

<b>Law Firm of Alexander D. Tripp, P.C. v Fiorilla</b>
2020 NY Slip Op 34362(U)
December 31, 2020
Supreme Court, New York County
Docket Number: 654991/2019
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 46

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LAW FIRM OF ALEXANDER D. TRIPP, P.C., Index No. 654991/2019

Plaintiff

- against -

DECISION AND ORDER

JOHN LEOPOLD FIORILLA,

Defendant

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LUCY BILLINGS, J.S.C.:

Plaintiff law firm moves, without opposition, for summary judgment dismissing the counterclaim by defendant former client of the firm for legal malpractice. C.P.L.R. § 3212(b).

Plaintiff's attorney Alexander Tripp authenticates the parties' two engagement agreements. The first, dated June 23, 2016, was for plaintiff to represent defendant in Citigroup Global Markets, Inc. v. Fiorilla, Index No. 653017/2013 (Sup. Ct. N.Y. Co.), in seeking to vacate a judgment that vacated an arbitration award in his favor. The second engagement agreement, dated September 18, 2016, was for plaintiff to represent defendant in the United States after he sought to enforce the award in France.

In the Citigroup Global Markets proceeding, Citigroup Global Markets moved for sanctions, including attorneys' fees, against both defendant and his attorney, plaintiff, August 4, 2017. Tripp establishes that consequently, on August 16, 2017, he

informed defendant that, because the motion sought relief against both plaintiff and defendant, plaintiff's representation of both itself and defendant in opposing the motion would pose a conflict. Therefore Tripp advised defendant that plaintiff was withdrawing from its representation of defendant and that defendant must retain another attorney. Tripp authenticates both his correspondence so notifying defendant and defendant's acknowledgment August 21, 2017, that plaintiff no longer would represent defendant and that he needed to retain a new attorney. Plaintiff's final invoice to defendant August 31, 2017, confirmed the termination of the parties' attorney-client relationship, which defendant again acknowledged in an email September 5, 2017.

On August 23, 2017, a new attorney, Robert de By, entered his appearance for defendant in the Citigroup Global Markets proceeding. Plaintiff presents documents showing that in September 2017 it opposed Citigroup Global Markets' motion for sanctions only on the firm's behalf and not on defendant's behalf and that de By opposed the motion on defendant's behalf.

The malpractice that defendant claims occurred November 9, 2017, when his attorney in the Citigroup Global Markets proceeding agreed with Citigroup Global Markets' attorney that its motion for sanctions raised no factual issues, obviating the need for an evidentiary hearing. Defendant claims that the waiver of an evidentiary hearing was malpractice, because he did

raise factual issues that would have been determined in his favor at a hearing, Sejfuloski v. Michelstein & Assoc., PLLC, 137 A.D.2d 549, 549-50 (1st Dep't 2016); Tenasca Delgado v. Bretz & Coven, LLP, 109 A.D.3d 38, 43-44 (1st Dep't 2013), and would have reduced the \$213,832.50 award of sanctions, attorneys' fees, and expenses against him. Baram v. Person, 153 A.D.3d 1183, 1183 (1st Dep't 2017); Caso v. Miranda Sambursky Sloane Sklarin Ver Veniotis LLP, 150 A.D.3d 422, 423 (1st Dep't 2017); O'Neal v. Muchnick Golieb & Golieb, P.C., 149 A.D.3d 636, 636 (1st Dep't 2017); Rubin v. Duncan, Fish & Vogel. L.L.P., 148 A.D.3d 432, 433 (1st Dep't 2017). The absence of a continuing attorney-client relationship between plaintiff and defendant when this alleged malpractice occurred, however, bars defendant's claim for legal malpractice against plaintiff. Seaman v. Schulte Roth & Zabel LLP, 176 A.D.3d 538, 538-39 (1st Dep't 2019); Barrett v. Goldstein, 161 A.D.3d 472, 473 (1st Dep't 2018); Cabrera v. Collazo, 115 A.D.3d 147, 153 (1st Dep't 2014); Waggoner v. Caruso, 68 A.D.3d 1, 5 (1st Dep't 2009), aff'd, 14 N.Y.3d 874 (2010).

Because plaintiff shows that it did not represent defendant or participate on his behalf in waiving an evidentiary hearing on Citigroup Global Markets' motion for sanctions, the court grants plaintiff's unopposed motion for summary judgment dismissing defendant's counterclaim. C.P.L.R. § 3212(b). This decision

constitutes the court's order and judgment dismissing defendant's counterclaim.

DATED: December 31, 2020



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LUCY BILLINGS, J.S.C.

LUCY BILLINGS  
J.S.C.