

The Law Offs. of Ira L. Slade, P.C. v Singer
2018 NY Slip Op 33179(U)
December 10, 2018
Supreme Court, New York County
Docket Number: 650874/2018
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

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THE LAW OFFICES OF IRA L. SLADE, P.C.,

Plaintiff,

- v -

DANIEL SINGER,

Defendant.

INDEX NO. 650874/2018
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29

were read on this motion to DISMISS

Upon the foregoing documents, defendant's motion to dismiss is granted.

Background

In this action, plaintiff, The Law Offices of Ira L. Slade, P.C. ("Slade"), sues to recover unpaid legal fees resulting from the alleged breach of a retainer agreement entered into by defendant's mother, Ricki Singer. Slade's complaint alleges essentially as follows.

Defendant, Daniel Singer ("Defendant"), is a remainder beneficiary under a testamentary trust under the will of his grandfather, and a beneficiary of 1994 and 1999 trusts in New Jersey. In 2005, Ricki Singer asked the law firm Slade & Newman LLP ("S&N") to represent her as guardian of Defendant, a minor at the time, in an accounting proceeding in the Surrogate's Court of Westchester County (the "Westchester Action") and New Jersey (the "New Jersey Action") relating to the trusts of which Defendant was a beneficiary; prior to this time Ricki Singer was already a client of S&N.

On September 21, 2006, Ricki Singer entered into three retainer agreements with S&N, wherein S&N agreed to represent Ricki Singer as the ancillary guardian of Defendant and assist Ricki Singer in all matters relating to the Westchester Action and New Jersey Action (the "Retainer Agreements"). Ricki Singer signed the Retainer Agreements in both her individual capacity and as ancillary guardian of Defendant.

S&N eventually dissolved pursuant to a settlement agreement dated December 31, 2010. As a result, Slade became the sole successor in interest to all S&N receivables related to the representation of Ricki Singer. Slade continued representing Ricki Singer as Defendant's ancillary guardian. The Westchester Action and the New Jersey Action were eventually concluded pursuant to a settlement agreement dated December 27, 2012.

Slade has made numerous attempts to obtain payment for the outstanding legal fees. On August 1, 2012, Slade commenced a Supreme Court action against Ricki Singer, seeking a judgment against Ricki Singer for unpaid legal fees in the amount of \$3,251,599.55, said amount encompassed the legal fees for the services rendered in the Westchester Action and New Jersey Action. Apparently, that proceeding has not moved passed the summons and complaint phase and no request for judicial intervention has been obtained or filed. Additionally, in March of 2013, Slade filed a petition pursuant to SCPA § 2110 in Westchester County Surrogate's Court, seeking, inter alia, to have the court fix and determine the fees owed to S&N and Slade, in the amount of \$1,141,076.72 incurred by Ricki Singer as Defendant's guardian. Ultimately, the Westchester County Surrogate's Court denied Slade's attempts to fix and determine the legal fees; Slade has appealed to the Appellate Division Second Department; said appeal is still pending.

On October 8, 2012, facing the lawsuit brought by Slade, Ricki Singer filed for bankruptcy in New Jersey; Slade submitted a proof of claim representing the outstanding balance of legal fees owed to S&N and Slade due to their representation of Ricki Singer in both her individual capacity and as ancillary guardian of Defendant, which Slade alleges totaled \$1,697,865.32 (\$3,251,599.55 (total outstanding legal fees) - \$1,553,764.23 (the alleged total of legal fees incurred by Ricki Singer in her individual capacity) = \$1,697,865.32 representing the total outstanding legal fees owed to Slade incurred in representing Ricki Singer as Defendant's guardian.) It should be noted that Ricki Singer's bankruptcy petition states that Slade has a claim against her in the amount of \$3,251,599.55, Slade's proof of claim is in the same amount. The bankruptcy court awarded Slade approximately \$26,000. Slade has categorized this recovery as being partial satisfaction of the claim for outstanding legal fees owed by Ricki Singer in her individual capacity and did not include any of the legal fees incurred on behalf of Ricki Singer as Defendant's guardian in the Westchester Action and the New Jersey Action. Ultimately, on May 25, 2017, the bankruptcy court issued a final decree discharging and closing Ricki Singer's bankruptcy estate.

The Complaint

The instant complaint, filed on February 23, 2018, asserts two causes of action: breach of contract (first cause of action), and quantum meruit (second cause of action), and seeks a judgment against Defendant for a sum of \$1,697,865.32, together with interest, costs, and disbursements.

Defendant now moves, pursuant to CPLR 3211(a)(5) and (7), to dismiss the complaint in its entirety on the grounds that: (i) the complaint fails to state a cause of action and (ii) the complaint cannot be maintained because it seeks to recover from Defendant the same legal fees extinguished in the discharge of Ricki Singer's bankruptcy petition. Alternatively, Defendant contends that even if the instant complaint is not dismissed in its entirety, Slade's claim for \$1,697,865.32 must be limited on the grounds that: (i) pursuant to CPLR 213(2), the Statue of Limitations bars collection of all but two invoices incurred by Ricki Singer as Defendant's guardian in the Westchester Action, thus, limiting Slade's claim to \$16,166; and (ii) New Jersey law applies to Slade's claims to fees related to the New Jersey Action, and as a result, pursuant to R 1:20A-6, the complaint (as it relates to fees sought in connection with the New Jersey Action)

must be dismissed because the complaint fails to allege that Slade provided Defendant with the required notice of the availability of fee arbitration.

Slade opposes the motion upon the grounds that: (i) there was a contract between the parties because New York law permits a parent to bind a minor child to a contract; (ii) pursuant to CPLR 1201, Ricki Singer, acting as Defendant's guardian, consented to S&N and Slade's representation by signing the Retainer Agreements thereby binding Defendant to them; (iii) Defendant failed to disaffirm the Retainer Agreements once he turned 18, yet he retained the benefits incurred as a result of Slade's legal representation; (iv) the CPLR 213(2) Statute of Limitations does not bar the complaint because it only begins to run at the time of the breach, which Slade alleges occurred once their representation was terminated; and (v) New York law applies because all the parties are residents of New York.

Discussion

Dismissal pursuant to CPLR 3211(a)(7) is warranted where, after accepting the facts alleged as true and according plaintiff the benefit of every possible favorable inference, the court determines that the allegations do not fit within any cognizable legal theory. Leon v Martinez, supra, 84 NY2d at 87-88; see also EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 (2005) (“[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus” in determining a motion to dismiss for failure to state a cause of action). A complaint survives a motion to dismiss for failure to state a cause of action if it gives the court and the parties “notice” of what is intended to be proved and the material elements of a cause of action. CPLR 3013.

The First Cause of Action, for Breach of Contract

The complaint fails to state a cause of action for breach of contract. To sufficiently plead a breach of contract, the complaint must allege the existence of a contract. Harris v Seward Park Hous. Corp., 79 AD3d 425, 426 (1st Dept 2010). Slade alleges that the contract breached was the Retainer Agreements entered into between Ricki Singer and S&N. The complaint is devoid of any allegation that Defendant entered into or was a party to any of the Retainer Agreements. Furthermore, pursuant to Gen. Oblig. Law § 3-101, Defendant lacked legal capacity to enter into the Retainer Agreements or accept any offer to enter into a contract with Slade, as the Retainer Agreements were dated September 21, 2006, more than five years before Defendant obtained legal capacity. Furthermore, when Defendant reached the age of 18 on January 5, 2012, he did not enter into any retainer agreement with Slade, despite the underlying litigation continuing in the Westchester Action and New Jersey Action. This suggests that Defendant disaffirmed Slade's representation. More importantly, Ricki Singer never obtained court approval to enter into a contract that would bind her son.

The Second Cause of Action, for Quantum Meruit

The complaint fails to state a cause of action for quantum meruit. To sufficiently plead quantum meruit, the complaint must allege: (1) that services were performed for the defendant in good faith, (2) that the defendant accepted the services, (3) that an expectation of compensation arose, and (4) the damages claimed are the reasonable value of the services rendered. Balestriere PLLC v BanxCorp, 96 AD3d 497, 498 (1st Dept 2012). The complaint fails to allege that Defendant accepted services; in fact, Defendant could not have accepted services from Slade, as Defendant lacked legal capacity to accept such services at the time the Retainer Agreements were executed.

Secondly, given the fact that (1) the Retainer Agreements were signed by Ricki Singer, not Defendant, and (2) all of S&N and Slade's invoices were mailed to Ricki Singer, not Defendant, the complaint fails to plead facts to establish that Slade had a reasonable expectation of compensation from Defendant. The complaint and its attached exhibits make clear that any reasonable expectation of compensation by Slade for the legal services rendered were from Ricki Singer, not Defendant.

Conclusion

Motion to dismiss the complaint is granted, and the clerk is hereby directed to enter judgment dismissing the complaint.



12/10/2018

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE