

Ehrlich Gayner, LLP v Russell
2021 NY Slip Op 32845(U)
December 22, 2021
Supreme Court, New York County
Docket Number: Index No. 657269/2020
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS NOCK PART 38M

Justice

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EHRlich GAYNER, LLP,

Plaintiff,

- v -

LISA RUSSELL, ESTATE OF VINCENT RUSSELL, ADAMS
LAW GROUP, LLC, BENJAMIN ADAMS, LAW OFFICES OF
BURKE, CONWAY & DILLON, LIBERTY MUTUAL
INSURANCE CO., ABC CO., ABC CO., INC., and
JOHN/JANE DOE,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, and 15

were read on this motion to

DISMISS/DISCONTINUE

LOUIS L. NOCK, J.

Upon the foregoing documents, and after argument, it is ordered that the instant motion practice is determined as follows.

The curious posture of this motion practice is highlighted by the fact that it is the plaintiff which commenced this action – the law firm of Ehrlich Gayner, LLP – which comes now before the court seeking its dismissal – dismissal of its very own action (*see*, Notice of Motion [NYSCEF Doc. No. 3]). Oddly enough at first blush, defendants have deemed it necessary to cross-move for the very same thing – dismissal of this action (*see*, Notice of Cross-Motion [NYSCEF Doc. No. 9]).

But as will become clearer during the course of the within discussion, this motion is really about each side’s competing requests for sanctions against the other.

The essential background facts are not in dispute. The complaint alleges that the plaintiff law firm, Ehrlich Gayner, LLP (“EG”), represented defendant Lisa Russell and defendant Estate of Vincent Russell in a tort action in Supreme Court, Rockland County, arising out of the tragic death of Mrs. Russell’s husband, the late Vincent Russell, from a motorcycle accident in 2014. Due to a falling out between EG and Mrs. Russell, EG moved to withdraw as counsel in 2018, and was granted leave to withdraw. Thereafter, the law firm of Adams Law Group, LLC (“Adams”),¹ a defendant in this action, took over as counsel for Mrs. Russell and the Estate of Vincent Russell, also a defendant in this action. Ultimately, Mrs. Russell’s tort action was settled, resulting in a commitment from Liberty Mutual Insurance Company (“Liberty Mutual”), also a defendant in this action, to tender the sum of \$50,000 in settlement. A check in that amount was sent by Liberty Mutual’s counsel, the Law Office of Burke, Conway & Dillon (“Burke”), also a defendant in this action, to EG. Because EG was no longer counsel at the time, it returned the check to Burke, asking for a re-issuance of the \$50,000 settlement proceeds in a manner that would result in a sharing of said proceeds as between EG and Adams. All the parties concerned stipulated to that arrangement in August 2020.

As clearly evidenced by copies of checks submitted by Adams as Exhibit A (contained within NYSCEF Doc. No. 10), checks for the precise amounts agreed to by all concerned for distribution of the settlement proceeds were, in fact, issued. As specifically relates to EG – the plaintiff in this action – those sums were \$3,964.28 for EG’s disbursements and \$12,014.31 as EG’s fee. Suffice it to say that no better proof of EG’s actual receipt of those checks can be found than EG’s instant motion to dismiss its own action – this very action.

¹ Defendant Benjamin Adams is a member of said law firm.

It becomes clear that EG's primary, if not only, tangible goal here is to try and secure an order from this court sanctioning Adams and/or its co-defendants (for costs) for what it protests as a delay in the distribution, or a perceived need to involve itself in a number of post-settlement communications with Liberty Mutual and/or Burke and/or Adams designed to effect the distribution that undeniably did come to pass. A careful reading of the complaint uncovers no unambiguous allegation (which would be disproven by the check evidence [NYSCEF Doc. No. 10] as well as the very fact of plaintiff's motion "for dismissal" [NYSCEF Doc. No. 3]) to the effect that EG has not been paid its share of the settlement proceeds. Rather, EG's apparent gripe with the defendants is that they somehow "failed to pursue" the "final payout" that, in fact, had occurred (*see*, Complaint ¶ 54 [emphasis added]). This sentiment is the apparent basis for EG's instant application for a sanction against the defendants (*see*, Notice of Motion [NYSCEF Doc. No. 3]; Affidavit of Charles J. Gayner [NYSCEF Doc. No. 12], *passim*). But as defendant Benjamin Adams puts it, "[t]hey had done absolutely everything needed to approve the issuance of the checks" but Mr. "Gayner for whatever reason, grew increasingly impatient" about it (Affirmation of Benjamin M. Adams [NYSCEF Doc. No. 10] ¶¶ 4 [g], [h]). Appreciative of that point, and especially given the fact that checks *were* issued to EG, this court perceives no conduct by any of the defendants that could remotely be considered egregious so as to warrant any sanction against them whatsoever.

As noted, defendants have cross-moved for the same thing: dismissal of this action and, reciprocal to plaintiff's request for sanctions, a sanction against the plaintiff (similarly, for costs). Although the court does not perceive any actionable claim underlying the delay in the issuance of the checks to EG, the court also does not perceive any severity of conduct by EG rising to the

level of sanctionability, merely because of its anxiety, or perhaps, over-anxiety, manifested by its post-settlement zeal to secure the distribution.

Accordingly, it is

ORDERED that the cross-motion by defendants to dismiss the complaint is granted, and the complaint is, therefore, dismissed; and it is further

ORDERED that the cross-motion by defendants for a sanction against plaintiff is denied; and it is further

ORDERED that the motion by plaintiff to dismiss its own complaint is denied as moot; and it is further

ORDERED that the motion by plaintiff for a sanction against defendants is denied.

This will constitute the decision and order of the court.

ENTER:



<u>12/22/2021</u> DATE					<u>LOUIS NOCK, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER			
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	REFERENCE