest from August 11, 2016, at the rate of 9.00% per annum, to the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that Kasowitz and Liddle are directed to appear by their counsel in Part 29, located at 71 Thomas Street, Room 104, New York, New York 10013-3821, on September 25, 2018 @ 9:30AM for a preliminary conference.

The foregoing constitutes the decision and order of the Court.

Dated: August 13, 2018
New York, New York



, J.S.C.
HON. ROBERT D. KALISH
J.S.C.

1. Check one: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. Check if appropriate: MOTION IS: ☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER
3. Check if appropriate: ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE