

**Spiegel v Ahearn**

2018 NY Slip Op 32472(U)

October 1, 2018

Supreme Court, New York County

Docket Number: 101251/2016

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

-----X  
MICHAEL SPIEGEL,  
:  
Plaintiff,  
:  
-against-  
:  
THOMAS AHEARN, LIRIDONA KASTRAT,  
:  
KRISTOPHER KENNINGTON and  
:  
DAVID ORTIZ,  
:  
Defendants.  
:  
-----X

Index No. 101251/2016  
  
Motion Sequence No. 002  
  
**DECISION AND ORDER**

MELISSA A. CRANE, J.:

Between 2006 and 2012, plaintiff pro se Michael Spiegel and defendants Thomas Ahearn, Liridona Kastrat, Kristopher Kennington, and David Ortiz were employed by the Hotel Edison (“Hotel”), located on West 47th Street in Manhattan (*see* Spiegel’s verified complaint, dated August 8, 2016 [complaint], ¶ 8). The defendants later sued the Hotel and its managers, claiming that the Hotel and its managers engaged in wrongful conduct with respect to their employment and termination.<sup>1</sup> Spiegel brings this action to recover damages from the defendants for allegedly breaching the contract they entered with him in connection with the prosecution of the defendants’ claims, versus the Hotel (*id.* ¶ 31 *et seq.*).

On this motion for summary judgment under CPLR 3212, designated as motion sequence number 002, the remaining defendants, Kastrat and Kennington (hereinafter, “Defendants”),<sup>2</sup> seek dismissal of the causes of action Spiegel asserts against them. Spiegel opposes Defendants’

<sup>1</sup> The action brought by Ahearn, Kastrat, Kennington and Ortiz against the Hotel and its managers, captioned *Kennington v 226 Realty LLC d/b/a Hotel Edison* (Sup Ct, NY County, Index No. 159306/2012), was commenced by the e-filing of the summons and complaint with the New York County Clerk’s Office on December 28, 2012 (*see* exhibit 3 to the affirmation of Christopher R. Deubert, Esq., dated November 30, 2017 [Deubert affirmation]).

<sup>2</sup> On November 7, 2017, Spiegel settled his claims against Ahearn and Ortiz (*see* stipulation of discontinuance with prejudice [NYSCEF Doc. No. 4]).

motion and cross moves for summary judgment, contending that he is entitled to recover damages from Defendants for their breach of contract, or in quantum meruit.

### **Background**

Spiegel asserts three causes of action in his complaint, for breach of contract, quantum meruit, and “Debt Owed,” each alleged to arise from the “Legal Agreement” he entered with Ahearn, Kastrat, Kennington, and Ortiz, dated October 31, 2012 (Legal Agreement) (exhibit 1 to the Deubert affirmation).

In the Legal Agreement, Spiegel promised to help Defendants and Ahearn and Ortiz in the civil lawsuit they were contemplating against the Hotel:

“Spiegel agree[d], for his part, to secure a lawyer for this action, to give full and complete aid in counsel for the preparation and planning of this lawsuit, up to and including trial and any appeal, and to also front any money paid to the lawyer as an advance or other purpose, plus to front any money to be paid as ‘out of pocket expenses. . . Spiegel also agree[d] to give testimony at the trial, as necessary and appropriate”

(*id.* at 1).

For their part, Defendants promised to cooperate with Spiegel in the prospective lawsuit, and to provide testimony in a lawsuit Spiegel planned to bring on his own behalf against the Hotel (*id.*).<sup>3</sup> Among other things, Defendants also agreed that they would pay Spiegel 25% of any money they received from the Hotel in the lawsuit, through settlement or an award after trial, after deduction of attorneys’ fees and “fronted expenses” (*id.* at 1-2).

With Spiegel’s assistance, shortly after their execution of the Legal Agreement, Defendants, along with Ahearn and Ortiz hired Neil Frank, Esq. of Frank & Associates, P.C. to represent them in their suit against the Hotel. In their retainer agreement with Frank’s law firm,

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<sup>3</sup> That action, captioned *Spiegel v 226 Realty d/b/a 226 Realty Co., LLC*. (Sup Ct NY County, Index No. 150371/2013), was commenced by summons and complaint dated January 14, 2013 (Deubert affirmation exhibit 24).

dated November 5, 2012, Defendants and Ahearn and Ortiz agreed to pay the firm \$500 each as an initial intake fee, plus 35% of any negotiated settlement, plus disbursements paid on their behalf (Deubert affirmation exhibit 9, at 1). If the suit went to trial, the law firm would be paid any fees and expenses the court awarded (*id.*).

Spiegel admits that, although he is not an attorney, he is a businessman with extensive experience in civil litigation (*see* Defendants' Rule 19-A Statement of Material Facts [SMF], ¶¶ 2-3; transcript of Michael Spiegel deposition, dated September 5, 2017 [Tr.], 36:19 to 42:5). Spiegel's experience includes his own lawsuit against the Hotel, several grievance arbitration proceedings concerning his termination by the Hotel, several proceedings before New York State's Department of Labor concerning his claim for unemployment benefits arising from his termination by the Hotel, a complaint with the Occupational Safety and Health Administration concerning conditions at the Hotel, and a complaint with the New York Division of Licensing Services concerning security guards at the Hotel (SMF ¶¶ 3, 7-11). Spiegel states that he has helped at least three other former Hotel employees bring lawsuits against the Hotel and has a financial interest in the outcome of one such suit (*id.* ¶¶ 4-5; Tr. 19:23-22:25).

Spiegel also admits that, since his termination in 2012, aside from his temporary employment as a tax preparer and as a salesman in a clothing shop, and his continuous self-employment in marketing gemstones, jewelry and collectibles, his principal activity has been maintaining his lawsuit against the Hotel and assisting other former employees in prosecuting their claims against the Hotel (SMF ¶ 6).

In the complaint, Spiegel contends that Defendants resolved their lawsuit against the Hotel by accepting payment of money in settlement, but breached their contract with him by

failing to respond to his demand for information regarding the settlement amount, and by refusing to pay the amount due him under the Legal Agreement (complaint ¶¶ 25, 28-30).

In this motion, Defendants assert that they are entitled to summary judgment dismissing Spiegel's complaint in its entirety. First, they argue the Legal Agreement is void and unenforceable because Spiegel's performance constituted the unauthorized practice of law. Defendants further argue that the Legal Agreement is void and unenforceable because it violates New York's prohibition against champerty. Defendants also assert that Spiegel cannot recover in quantum meruit because its Legal Agreement is unlawful, and that his cause of action for "Debt Owed," for money Spiegel claims he spent on Defendants' behalf for "litigation cost, fees and expenditures" in their suit against the Hotel, is not cognizable under New York Law and is otherwise duplicative of his breach claim.

Spiegel opposes Defendants' motion, asserting that Defendants are not entitled to summary judgment because the Legal Agreement is neither unlawful nor champertous, as he never engaged in the unauthorized practice of law. Spiegel also cross moves, contending that he is entitled to recover for Defendants' breach of the Legal Agreement, either in contract or quantum meruit.

### **Discussion**

"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. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [internal citations omitted]).

To prevail, the movant must produce evidentiary proof in admissible form sufficient to warrant granting summary judgment in its favor (*GTF Mktg. v Colonial Aluminum Sales*, 66 NY2d 965, 967 [1985]). Once the movant makes its showing, the burden shifts to the opposing party, to submit proof in admissible form sufficient to show a question of fact exists, requiring trial (*Kosson v Algaze*, 84 NY2d 1019, 1020 [1995]).

In deciding the motion, the court must view evidence in the light most favorable to the nonmovant (*Prine v Santee*, 21 NY3d 923, 925 [2013]). Party affidavits and other proof must be examined carefully “because summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue” (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978] [citation and internal quotation marks omitted]). Still, “only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment” (*id.*).

Defendants allege that the Legal Agreement is unenforceable because it calls for Spiegel’s unauthorized practice of law, in violation of Judiciary Law Section 478, that states, in pertinent part:

It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself or herself in a court of record in this state, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself or herself out to the public as being entitled to practice law as aforesaid, or in any other manner, . . . without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath.

This statute is intended “to protect our citizens against the dangers of legal representation and advice given by persons not trained, examined and licensed for such work, whether they be laymen or lawyers from other jurisdictions” (*Spivak v Sachs*, 16 NY2d 163, 168 [1965]). A contract violating Section 478 is illegal “and under our settled rules [New York courts] refuse to

aid in it but leave the parties where they are” (*Spivak*, 16 NY2d at 168, citing *McConnell v Commonwealth Pictures Corp.*, 7 NY2d 465 [1960]; see also *El Gamayel v Seaman*, 72 NY2d 701, 705 [1988] [“As a matter of public policy, a contract to provide services in violation of [Judiciary Law § 478] is unenforceable in our state courts”]).

Defendants assert that, by advising them about their claims, the problems that they may encounter in preparing and presenting them, and by helping them prepare necessary documents, Spiegel engaged in the unauthorized practice of law. Spiegel denies these allegations.

“The essence of the practice of law has been said to be ‘the representation and the advising of a particular person in a particular situation’” (*Roschko v Roschko*, 130 Misc 2d 827, 830 [Sup Ct NY County 1985], quoting *Matter of New York County Lawyers’ Assn. v Dacey*, 28 AD2d 161, 174 [1st Dept] [Stevens, J., dissenting], *aff’d on the dissenting opinion*, 21 NY2d 694 [1967]; see also *Carter v Flaherty*, 37 Misc 3d 46, 48 [App Term Nassau County 2012] [“A person is practicing law when he or she gives legal advice”]).

The “full and complete aid in counsel” Spiegel provided to Defendants included extensive advice about their prospective lawsuit against the Hotel, the merits of Defendants’ possible claims, the extent of the damages they could recover, and the steps they would have to take to prosecute their suit (*e.g.* SMF ¶¶ 19-24; Tr. 47:25 to 48:5, 51:19 to 53:20; 53:23 to 55:8; 55:9 to 58:9; 58:10 to 65:22, and 81:23 to 82:20). Thus, as a non-lawyer providing legal advice, Mr. Spiegel engaged in the unauthorized practice of law (*El Gamayel v Seaman*, 72 NY2d 701 at 706, citing *Spivak v Sachs*, 16 NY2d at 166 [“The ‘practice’ of law reserved for duly licensed New York attorneys includes the rendering of legal advice. . .”]).

*State of New York v Winder* (42 AD2d 1039, 1040 [4th Dept 1973]), cited in *Roschko v Roschko* (130 Misc 2d at 829), illustrates New York’s prohibition against laypersons rendering

legal advice. In that case, the Appellate Division, Fourth Department enjoined the seller of a do-it-yourself divorce kit from giving legal advice to customers. It found that the lay author's sale of a "Divorce Yourself Kit" book, that contained forms and instructions in matrimonial law and procedure, did not constitute unauthorized practice of law under Judiciary Law Section 478. However, the court found that the author had violated the statute by giving legal advice in the course of his personal contacts with kit purchasers, "concerning particular problems which might arise in the preparation and presentation of the purchaser's asserted matrimonial cause of action or pursuit of other legal remedies and assistance in the preparation of necessary documents" (*Winder*, 42 AD2d at 1040). Here, by discussing Defendants' legal problems with them and advising them what they needed to do to resolve those problems, Spiegel violated the Judiciary Law.

Spiegel tries to distinguish his circumstances by asserting that he never prepared legal documents on Defendants' behalf, and that he repeatedly urged Defendants to hire an attorney, to assess their claims and provide them legal advice. These arguments are unavailing. First, Spiegel admits to drafting documents for the purpose of advancing Defendants' suit versus Hotel, including his "participating" in drafting Defendants' document demands (Spiegel SMF ¶ 46), drafting letters on behalf of Defendants to attorney Frank concerning the lawsuit (*id.* ¶ 53), drafting a letter on behalf of Kastrat to the judge presiding over the lawsuit (*id.* ¶ 54), and drafting a "Legal Memorandum" to Kastrat's new attorney (*see* Deubert affirmation exhibit 45), summarizing her case against the Hotel and its status (Spiegel SMF ¶ 59).

Moreover, there was little change in the relationship between Defendants and Spiegel following the retention of Frank's law firm. Spiegel continued to provide legal advice on how to prepare for and maintain Defendants' suit against the Hotel, but now shared this advice with both



Defendants and Frank (*see* SMF ¶¶ 39-43, 49-52; Deubert affirmation exhibits 18-21, 54; and Tr. 130:10-19, 207:15 to 208:15; 245:21 to 246:2, 372:23 to 375:13, 395:11-19). Spiegel admits he maintained this level of involvement to protect his financial stake in Defendants' claims (Tr. 96:13 to 98:17).

Spiegel also does not contest Defendants' assertion that the "Legal Memorandum" advised Kastrat's prospective new counsel of five tasks which Spiegel believed "need[] to be completed" (SMF ¶ 60; Spiegel SMF ¶ 60), that is: "(1) vacate the note of issue; (2) depose additional witnesses; (3) serve new interrogatories and document demands; (4) amend the complaint to add an additional corporate defendant; and (5) plan a list of witnesses and either interview or depose them" (SMF ¶ 60). Defendants further allege that Spiegel recommended that they obtain new counsel, after Spiegel argued with Frank, and undermined Defendants' relationship with him, hurting their litigation prospects in the process (Defendants' memorandum in support, at 13-14). Spiegel even admits that he advised Defendants to replace Frank with a new attorney (Spiegel SMF ¶ 56). Plainly, Defendants' hiring Frank as their attorney did not stop Spiegel from violating Judiciary Law Section 478.

Spiegel's litigation experience and knowledge of New York Civil Practice does not excuse his conduct either:

A layman may know a lot of law about a particular subject, upon the knowledge of which he may rely at his own risk in his own business. He may not, however, set himself up as a public consultant on the law of his speciality. If the services of a specialist in some particular branch of the law are required, the public must still turn to the bar, for all the reasons of public protection for which the bar and bar standards are maintained. The law specialist offers more and much more is required of him for admission to practice than knowledge of his specialty. He must have a grounding in the law and a legal education and training, must pass examinations in the law and attain and maintain standards which are imposed by the Bench and Bar for the protection of the public.

(*Matter of New York County Lawyers' Assn.*, 273 App Div 524, 534 [1st Dept 1948] *affd*, 299 NY 728 [1949] [adjudging certified public accountant in contempt, fining him and enjoining his unauthorized practice of law, for undertaking to answer accounting client's tax law question]).

It is clear from the facts on this motion that the Legal Agreement was void from its very inception because of the legal advice Spiegel gave to Defendants and Ahearn and Ortiz, to induce them to sign the contract and sue the Hotel. Defendants contend that, before the execution of the Legal Agreement and the retention of Frank's law firm, there were numerous incidents in which Spiegel's conduct constituted the unauthorized practice of law, including his discussing with Defendants the circumstances of their respective terminations and advising them that they should sue the Hotel because their terminations were illegal (*see* SMF ¶¶ 18-21). In addition, Spiegel advised Defendants about the possible claims that they could assert, and the different types and amounts of damages that they could possibly recover (SMF ¶¶ 22-24).

Spiegel denies that he provided Defendants legal advice, asserts that Defendants got any such advice from their attorney Frank and that Spiegel later agreed with Frank's advice (Spiegel SMF ¶¶ 18-24).

Spiegel's denial, however, is at odds with his own deposition testimony, and the parties' representations in the Legal Agreement. Spiegel sent Defendants a proposed draft of the Legal Agreement in May 2012 (*see* Deubert affirmation exhibit 16), that indicates they had already discussed and identified Defendants' causes of action against the Hotel and intended to sue the Hotel (*see id.* at 1 [proposed Legal Agreement provides, in pertinent part, that the parties were entering "this mutual legal agreement to work for a planned civil lawsuit" against the Hotel "for the purpose of securing a judgment or settlement. . . for unjust termination, discrimination, retaliation and other illegal actions and consequences. . ."]]).

Spiegel admits that he had further discussions with Defendants about the proposed Legal Agreement later in May 2012 (Tr. 45-46) and spoke at length with Defendants and Ahearn and Ortiz about the proposed lawsuit and Legal Agreement (Tr. 49:2-4).

Between his distribution of the proposed Legal Agreement in May 2012 and its execution in October 2012, Spiegel told Defendants that, if they wished to secure his help and have him arrange for the retention of an attorney for them, they must first enter the proposed Legal Agreement (*see* Tr. 67:2-3, 67:10-12 [“I told them if they wanted my help on this, I wasn’t doing it for free” and that “before I even went and found an attorney, I wanted to have an agreement”]; *see* also Tr. 47:25 to 48:5 [after distribution of proposed Agreement, Spiegel sought “to move it [*i.e.*, the proposed lawsuit] along to where they – to where we signed the contract and I introduced them to Neil Frank”])).

In the Legal Agreement, dated October 31, 2012, that Spiegel had drafted in May 2012 (SMF ¶ 26, Spiegel SMF ¶ 26), and that Spiegel and Defendants signed (Deubert affirmation exhibit 1, at 2) and had notarized at Spiegel’s insistence (Tr. 75:18-21), Spiegel and Defendants acknowledge and agree that they had decided to pursue a lawsuit against the Hotel for its “illegal actions.” Indeed, they had largely determined the nature of Defendants’ claims against the Hotel (*id.* at 1). Thus, it would have been impossible for Defendants to have relied on their attorney’s legal advice to make these decisions, as Spiegel claims, because they had not yet retained Frank’s law firm (*see* Deubert affirmation exhibit 9, at 1).

These same representations about Defendants’ determination to sue the Hotel and the causes of action they contemplated asserting for the Hotel’s various “illegal actions” date to at least May 5, 2012, when they appeared verbatim in a draft of the Legal Agreement that Spiegel sent to Defendants for review (*see* Deubert affirmation exhibits 16 and 17). At his deposition,

Spiegel conceded that, although he cautioned Defendants to speak to an attorney, he discussed Defendants' claims with them extensively and encouraged them to sue the Hotel (Tr. 51:19 to 53:20, 63:16 to 65:17, and 81:23 to 82:10).

Here, Defendants make their prima facie showing that Spiegel's "aid in counsel" was the rendering of unauthorized legal advice in violation of New York's Judiciary Law Section 478. Spiegel fails to raise any bona fide issue to defeat Defendants' motion or to support his own cross motion. Accordingly, the court grants Defendants' motion for summary judgment, and denies Spiegel's cross motion for summary judgment, with respect to his first cause of action for breach of contract.

The court also grants Defendants' motion for summary judgment, and denies Spiegel's cross motion for summary judgment, with respect to his second cause of action for quantum meruit, on the ground that a party cannot recover in quantum meruit where the contract is deemed unlawful (*Servidone Constr. Corp. v St Paul Fire & Marine Ins. Co.*, 911 F Supp 560, 576 [ND NY 1995] [applying Judiciary Law § 487], citing *Charlebois v J.M. Weller Assocs., Inc.*, 72 NY2d 587, 593 [1988]).

However, the court grants plaintiff's cross motion (and denies defendants motion) to the extent that plaintiff fronted expenses. Defendants do not dispute that Spiegel fronted certain costs for them such as filing fees and the attorney's up front retainer. For instance, defendant Kastrat admitted at her deposition that plaintiff had paid her attorney \$500 on her behalf. To the extent that plaintiff fronted expenses, he should be repaid. However, the court grants summary judgment on this cause of action as to liability only. It is not possible to glean from this record the amount of legal expenses that plaintiff fronted, and to what extent they were separate from his own expenses.

**Conclusion**

Accordingly, it is

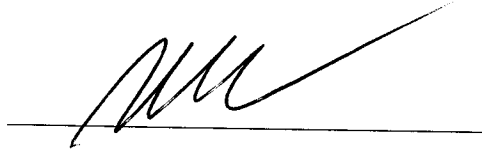
**ORDERED** that the court grants the motion for summary judgment of defendants Liridona Kastrat and Kristopher Kennington, except for the third cause of action which is severed and shall continue; and it is further

**ORDERED** the court grants plaintiff's cross motion on then third cause of action, but only as to litigation costs plaintiff may have fronted; and it is further

**ORDERED THAT** the parties are to appear for an inquest on the amount of expenses plaintiff fronted on December 11, 2018 at 11:30 a.m. The court precludes plaintiff from introducing at that hearing any document not already produced.

Dated: October 1, 2018.

Enter:



J.S.C.  
**HON. MELISSA A. CRANE**  
J.S.C.