At an IAS Term, Part 19 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 13 day of April, 2026.

P R E S E N T:

HON. HEELA D. CAPELL,
Justice.

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KLEYMAN LAW GROUP, P.C.,

Plaintiff,

-against- Index No.: 502644/25

JAMES KALOIDIS, as Executor of the Estate of George Kaloidis,

Defendants.

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The following e-filed papers read herein:	NYSCEF Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	6-18,19-23,25-29,30-36,37,42,53-63
Opposing Affidavits (Affirmations)	45-52,64-71,74-76,77,96
Affidavits/ Affirmations in Reply	78-82,86-92,93-95
Other Papers:	

Upon the foregoing papers, Kleyman Law Group, P.C. ("Plaintiff" or "KLG") moves, in motion (mot.) sequence (seq.) 1, for an order pursuant to CPLR 3211(a)(1), (a)(2), and (b) dismissing James Kaloidis, as Executor of the Estate of George Kaloidis' ("Defendant") affirmative defenses and counterclaims. Plaintiff moves, in mot. seq. 2, for an order pursuant to 22 NYCRR § 130-1.1, awarding it sanctions against Defendant in the amount of $20,000 for allegedly filing an alleged frivolous ethics complaint against

Plaintiff's principal attorney, Alex I. Kleyman ("Mr. Kleyman") and for filing an answer in the instant action which contained alleged frivolous counterclaims and affirmative defenses. Plaintiff further moves for attorney's fees in the amount of $50,000 for the time it spent defending against the alleged frivolous filings. Plaintiff moves, in mot. seq. 3, for an order, pursuant to CPLR 6201(1), 6201(3), and 6212(a) granting a prejudgment attachment of Defendant's full ownership interest in Sheepshead Restaurant Associates, Inc. ("SRA"), granting a prejudgment attachment of all proceeds received or to be received by Defendant from the sale of the SRA property, authorizing Plaintiff to file a lien or security interest and to restrain transfer, concealment, or dissipation of all proceeds from the sale of the SRA property, directing Defendant to disclose all entities, accounts, contracts, and distributions related to the SRA property sale, directing Defendant, within 10 days of service of the court's order, to disclose under oath a complete list of all assets, corporate interests, and proceeds held by Defendant, and requiring Plaintiff to post an undertaking in an amount fixed by the court.[1] Plaintiff also moves, in mot. seq. 4, for an order, pursuant to CPLR 3212, granting it summary judgment under its breach of contract claim and awarding it $1,246,000.00 in damages along with contractual interest at the rate of 18% per year on unpaid balances or, alternatively prejudgment interest at the 9% statutory rate. Defendant cross-moves, in mot. seq. 5, for an order sanctioning Plaintiff/Mr. Kleyman for the filing of an alleged frivolous motion for sanctions and for citing to fictitious cases and/or misrepresenting the holdings of cases in its legal papers (i.e., mot.

[1] Plaintiff's notice of motion in mot. seq. 3 also seeks sanctions against Defendant. However, Plaintiff's affirmations in support and memorandum of law contain no discussion supporting this branch of its motion.

seq. 2). Plaintiff moves, in mot. seq. 6, for an order continuing the temporary restraints which preclude Defendant from transferring, encumbering, dissipating or otherwise disposing of $2,000,000 of any proceeds received from the pending sale of SRA property or its 50% membership interest therein during the pendency of this action and pending the resolution of mot. seq. 3. In the alternative, Plaintiff seeks an order directing that no less than $2 million in net proceeds from the pending sale of SRA property be deposited and maintained in a segregated, interest-bearing IOLA or escrow account under the control of Defendant's attorney or a neutral third-party escrow agent. Plaintiff further moves for an order waiving the undertaking requirement under CPLR 6312(b) in light of Plaintiff's demonstrated financial hardship.

Background Facts/Allegations and Procedural History

Plaintiff posits that in or about March of 2021, KLG was retained to provide legal services on behalf of Defendant's father, George Kaloidis. Plaintiff further maintains that after Mr. Kaloidis' death and the appointment of Defendant as the executor of his estate, Defendant retained KLG to perform various legal services including representation in several civil lawsuits, the sale of the estate's 50% ownership interest in certain commercial property valued at $16,000,000 (i.e., Sheepshead Restaurant Associates, Inc.), as well as obtaining a judgment based upon debt owed to the estate. In this regard, Plaintiff has filed with the court a copy of a retainer agreement dated June 22, 2022 (NYSCEF Doc. 12) between KLG and Defendant which indicates that KLG was retained to represent Defendant "in connection with general corporate, advisory, and Litigation matters, including but not limited to disputes involving [Defendant's] ownership interest,

shareholder conflicts, mortgage or financial issues, and matters concerning Sheepshead Restaurant Associates Inc. (SRA)." The retainer agreement further provided that KLG would bill at the rate of $500 per hour and that Defendant would pay an initial retainer fee of $25,000 which would be applied toward fees as earned. Further, the retainer agreement stated that "[i]nvoices will be issued regularly and are payable within 15 days. Outstanding balances over 30 days will accrue interest at 1.5%."

Plaintiff contends that between June 2022 and October 2024, KLG performed various legal services for Defendant. However, in or about the summer and early fall of 2024, certain disputes arose between the parties concerning the work performed by KLG. In an email dated December 4, 2024, Defendant advised the Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts (the AGC) that his relationship with KLG and Alex Kleyman had deteriorated over the preceding six months, that he instructed Alex Kleyman to return a power of attorney that was executed in late 2022, and that Mr. Kleyman refused return of the power of attorney. In an email to the AGA dated January 10, 2025, Defendant alleged that Mr. Kleyman used the power of attorney to sign contracts on Defendant's behalf after he had revoked the power of attorney. In an email dated January 16, 2025, Defendant notified KLG that he was terminating its services for him.

By summons and complaint filed on January 24, 2025, Plaintiff commenced the instant action against Defendant seeking $1,240,000 in damages plus interest based upon causes of action sounding in breach of contract, quantum meruit, and an account stated. On March 6, 2025, Defendant filed an answer with 10 affirmative defenses and 7 counterclaims. Among other things, the answer alleged that the Defendant never executed

a retainer agreement with KLG and that KLG never presented Defendant with invoices detailing and specifying the $1,260,000 in legal services which the complaint alleged was due and owing. The answer further alleged that Defendant had "an informal agreement" with KLG pursuant to which KLG was to provide legal services to recover assets owned by the estate of George Kaloidis and that the exact terms of the agreement including the hourly rate charged by KLG were never agreed to.

On April 7, 2025, in support of its motion to dismiss (i.e. mot. seq. 1), Defendant filed a copy of the aforementioned retainer agreement. Plaintiff further submitted monthly billing invoices for the period between June 1, 2022, and October 31, 2024 (NYSCEF Doc. 16) which indicate that Defendant owed KLG $1,419,000 for legal services rendered. These invoices also indicate that during this entire period, Defendant only made two payments to KLG, a payment of $30,000 on November 2, 2023 and a payment of $90,000 on January 5, 2024. Plaintiff also submitted email and phone logs between KLG and Defendant as well as between KLG and other parties in connection with its representation of Defendant (NYSCEF Docs. 14 and 15). Together, these logs list over 4,000 individual phone and email conversations.

Plaintiff's Use of Fictitious and Misrepresented Legal Authority

As an initial matter, upon review of Plaintiff's submissions in Motion Sequence Nos. 1, 2, 3, 4, and 6, the court finds that those papers—including Mr. Kleyman's affirmations in support, supporting affidavits, memoranda of law, reply affirmations, reply affidavits, proposed order to show cause, and correspondence to the court—are replete with citations to nonexistent authority, as well as citations to actual cases in which the facts,

applicable law, and/or holdings are materially misrepresented. Notably, Plaintiff's submissions cite 23 fictitious cases on a total of 47 occasions.[2] With respect to Plaintiff/Mr. Kleyman's misrepresentation of the holdings and applicable law in the cases cited, the court has identified at least 83 instances in which the holdings are misstated, often with the same case being mischaracterized multiple times throughout the submissions. While too numerous to detail fully herein, illustrative examples are set forth in the margins to demonstrate the flagrant nature of these misrepresentations.[3] Such misconduct is

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[2] These fictitious cases are as follows: *Feder Kasovitz LLP v Rosen*, (202 AD3d 421 [1st Dept 2022]); *Bauer v Cravath, Swain & Moore*, LLP, (177 AD3d 479 [1st Dept 2019]); *Lawsky v Condor Capital Corp.*, (154 AD3d 537 [2d Dept 2017]); *Liberty Mut. Ins. Co. v Jenkins*, (10 AD3d 792 [2d Dept 2004]); *Rich v Rich*, (231 AD2d 384 [1st Dept 1996]); *Carlucci v Poughkeepsie City Sch. Dist.*, (88 AD3d 1054 [2d Dept 2011]); *Citibank v Suthers*, (68 AD3d 68 [2d Dept 2009]); *Pine v AIA Delivery, Inc.*, (201 AD3d 640 [2d Dept 2022]); *Cruz v TDE Bank NA*, (202 AD3d 582 [2d Dept 2022]); *Matter of White Plains Plaza Realty, LLC v Cappelli*, (201 AD3d 689 [2d Dept 2022]); *Madison Liquidity Invs. 119, LLC v Griffith*, (205 AD3d 826 [2d Dept 2022]); *Epstein v New York City Transit Auth*, (110 AD3d 493 [1st Dept 2013]); *Loew v Smith*, 182 AD3d 492 [1st Dept 2020]); *Credit Argicole Indosuez v Rossy*, (30 AD3d 1041 [1st Dept 2006]); *Nassau Diagnostic Imaging v Hummel*, (201 AD2d 724 [2d Dept 1994]); *Banco Popular N. Am. v Christie*, (202 AD2d 385 [2d Dept 1994]); *Matter of Winston & Strawn LLP* (21 NY3d 715 [2013]); *Ma v Lien*, (198 AD3d 567 [1st Dept 2006]; *Shukat Arrow Hafer Weber & Herbsman, LLP v Hutton* (43 AD3d 395 [1st Dept 2007]); *Edgeworth Food Corp. v Stephenson*, (53 NY2d 962 [1981]); *Tash v Perlmutter*, (453 NYS2d 61 [2d Dept 1982); *Matter of Witham v Witham*, 1221 AD3d 781 [2d Dept 2014]); and *Matter of Index Stock Transfer v Blasnik* (57 AD3d 1080 [3d Dept 2008]).

[3] On page 3 of his affirmation in support of Defendant's motion to dismiss (NYSCEF Doc 7), Mr. Kleyman cites the case of *Pace v Raisman & Assocs., Esqs, LLP*, (95 AD3d 1185 [2d Dept 2012]) and states that in this case "the client waited until after the attorney demanded unpaid legal fees before raising counterclaims and grievances that had never been mentioned during the representation. The Second Department dismissed the counterclaims, emphasizing that claims raised only after the breakdown of the attorney-client relationship and in response to fee demands lack credibility and legal merit." In fact, in *Pace*, the plaintiff sued his former attorney's alleging causes of action sounding in (among other things) legal malpractice and fraud. The Second Department found that the malpractice claim must be dismissed under CPLR 3211 (a)(5) as it was time-barred and that the fraud claim must be dismissed for failing to be pled with the requisite particularity required under CPLR 306(b) and because it was duplicative of the malpractice claim (*Pace*, 95 AD3d at 118). The case does not involve counterclaims or unpaid legal fees.

On page 6 of his affidavit in support of sanctions (NYSCEF Doc 21), Mr. Kleyman cites the case of *Butler v Catinella*, (58 AD3d 145 [2d Dept 2008]) and states that in the case, "the Second Department sanctioned a party for verified allegations refuted by documentary evidence." In fact, in *Butler*, the court ruled that the defense of failure to state a cause of action was a proper affirmative defense that could be asserted in an answer and that certain other counterclaims and affirmative defenses in the answer must be dismissed as lacking merit (*Butler*, 58 AD3d at 148-152). The *Butler* case does not involve sanctions.

sanctionable as discussed below in relation to Defendant's cross motion (mot. seq. 5). The court has attached, as Exhibit A to this decision, a comprehensive list of the fictitious citations in Plaintiff's papers as well as the citations in which Plaintiff/Mr. Kleyman misrepresented the holdings and/or facts. The court now turns to the merits of each motion.

Plaintiff's Motion to Dismiss

Plaintiff moves, pursuant to CPLR 3211(a)(1), (a)(2), and (b), to dismiss Defendant's affirmative defenses and counterclaims. As noted above and set forth in Exhibit A to this decision, Plaintiff's affirmation, affidavit, and memorandum of law in

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On page 8 of his memorandum of law in support of Plaintiff's motion for prejudgment attachment, Mr. Kleyman cites the case of *VisionChina Media Inc. v Shareholder Representative Servs., LLC* (109 AD3d 49 [2d Dept 2013]) and states that the court granted attachment "to prevent post-litigation dissipation." In fact, in *VisionChina Media Inc.*, the First Department did the exact opposite of what Mr. Kleyman claims and reversed the lower court's order granting the plaintiff's motion to attach the defendant's assets (*VisionChina Media Inc.*, 109 AD3d at 62). On the same page, Mr. Kleyman cites the case of *Erdman Anthony & Assoc., Inc. v Barkstrom* (298 AD2d 981 [4th Dept 2002]) for the proposition that CPLR 6201(1) "aims to prevent defendants from rendering judgments ineffectual by removing assets from jurisdictional reach." In fact, this case involves the granting of the defendant's motion for summary judgment dismissing an account stated cause of action and does not involve prejudgment attachment orders.

On page 16 of his memorandum in support of Plaintiff's motion for injunctive relief (NYSCEF Doc 40), Mr. Kleyman cites the case of *Yedlin v Lieberman*, (102 AD3d 769 [2d Dept 2013]) for the proposition that "[c]ourts routinely [waive undertakings under CPLR 6312[b] or fix the bond in a nominal amount] when the plaintiff has shown financial hardship, equitable standing, and good cause." In fact, the *Yeldin* court upheld a preliminary injunction involving a restrictive covenant in the parties' employment agreement (*Yeldin*, 102 AD3d at 769). The case does not involve CPLR 6312 or the waiving of an undertaking.

On page 4 of his affidavit in support of his summary judgment motion, Mr. Kleyman cites the case of *Gould v Decolator*, (121 AD3d 845 [2d Dept 2014]) for the proposition that a "[d]efendant's partial payments, made voluntarily without reservation of rights or protest, constitute a ratification of plaintiff's invoices and services rendered." In contrast, the Second Department held in *Gould* that the defendant failed to establish that the plaintiff's claim for breach of an implied contract for legal services under a quantum meruit theory was time-barred (*Gould*, 121 AD3d at 847). The court further held that the allegations in plaintiff's complaint were insufficient to support a claim of fraud (*id.* at 848). In addition, the court held that plaintiff's claim for a contingency fee "was dismissible on the ground that the plaintiff failed to provide the defendants with a writing identifying the method by which the contingency fee was to be determined in violation of former Code of Professional Responsibility DR 2-106 [d] [22 NYCRR 1200.11 [d]" (*id.* at 848). Finally, the court found that plaintiff's claim for punitive damages must be dismissed (*id.*). Thus, contrary to Mr. Kelyman's representation, *Gould* did not involve partial payments made voluntarily without reservation of rights or protest.

support are replete with citations to nonexistent authority, as well as citations to actual cases in which Plaintiff/Mr. Kleyman materially misrepresents the facts or holdings. Indeed, virtually every citation in Plaintiff's motion papers falls into one of these two categories. Under these circumstances, Plaintiff's motion to dismiss is denied.

In any event, Plaintiff's motion is primarily based upon claims in Mr. Kleyman's affidavit and affirmation and the argument that Defendant's affirmative defenses and counterclaims are contradicted by documentary evidence including the retainer agreement, invoices, and email/phone logs filed by Plaintiff. However, it is well settled that affidavits do not constitute documentary evidence under CPLR 3211 (a)(1) (*Bremner v Bush*, 244 AD3d 1044 [2d Dept 2025]). Moreover, as will be discussed more fully below, there are issues of fact regarding the validity of the retainer agreement, invoices, and email/phone logs submitted by Plaintiff.

Sanctions

Plaintiff moves, pursuant to 22 NYCRR § 130-1.1, for sanctions against Defendant in the total amount of $20,000 for frivolous counterclaims, affirmative defenses, and ethics complaints as well as $50,000 in attorney's fees expended in defending against these frivolous claims. At the same time, Defendant cross-moves for sanctions against Plaintiff for filing a frivolous motion for sanctions and for citing fictitious cases and misrepresenting the holdings of cases.

In support of its motion for sanctions, Plaintiff maintains that the affirmative defenses and counterclaims in Defendant's answer are frivolous on their face as they are contradicted by documentary evidence including the retainer agreement, the invoices, as

well as the email/phone logs submitted by Plaintiff. Plaintiff also avers that the ethics complaint that Defendant filed with the AGC was frivolous and intended to harass Plaintiff/Mr. Kleyman, which warrants further sanctions. Finally, Plaintiff submits Mr. Kleyman's own affidavit in which he avers that the billing impact of Defendant's frivolous claim has exceeded $50,000 which should be charged to Defendant.

In opposition to Plaintiff's motion for sanctions, Defendant submits his own affidavit in which he denies that he entered into the retainer agreement or that he received the invoices that Plaintiff filed. Defendant also notes that Plaintiff forwarded to Matthew Donovan, of the law firm Farrell Fritz, an introductory email on November 14, 2022, seeking that firm's assistance in connection with litigation arising out of the sale of the SRA property (NYSCEF Doc 50). However, the email/phone logs filed by Plaintiff list numerous purported communications with Farrell Fritz that predate the introductory email. In addition, Defendant notes that the email and phone logs submitted by Plaintiff contain numerous purported communications with Maria Johnson, of Farrell Fritz, from 2022 and 2023. However, Ms. Johnson did not join the law firm of Farrell Fritz until February of 2024 as evidenced by a press release submitted by Defendant (NYSCEF Doc. 52). Thus, Defendant maintains that there is no basis for awarding sanctions against him since the documentary evidence which Plaintiff relies upon in support of his motion for sanctions has been called into question. In addition, Defendant argues that there is no basis for awarding sanctions against him based upon the ethics complaint that he filed against Defendant with the AGC since the matter before this court and the matter before the AGC are separate proceedings.

With respect to his cross motion for sanctions against Plaintiff/Mr. Kleyman, Defendant maintains that Plaintiff's motion for sanctions in this case based upon Defendant's filing a complaint against Plaintiff with the AGC is itself sanctionable. In support of this contention, Defendant maintains that the Court of Appeals ruling in *Wiener v Weintraub* (22 NY2d 330, 331-332 [1968]) precludes Plaintiff from seeking sanctions against him in this case based upon the complaint filed with the AGC. Defendant further notes that Plaintiff was presented with this precedent but refused to withdraw his motion for sanctions. In further support of his cross motion for sanctions, Defendant points out that Plaintiff's memorandum of law in support of its motion for sanctions cites numerous cases that do not stand for the proposition that Plaintiff claims they stand for and that Plaintiff also cites to a non-existent case.

"Pursuant to 22 NYCRR 130-1.1, sanctions may be imposed against a party or the party's attorney for frivolous conduct" (*Genco v Genco*, 124 AD3d 580, 580 [2d Dept 2015]). "Conduct is frivolous if (1) it is completely without merit in law or fact and cannot be supported by a reasonable argument for the extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false" (*Matter of Congregation Ahavas Moische, Inc., v Katzoff*, 1354 AD3d 934, 934 [2d Dept 2015], citing 22 NYCRR 130-1.1[c]). "The decision whether to impose costs or sanctions against a party for frivolous conduct, and the amount of such costs or sanctions, is generally entrusted to the court's sound discretion" (*Strunk v New York State Bd. of Elections*, 126 AD3d 779, 781 [2d Dept 2015]).

Turning first to Plaintiff's motion for sanctions against Defendant, the court notes that, as discussed above, Plaintiff's submissions—including those in support of the instant motion—contain multiple citations to nonexistent authority and to cases that do not support the propositions for which they are cited. The court finds it particularly noteworthy that such conduct, which is itself sanctionable as discussed below, occurs in the context of a motion seeking sanctions against the opposing party. The court further notes that Plaintiff seeks $50,000 in attorney's fees for work product that appears to have been generated through the use of artificial intelligence, without adequate verification of the accuracy of the cited authorities.

In any event, Plaintiff's motion for sanctions must be denied on the merits. Specifically, there is no basis for imposing sanctions against Defendant in the instant action based upon his alleged filing of a frivolous complaint against Plaintiff/Mr. Kleyman with the AGC. As Defendant maintains, the matter before the AGC was a separate and distinct proceeding from the instant matter (*Wiener v Weintraub*, 32 NY2d 330, 331-332) and there is no authority for the proposition that this court may impose sanctions against Defendant for a matter he brought before the AGC. Moreover, Plaintiff has failed to establish that Defendant's complaint against him with the AGC was frivolous.

Plaintiff has also failed to establish that the affirmative defenses and counterclaims in the answer were frivolous, warranting the imposition of sanctions. In particular, Plaintiff's motion for sanctions is primarily based upon its claim that the affirmative defenses and counterclaims are contradicted by documentary evidence in the form of the retainer agreement, invoices, and email/phone logs submitted by Plaintiff. As will be more

fully discussed below, there are issues of fact regarding this evidence. Accordingly, Plaintiff's motion for sanctions against Defendant and attorney's fees is denied.

Turning to Defendant's cross motion for sanctions against Plaintiff/Mr. Kleyman, although Plaintiff's motion for sanctions against Defendant based upon the complaint filed with the AGC was without merit, it cannot be said that it was frivolous so as to justify the imposition of sanctions. However, Plaintiff's conduct in submitting papers riddled with fictitious citations and citations that do not stand for the propositions claimed is sanctionable as frivolous conduct pursuant to 22 NYCRR 130-1.1. Indeed, the Appellate Division, Third Department recently sanctioned an attorney for frivolous conduct in the amount of $5,000 for submitting five filings containing 23 fabricated legal authorities as well as misrepresenting the holdings in several cases during the pendency of an appeal (*Deutsche Bank Natl. Trust Co. v LeTennier*, __AD3d__, 2026 NY Slip Op 00040 [3rd Dept 2026]).[4] As the Third Department noted in that case, "there are many harms associated with the submission of fake cases that extend beyond merely wasting the time and money of the opposing party, but also in taking up the court's resources to evaluate and resolve the deception." With respect to this latter point, and as evidenced by exhibit A to this decision and order, the court expended considerable time, effort and resources in evaluating and resolving Plaintiff's deception. In imposing sanctions, the Third Department also noted that some of the papers containing erroneous and fictitious citations were filed after the defense counsel was on notice of the issue, which also occurred in the instant case.

[4] This ruling imposed additional sanctions against the attorney and his client for filing a frivolous appeal.

The court also notes that Mr. Kleyman's conduct may be referable to the AGC. The Appellate Division, First Department recently granted the AGC's motion for reciprocal discipline pursuant to Judiciary Law § 90(2) and 22 NYCRR 1240.13 to publicly censure an attorney admitted to practice in New York who filed a brief in the United States District Court for the Northern District of Texas that contained numerous citation errors and repeatedly misrepresented case law for propositions it did not support (*Matter of Zareh*, __AD3d__, 2026 NY Slip Op 00619 [1st Dept 2026]). Indeed, it would appear that Mr. Kleyman's conduct in the instant matter is more egregious than that of the attorney in *Matter of Zareh* since he directly filed 19 separate affirmations, affidavits, memorandum of law as well as a proposed order to show cause and letter to the court containing fictitious and/or erroneous citations, some of which were filed after he was placed on notice of his actions.

For the reasons set forth above, Defendant's cross motion for sanctions against Plaintiff/Mr. Kleyman is *granted* and the parties are to appear before the court for a hearing on June 9, 2026 at 10:00A.M. at 360 Adams Street, Part 19, Room 419, Brooklyn NY, 11201, at which time the amount of sanctions, as well as whether referral of Mr. Kleyman to the AGC is warranted, will be determined.

Plaintiff's Motion for Prejudgment Attachment

Plaintiff moves, in mot. seq. 3, pursuant to CPLR 6201(1), 6201(3), 6212(a) and 6220 for an order awarding it prejudgment attachment of Defendant's ownership interest in the SRA property and all proceeds received or to be received from the sale of the SRA property. In addition, Plaintiff seeks an order, pursuant to CPLR 6220 directing Defendant

to disclose all entities, accounts, contracts, and distributions related to the SRA transaction and further directing Defendant to disclose under oath all assets held by the estate of his late father, George Kaloidis.[5]

In support of this motion, Plaintiff claims to have demonstrated the probable success of its claims as required under CPLR 6212 (a). Plaintiff points to the retainer agreement, invoices, email records, as well as the fact that Defendant made partial payments for the legal services rendered by Plaintiff. Plaintiff further notes that Defendant currently lives in Florida, and as such, is a nondomiciliary residing outside the state of New York. In addition, Plaintiff submits Mr. Kleyman's affidavit in which he contends that Defendant told him on numerous occasions that he plans to move back to his native Greece once the sale of the SRA property is complete. Under the circumstances, Plaintiff contends that he is entitled to an order awarding him prejudgment attachment of Defendant's ownership interest in the SRA property and all proceeds received or to be received from the sale of the SRA property under CPLR 6201(1).

Plaintiff also maintains that it is entitled to an order of attachment under CPLR 6201 (3) inasmuch as Defendant has or is about to act to frustrate the enforcement of a judgment in Plaintiff's favor by assigning, disposing of, and secreting the proceeds from the sale of the SRA property. In support of this argument, Plaintiff again points to Mr. Kleyman's affidavit in which he avers that Defendant intends to relocate to Greece after liquidating the estate of his father. In addition, Plaintiff states that in 2023, Defendant instructed Mr.

[5] Plaintiff also moves for sanctions against Defendant in mot. seq. 3. However, the court has already determined that Plaintiff is not entitled to sanctions.

Kleyman to release a $275,000 distribution to Defendant's brother, who is a beneficiary under the estate. Plaintiff also points to Defendant's answer, in which he denied the existence of the retainer agreement and claimed that he never received any invoices for legal work, both of which, according to Plaintiff, are contradicted by documentary evidence. According to Plaintiff, this conduct constitutes a calculated campaign by Defendant to evade his legal obligations and shield the estate assets from judicial enforcement.

In opposition to Plaintiff's motion, Defendant maintains that the mere fact that he resides in Florida is not sufficient grounds for granting an attachment under CPLR 6201 (1). According to Defendant, Plaintiff also must demonstrate that Defendant lacks sufficient assets to cover any future judgment or that he has or will hide or dispose of his assets so as to frustrate any future judgment. Here, Defendant argues that Plaintiff has failed to make such a showing. In particular, Defendant points out that the estate seeks to sell its 50% ownership in SRA for $16 million, which demonstrates that Defendant has the wherewithal to satisfy the judgment sought by Plaintiff. In addition, Defendant maintains that Plaintiff has failed to produce any evidence that he has or will hide or dispose of assets so as to defeat a future judgment. Defendant submits his own affidavit in which he states that he never told Plaintiff that he planned to move to Greece and that he has no intention of doing so. In addition, while Defendant concedes that he distributed $275,000 in estate assets to his brother, he maintains that this money was given to his brother as a return of his portion of estate taxes when his brother renounced his share of the estate. Defendant

further states that this distribution was made with Plaintiff's/Mr. Kleyman's knowledge as the money was released from Plaintiff's escrow account.

Similarly, Defendant argues that Plaintiff has failed to establish that he is entitled to an attachment under CPLR 6201(3) as there is no evidence that he intends to frustrate the enforcement of any judgment or that he has or is about to assign, dispose of or remove property or that he is about to do so. Finally, Defendant argues that Plaintiff has failed to demonstrate that he is likely to succeed on the merits of his claim, as is required when seeking an order of attachment. In support, Defendant reiterates his claim that he did not sign the retainer agreement and never received the invoices filed by Plaintiff. In addition, Defendant again notes that the phone/email logs submitted by Plaintiff contain numerous emails to Farrell Fitz that predate Plaintiff's introductory email to that firm as well as numerous emails to Ms. Johnson that predate her joining the Farrell Fitz law firm, both of which undercut the validity of these phone/email logs.

As previously noted, and as set forth in Exhibit A, Plaintiff's papers in support of his motion for a prejudgment attachment are replete with fictitious and erroneous citations. In any event, even disregarding these citations, Plaintiff has failed to meet his burden in seeking an attachment order. "Attachment is a 'harsh' remedy, and is construed narrowly in favor of the party against whom the remedy is invoked" (*VisionChina Media Inc.*, 109 AD3d at 59, citing *Penoyar v Kelsey*, 150 NY 77, 80 [1896]). "Whether to grant a motion for an order of attachment rests within the discretion of the court (*VisionChina Media Inc.*, 109 AD3d at 59, citing *Morgenthau v Avion Resources, Ltd.*, 11 NY3d 383, 387 [2008]). Under CPLR 6201(1) a defendant being a nondomiciliary residing without the state is

grounds for attachment. However, in addition to meeting this statutory requirement, "the party seeking attachment must demonstrate an identifiable risk that the defendant will not be able to satisfy the judgment" (*VisionChina Media Inc.*, 109 AD3d at 60). "That risk should be real, 'whether it is a defendant's financial position or past and present conduct'" (*id.*, quoting *Ames v Clifford*, 863 F.Supp. 175, 177 [SDNY 1994]).

Here, Plaintiff has failed to demonstrate that Defendant will not be able to satisfy the judgment sought by Plaintiff. To the contrary, the evidence before the court indicates that the estate's ownership interest in the SRA properties is more than enough to cover any eventual judgment. Further, Plaintiff has failed to establish that Defendant's conduct indicates that he intends to frustrate hide or dispose of the estate's assets. The only specific example given by Plaintiff of Defendant disbursing the assets of the estate involves a $275,000 distribution to his brother. However, in his affidavit, Defendant states that this was in return for estate taxes paid by his brother after he renounced his share of the estate and Plaintiff does not dispute this claim.

Plaintiff has also failed to demonstrate that it is entitled to an attachment order under CPLR 6211(3). Under this provision, attachment may be granted when it is shown that "defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts." "Affidavits containing allegations raising a mere suspicion of an intent to defraud are insufficient. It must appear that such fraudulent intent really existed in the defendant's mind" (*Societe Generale Alsacienne De Banque, Zurich v Flemingdon Dev. Corp.*, 118

AD2d 769, 773 [2d Dept 1986] [internal quotation marks omitted]). Furthermore, "[t]he 'mere removal, assignment or other disposition of property is not grounds for attachment'" (*Cyngiel v Krigsman*, 192 AD3d 762, 763 [2d Dept 2021], quoting *Corsi v Vroman*, 32 AD3d 397, 397 [2d Dept 2007]). Here, Plaintiff has failed to make a showing of any conduct which would satisfy the requirements of CPLR 6201(3).

Accordingly, Plaintiff's motion, for an order awarding it prejudgment attachment under CPLR 6201(1) and (3) is denied. Furthermore, Plaintiff's motion, pursuant to CPLR 6220 seeking various disclosure related to the sale of the SRA property and the assets of the estate is also denied. Although CPLR 6220 permits a plaintiff to move for an order directing disclosure regarding property in which the defendant has an interest "at any time after the granting of an order of attachment," here, Plaintiff's motion for an order of attachment is denied.

Plaintiff's Motion for Summary Judgment

Plaintiff moves for summary judgment under its breach of contract cause of action. In support of its motion, Plaintiff submits the purported retainer agreement between Defendant and KLG, the monthly invoices for the work it allegedly performed for Defendant between June 1, 2022 and October 31, 2024, as well as email/phone logs for work purportedly performed on behalf of Defendant. According to Plaintiff, this documentary evidence conclusively establishes that the parties entered into a written contract for the performance of services by KLG, that KLG performed its obligations under the contract, that Defendant breached the contract by failing to pay for these services, and that KLG was damaged in the amount of $1,419,000.000 (plus interest) as a result of

Defendant's breach. Plaintiff further contends that Defendant's claim in his answer and affidavit in opposition to the motion that he did not sign the retainer agreement or receive any of the invoices submitted by Plaintiff is insufficient to raise a triable issue of fact given the documentary evidence submitted by Plaintiff, as well as the fact that Defendant made partial payments in the total amount of $170,000 for services performed.

In further support of his motion for summary judgment, Plaintiff argues that Defendant's affirmative defenses fail as a matter of law. In particular, Plaintiff maintains that Defendant's first affirmative defense (failure to state a claim) is not a proper affirmative defense and must be raised in a CPLR 3211(a)(7) motion. In addition, Plaintiff argues that Defendant's second and third affirmative defenses (failure to provide invoices, no account stated and waiver) are refuted by the documentary evidence submitted by Plaintiff. Plaintiff also maintains that Defendant's fourth and fifth affirmative defenses (failure to provide invoices was an ethical violation and said failure also results in Plaintiff's claims being barred by the doctrine of laches) are refuted by the documentary evidence submitted by Plaintiff. Further, Plaintiff argues that allegations of ethical violations, even if proven, do not negate a party's contractual entitlement to payment for services rendered. In addition, Plaintiff argues that the doctrine of laches is not an available defense in actions at law for monetary damages. Plaintiff also argues that Defendant's sixth affirmative defense (failure to enter into a retainer agreement) is refuted by the documentary evidence before the court. Finally, Plaintiff argues that Defendant's seventh through tenth affirmative defenses (malpractice, negligence, breach a fiduciary duty, and conversion) are conclusory and unsupported by any admissible evidence.

With respect to Defendant's counterclaims, Plaintiff argues that Defendant's first and second counterclaims (breach of fiduciary duty) fail since Defendant has not presented admissible evidence showing misconduct on KLG's part. Further, Plaintiff argues that the parties' underlying relationship was governed by the retainer agreement and as such, these claims are duplicative of Defendant's breach of contract counterclaim. Plaintiff contends that Defendant's third counterclaim (which seeks an accounting) has no basis inasmuch as KLG has provided detailed monthly billing invoices which were accepted by Defendant without objection. In addition, Plaintiff maintains that there is no basis for Defendant's fourth counterclaim, which alleges the breach of an oral contract between the parties given the existence of the written retainer agreement. With respect to Defendant's fifth counterclaim, which alleges conversion, Plaintiff argues that this claim fails as Defendant has failed to allege a wrongful dominion over property in defiance of the owner's rights. As a final matter, Plaintiff claims that Defendant's sixth and seventh counterclaims (negligence and malpractice) are baseless as Defendant cannot establish that KLG's conduct caused any actual damages.

In opposition to Plaintiff's motion for summary judgment under its breach of contract claim, Defendant argues that there are issues of fact that preclude awarding Plaintiff summary judgment under this cause of action. In support, Defendant submits his own affidavit in which he denies that he signed the retainer agreement submitted by Plaintiff and further states that he never saw this agreement until after the commencement of this action. Instead, Defendant avers that he entered into an oral agreement with KLG whereby KLG would receive 5% of Defendant's portion of the proceeds from the sale of

the SRA property. Defendant admits that he did pay KLG for work performed, but only after Kleyman "begged me for an advance because he needed the money." Defendant also maintains that he never received any of the invoices submitted by Plaintiff and did not see these documents until after the commencement of this action. Defendant also notes that Plaintiff has failed to produce a single contemporaneous communication between the parties such as an email or letter referencing the retainer agreement or invoices. In addition, Defendant notes that Plaintiff contends that the invoices were delivered to Defendant by hand. However, Defendant points out that he has lived in Florida since late 2023 and Plaintiff has failed to introduce any evidence regarding how the delivery of the invoices were made after he moved to Florida. Further, Defendant submits a copy of an email sent to him by Mr. Kleyman dated November 19, 2024 in which Mr. Kleyman states, "I am currently working on itemizing all the work I performed for your benefit … and all the work I did for your judgment dating back to 2022 and continuing till present day." Mr. Kleyman further states in this email that "I estimate that the total [amount due] is going to be around $1.3-$1.5 million." In this regard, Defendant notes that if KLG had provided him with invoices on a monthly basis going back to June of 2022 (as claimed by Mr. Kleyman), Mr. Kleyman would not have needed to itemize the work performed nor to estimate the amount due. Thus, Defendant maintains that it is clear from Mr. Kleyman's own statement in this email that the invoices were created after the fact and were never delivered to Defendant.

In further opposition to Plaintiff's motion for summary judgment, Defendant points to several anomalies in the proof submitted by Plaintiff. In particular, as previously noted,

Defendant points out that KLG's first communication with the law firm of Farrell Fritz on Defendant's behalf was an introductory email from KLG to Matt Donovan at Farrell Fritz dated November 14, 2022 (NYSCEF Doc. 50). However, the email and phone logs submitted by Plaintiff in support of his motion contain numerous purported communications with individuals at Farrell Fritz that pre-date the introductory email. In addition, Defendant again notes that the email and phone logs submitted by Plaintiff contain numerous purported communications with Maria Johnson of Farrell Fritz from 2022 and 2023. However, Ms. Johnson did not join the law firm of Farrell Fritz until February of 2024 as evidenced by a press release submitted by Defendant (NYSCEF Doc. 52). Finally, Defendant points to certain anomalies in the invoices submitted by Plaintiff. In particular, KLG's December 2022 invoice billed Defendant for 7.9 hours for a meeting held with Farrell Fritz on December 6, 2022. However, Farrell Fritz's invoice for the same meeting only billed 1.5 hours for the meeting. In addition, KLG's invoices indicate that it met with Farrell Fritz for 8.1 hours on December 16, 2022. However, Farrell Fritz's invoices show no record of any such meeting with KLG on that date.

In opposition to Plaintiff's motion to dismiss his affirmative defenses, Defendant argues that contrary to Plaintiff's claim, his first affirmative defense (failure to state a claim) is a viable affirmative defense. Defendant also argues that his second affirmative defense (no account stated because KLG failed to provide him with invoices), third affirmative defense (KLG waived it's right to payment by failing to provide Defendant with invoices) and fourth affirmative defense (failure to provide invoices was a violation of attorney ethics cannons) are all viable since Defendant was not in fact provided with the

invoices. Defendant further contends that his fifth (latches), sixth and seventh affirmative defenses (overcharge) are viable. In particular, Defendant reasserts his claim that Plaintiff failed to send him any invoices and further points to Mr. Kleyman's November 19, 2024 email in which he indicated that he was in the process of itemizing the work he performed for Defendant. Thus, Defendant maintains that Plaintiff failed to bill him in a timely manner and that he was prejudiced by this delay. In addition, Defendant points to the aforementioned discrepancies between Plaintiff's invoices and Farrell Fritz's invoices. Defendant also contends that his eighth affirmative defense (alleging negligence) is viable since Plaintiff rendered negligent legal services by using an invalid power of attorney to sign an agreement to sell a judgment, and by improperly commencing a direct action against an SRA member rather than a derivative action which resulted in the discontinuance of the action. Finally, Defendant argues that his ninth and tenth affirmative defenses (alleging breach of fiduciary duty) are viable since Plaintiff represented both sides of a transaction without Defendant's knowledge and improperly released escrow funds in violation of a judgment agreement.

With respect to his counterclaims, Defendant argues that his first and second counterclaims, which allege breach of fiduciary duty are valid and should not be dismissed. In support of this contention Defendant maintains that Mr. Kleyman placed his own interests above Defendant's interests when acting as an escrow agent, he transferred a $100,000 down payment in an escrow account to LRJADE consulting, Inc., which is an entity controlled by Mr. Kleyman's wife. In addition, Defendant argues that Mr. Kleyman breached his fiduciary duty by representing both parties in a transaction in an effort to sell

a judgment held by the estate. In addition, Defendant maintains that his third counterclaim (seeking an accounting) should not be dismissed since Defendant has denied ever receiving the invoices and Plaintiff has failed to provide any documentation proving otherwise. In further opposition to Plaintiff's motion for summary judgment dismissing the accounting counterclaim, Defendant maintains that there is evidence that KLG overbilled him given the discrepancies between KLG's bills and Farrell Fritz's corresponding bills for the same work. In addition, Defendant maintains that he has a viable breach of contract claim (fourth counterclaim) against Plaintiff based upon the poor quality of KLG's work and the fact that Plaintiff placed its own interest before those of its client. Furthermore, Defendant contends that his fifth counterclaim (conversion) is viable given his allegation that Mr. Kleyman improperly released $100,000 from KLG's escrow account.

As a final matter, Defendant argues that his sixth and seventh counterclaims, which allege malpractice, should not be dismissed. Defendant maintains that there is evidence that KLG committed malpractice when it commenced an action to enforce an alleged agreement for Defendant's late father to purchase shares from his brothers that was dismissed on a summary judgment motion. Defendant further alleges that KLG committed malpractice when it improperly commenced an action for misappropriation that was discontinued after a motion to dismiss was made based on lack of standing. Moreover, Defendant contends that KLG committed malpractice by improperly using an invalid power of attorney to sign a judgment agreement. Finally, Defendant argues that Mr. Kleyman is personally liable for this malpractice pursuant to Business Corporation Law § 1505.

Mr. Kleyman's affirmation, affidavit, and memorandum in support of Plaintiff's summary judgment motion on its breach of contract claim once again contain numerous fictitious citations and misrepresentations of actual case law. A party cannot satisfy its prima facie burden by relying on nonexistent cases or misstating the law. Moreover, genuine issues of fact preclude granting summary judgment on the breach of contract.

"To establish prima facie entitlement to judgment as a matter of law on a cause of action alleging breach of contract, a party is required to demonstrate the existence of a contract, the party's performance under the contract, the other party's breach of the contract, and that the party suffered harm as a result" (*U.S. Bank Natl. Assoc. v Reddy*, 220 AD3d 967, 972 [2d Dept 2023], quoting *Sammy v First Am. Tit. Ins. Co.*, 205 AD3d 949, 957 [2d Dept 2022]). Here, Plaintiff relies primarily upon the retainer agreement, the invoices, and the email/phone logs in support of his summary judgment motion under his breach of contract claim while Defendant's opposition to the motion is primarily based upon his claim that he never entered into the retainer agreement and never received the invoices. As a general rule, a defendant's "bald assertion of forgery" is insufficient to raise a triable issue of fact regarding a breach of contract claim (*Law Office of Ronald D. Weiss P.C. v Piltan*, 241 AD3d 671, 672, [2d Dept 2025], quoting *82-90 Broadway Realty Corp. v New York Supermarket, Inc.*, 154 AD3d 797, 799 [2d Dept 2017]). However, as discussed below, there are certain unexplained anomalies, discrepancies and inconsistencies in Plaintiff's proof which raise triable issues of fact.

Initially, the court notes that the retainer agreement submitted by Plaintiff requires that Defendant pay KLG a $25,000 retainer fee. However, the invoices submitted by

Plaintiff indicate that this retainer fee was never paid. Moreover, Plaintiff has failed to submit a single contemporaneous written communication between the parties wherein KLG asks Defendant about the payment of the retainer fee. Further, the retainer agreement requires that Defendant pay all monthly invoices within 15 days of receipt. However, the invoices submitted by Plaintiff indicate that Defendant did not make a single payment until November of 2023, some 17 months after the retainer agreement was entered into, by which time (according to the invoices) there was a balance of over $850,000 due based upon over 1,700 hours being billed. Moreover, notwithstanding the length of time that had passed before any payments were made and the amount of the balance due, Plaintiff has failed to submit a single contemporaneous written communication between the parties inquiring about payments and the outstanding balance. The court also notes that, contrary to Plaintiff's claim, the invoices do not indicate that Defendant made a $50,000 payment in March 2024.

Further, regarding the invoices upon which Plaintiff relies in support of its summary judgment motion, although Mr. Kleyman maintains that he hand-delivered the invoices to Defendant, he has offered no proof (such as a mailing receipt or email) as to how the invoices were delivered to Defendant after he moved to Florida in 2023. Moreover, the statement in Mr. Kleyman's November 19, 2024 email that he was in the process of "itemizing all the work I performed for your benefit" raises issues of fact as to whether the invoices submitted by Plaintiff were ever delivered to Defendant and/or whether these invoices were created years after KLG was initially hired by Defendant. Mr. Kleyman's statement that he estimated "the total is going to be around $1.3-$1.5 million" raises similar

issues of fact since he would not have had to estimate the balance due had the invoices been generated and delivered on a monthly basis going back to June of 2022 as claimed by Mr. Kleyman.

There are also issues regarding the email and phone logs submitted by Plaintiff in support of his summary judgment motion. As Defendant indicates, these logs list hundreds of purported emails between KLG and individuals working for Farrell Fitz which predate the November 14, 2022 introductory email between KLG and Farrell Fritz. Plaintiff has failed to offer any explanation for this discrepancy. Further, Plaintiff has not adequately explained why the logs contain emails with Maria Johnson of Farrell Fritz which predate her joining that firm in February 2024.[6] These claimed emails are all the more problematic inasmuch as the invoices that predate the November 14, 2022 introductory letter all bill hours for "bundled emails" that were reviewed, which presumably include the emails with Farrell Fritz set forth in the logs submitted by Plaintiff.

Under these circumstances and considering the fact that no discovery has yet taken place in this action, Plaintiff's motion for summary judgment under his breach of contract claim against Defendant is denied as there are issues of fact regarding whether the parties entered into the retainer agreement and whether Defendant ever received the invoices. There are also issues of fact regarding the legitimacy of the email/phone logs submitted by Plaintiff in support of its summary judgment motion.

[6] In response to Defendant's argument regarding the Johnson emails, Plaintiff submits a screenshot of emails between KLG and Ms. Johnson that occurred *after* she joined Farrell Fritz. Obviously, this does not refute Defendant's arguments regarding the emails listed in the logs that occurred *before* she joined the firm.

Turning to Plaintiff's motion for summary judgment dismissing Defendant's affirmative defenses, contrary to Plaintiff's contention, the failure to state a claim is a valid affirmative defense (*Butler v Catinella*, 58 AD3d 145 [2d Dept 2008]). Accordingly, Plaintiff's motion for summary judgment dismissing Defendant's first affirmative defense is denied. Furthermore, the court has already determined that there are issues of fact regarding whether Plaintiff provided Defendant with the invoices. Accordingly, Plaintiff's motion for summary judgment dismissing Defendant's second and third affirmative defenses (which allege that no account has been stated and that Plaintiff waived its right to payment for failing to provide Defendant with the invoices) is denied. Similarly, summary judgment dismissing Defendant's fourth affirmative defense alleging that the failure to provide detailed invoices constituted an ethical breach is denied. In addition, that branch of Plaintiff's motion seeking to dismiss Defendant's fifth affirmative defense, which alleges that Plaintiff's claims are barred by the doctrine of laches based upon its failure to bill Defendant for work performed for a period of over two years, must be denied.

That branch of Plaintiff's motion seeking to dismiss Defendant's sixth affirmative defense, which alleges that Plaintiff's failure to enter into a retainer agreement with Defendant constituted an ethical breach, must also be denied since the court has determined that there are issues of fact regarding the validity of the retainer agreement. The motion to dismiss Defendant's seventh affirmative defense (that Plaintiff undertook unnecessary work during its representation of Defendant) and eighth affirmative defense (that Plaintiff performed its work for Defendant in a negligent manner) is denied as Plaintiff has failed to meet its prima facie burden of demonstrating that these defenses are frivolous or that

Plaintiff was free from negligence during its representation of Defendant. Finally, Plaintiff's motion to dismiss Defendant's ninth and tenth affirmative defenses is denied. These affirmative defenses allege that Plaintiff's improper transfer of $100,000 in the escrow account breached its duty of loyalty and care owed to Defendant and was an ethical violation. In this regard, Plaintiff has failed to meet its prima facie burden of demonstrating that this transfer was made with Defendant's knowledge and consent. Accordingly, the branch of the motion seeking to dismiss Defendant's affirmative defenses is denied.

Turning to Plaintiff's motion for summary judgment dismissing Defendant's counterclaims, Defendants first and second counterclaims (alleging breach of fiduciary duty) and fourth counterclaim (breach of contract) are duplicative of his malpractice claim (*Alphas v Smith*, 147 AD3d 557, 558-559 [1st Dept 2017], *Conklin v Owen*, 72 AD3d 1006, 1007 [2d Dept 2010]). Accordingly, these counterclaims must be dismissed. However, Plaintiff has failed to meet its prima facie burden of demonstrating that it did not commit malpractice in its representation of Defendant. Thus, Plaintiff's motion for summary judgment dismissing Defendant's sixth counterclaim is denied.

Plaintiff's motion for summary judgment dismissing Defendant's third counterclaim (accounting) must also be denied as the court has already determined that there are issues of fact regarding whether or not KLG provided Defendant with the invoices. In addition, Plaintiff has failed to meet its prima facie burden in moving for summary judgment dismissing Defendant's fifth counterclaim (conversion) given Defendant's allegation that Mr. Kleyman improperly transferred $100,000 out of the escrow account to an entity controlled by Mr. Kleyman's wife. As a final matter, Plaintiff

has failed to meet its prima facie burden in moving for summary judgment dismissing Defendant's seventh counterclaim, which seeks to hold Mr. Kleyman individually liable for KLG's malpractice pursuant to Business Corporation Law § 1505(a). Under the statute, an attorney "can be personally liable for the negligent performance of [legal] services if he participated in the negligent acts or supervised and controlled the members of the corporation who committed the negligent acts" (*Beltrone v General Schuyler & Company*, 223 AD2d 938, 939 [3d Dept 1996]). Here, it is undisputed that Mr. Kleyman performed all the legal services performed by KLG and the court has already determined that KLG has failed to demonstrate, as a matter of law, that it did not commit malpractice in its representation of Defendant.

Accordingly, that branch of Plaintiff's motion which seeks summary judgment dismissing Defendant's first and second and fourth counterclaims is granted. That branch of the motion which seeks summary judgment dismissing the remaining counterclaims is denied.

Plaintiff's Motion for Injunctive Relief

Plaintiff moves, in mot. seq. 6, for an order continuing the temporary restraints which precludes Defendant from transferring, encumbering, dissipating or otherwise disposing of $2,000,000 of any proceeds received from the pending sale of SRA or its 50% membership interest therein during the pendency of this action and pending the resolution of mot. seq. 3. In the alternative, Plaintiff seeks an order directing that no less than $2 million in net proceeds from the pending sale of SRA be deposited and maintained in a segregated, interest-bearing IOLA or escrow account under the control of Defendant's

attorney or a neutral third-party escrow agent. Plaintiff further moves for an order waiving the undertaking requirement under CPLR 6312(b) in light of Plaintiff's demonstrated financial hardship.

In support of this motion, Plaintiff raises the same arguments that it raised in support of its motion for attachment and argues that temporary injunctive relief is necessary pending the resolution of the attachment motion. In particular, Plaintiff reiterates its claim that Defendant is planning on relocating to Greece and that it will be irreparably harmed unless injunctive relief is granted as it will be impossible for it to enforce any judgment it is awarded. In addition, Plaintiff maintains that it will likely succeed on the merits of this case given the documentary evidence submitted including the retainer agreement, the invoices, and email/phone logs. Finally, Plaintiff contends that the equities tip in its favor of granting injunctive relief. Specifically, Plaintiff notes that the sale of the SRA property will generate approximately $16,000,000 and it is merely seeking to restrain $2,000,000 to preserve its ability to recover a $1.246 million legal fee claim.

In opposition to this motion, Defendant maintains that injunctive relief is not appropriate herein as Plaintiff merely seeks monetary damages. Further, Defendant argues that the motion should be denied for the same reasons that Plaintiff's motion for prejudgment attachment should be denied, namely that Plaintiff has failed to prove that there is any danger of dissipation of assets by Defendant.

As previously noted, the authorities cited by Plaintiff in support of this motion largely either misstate the applicable law or are entirely nonexistent. This includes the fictitious case of *Loew* (182 AD3d at 492), cited in Plaintiff's proposed order to show

cause, which resulted in the issuance of an order containing an invalid citation. In any event, the motion must be denied, as Plaintiff has failed to demonstrate irreparable harm in the absence of injunctive relief.

As a final matter, given the denial of Plaintiff's motion for injunctive relief, the temporary restraining order contained on page two of the court's June 12, 2025 order to show cause is vacated.

Summary

In summary, the court rules as follows: (1) Plaintiff's motion, in mot. seq. 1, for an order, pursuant to CPLR 3211(a)(1), (a)(2), and (b), dismissing Defendant's affirmative defenses and counterclaims is denied. Plaintiff's motion, in mot. seq. 2, for an order awarding sanctions and attorney's fees against Defendant is denied. Plaintiff's motion, in mot. seq. 3, for an order, pursuant to CPLR 6201(1), 6201(3), and 6212(a), granting prejudgment attachment and directing various discovery and disclosure is denied. Plaintiff's motion, in mot. seq. 4, which seeks summary judgment under its breach of contract claim and summary judgment dismissing Defendant's affirmative defenses and counterclaims is granted only to the extent that Defendant's first, second, and fourth counterclaims are dismissed and the motion is otherwise denied. Plaintiff's motion, in mot. seq. 6, which seeks injunctive relief is denied and the temporary restraining order in the court's June 12, 2025 order is vacated. Defendant's cross motion, in mot. seq. 5, which seeks sanctions against Plaintiff/Mr. Kleyman is granted and this matter is set down for a hearing before the Court on June 9, 2026 at 10:00 A.M., at which time the amount of

sanctions, as well as whether referral of Mr. Kleyman to the AGC is warranted, will be determined.

This constitutes the decision and order of the court.

ENTER,

J. S. C.

HON. HEELA D. CAPELL, JSC

COURT'S EXHIBIT A

Motion Seq. 1, (Plaintiff's motion to dismiss)

-Alex Kleyman Esq.'s (Plaintiff) affirmation in support (NYSCEF Doc. 7) misrepresents the facts/holding in *Fontanetta v Doe* (73 AD3d 78 [2d Dept 2010]) (on page 2), misrepresents the holding in *Pace v Raisman & Assocs., Esq. LLP*, (95 AD3d 1185 [2d Dept 2012]) (on page 3), and misrepresents the holding in *Matter of Tagliaferri v Weiler,* (1 NY3d 605 [2004]) (on page 5).

-Plaintiff's affidavit in support (NYSCEF Doc. 8) again misrepresents the holding in *Fontanetta* (on pages 2 and 5). He again misrepresents the holding in *Pace* (on page 2). He also misrepresents the holding in *David v Hack, Fern & Hack*, (97 AD3d 437, 439 [2d Dept 2012]) (on page 3 and page 4). His affidavit also cites a fictitious case, *Feder Kaszovitz LLP v Rosen*, 202 AD3d 421, 422 [1st Department 2022]) (on page 12).[7] The affidavit again misrepresents the holding in *Pace* (on page 5)

-Plaintiff's Memorandum of Law (NYSCEF Doc. 9) misrepresents the holding *in Leon v Martinez* (84 NY2d 83 [1994]) (on page 7), misrepresents the holding in *Marinelli v Sullivan Papain Block McGrath & Cannavo, P.C*, (205 AD3d 714 [2d Dept 2022]) (on pages 7-8), again misrepresents the holding in *Pace* (on page 8), and misrepresents the holding in *Gould v Decolator*, (121 ad3d 846 [2d Dept 2014]) (on page 10). The memorandum of law also cites a fictitious case, *Bauer v Cravath, Swain & Moore LLP*,

[7] There is a Federal District Court case by this name, but not any state cases.

(177 AD3d 479 [1st Dept 2019]) (on page 11). The memorandum also cites a fictitious case, *Lawsky v Condor Capital Corp*, (154 AD3d 537 [2nd Dept 2017]) (on page 13), misrepresents the holding in *Apple Records, Inc., v Capitol Records, Inc.*, (137 AD2d 50 [1st Dept 1988]) (on page 13) and misrepresents the holding in *Butler v Catinella*, (58 AD3d 145, 148 [2d Dept 2008]) (on page 13). The memorandum also cites a fictitious case, *Liberty Mut. Ins. Co. v Jenkins*, (10 AD3d 792 [2d Dept 2004]) (on page 14). The memorandum also misrepresents the holding in *DRMAK Realty LLC v Progressive Credit Union*, (133 AD3d 401 [1st Dept 2015]. In addition, the memorandum cites to two fictitious cases, *Rich v Rich*, (231 AD2d 384 [1st Dept 1996]) and *Carlucci v Poughkeepsie City Sch. Dist.*, (88 AD3d 1052 [2d Dept 2011]) (both on page 15). The memorandum again cites to the fictitious *Carlucci* (on page 16). The memorandum again misrepresents the holding in *David* (on page 16). Finally, the memorandum again misrepresents the holdings in *Gould* and *Marinelli* (on page 20).

Motion Sequence 2 (Plaintiff's motion for sanctions)

-Plaintiff's affirmation in support (NYSCEF Doc 20) again misrepresents the holdings in *Vision China Media Inc.* (on pages 2 and 4), *Butler* (on page 2) and *Pace* (on page 4).

-Plaintiff's affidavit in support (NYSCEF Doc 21) again misrepresents the holdings in *Pace*, *Vision China Media Inc.*, and *Butler* (all on page 6).

-Plaintiff's memorandum of law in support again misrepresents the holding in *Pace* (on pages 7, 9, 12, and 14). The memorandum again misrepresents the holding in *Butler* (on pages 8, 11, and 13). In addition, the memorandum misrepresents the holding in *Schwartz v Sayah*, (72 NY3d 790 [2d Dept 2010]) (on page 7). Furthermore, the

memorandum again misrepresents the holding in *Vision China Media Inc.* (on pages 9, 11, and 13). In addition, the memorandum cites the fictitious case *Citibank v Suthers*, (68 AD3d 68 [2d Dept 2009]) (on pages 10 and 12).[8] Further, the memorandum misrepresents the holding in *Kashi v Gratsos*, (790 F2d 1050 [2d Cir 1986]) (on page 12).

Motion Sequence 3 (Plaintiff's motion for pre-judgement attachment)

-Plaintiff's affirmation in support (NYSCEF Doc 26) misrepresents the holding in *Mineola Ford Sales Ltd. v Rapp*, (242 AD2d 371 [2d Dept 1997]) (on page 2), again misrepresents the holding in *Kashi* (on page 3), and again misrepresents the holding in *Pace* (on page 3).

-Plaintiff's affidavit in support (NYSCEF Doc 27) again misrepresents the holdings in *Pace* (on page 4), *David* (on page 4) and *Mineola Ford Sales Ltd.* (on page 4).

-Plaintiff's memorandum of law in support (NYSCEF Doc 28) cites a fictitious case – *Pine v AIA Delivery, Inc.*, (201 AD3d 640 [2d Dept 2022]) (on page 6). The memorandum also misrepresents the holding in *Erdman Anthony & Assoc., Inc. v Barkstrom*, (298 AD2d 981 [4th Dept 2002]) (on page 8), again misrepresents the holding in *Kashi* and *VisioChina Media Inc.* (both on page 8). The memorandum of law cites an additional fictitious case, *Cruz v TD Bank NA*, (202 AD3d 582 [2d Dept 2022]). (on page 9). The memorandum again misrepresents the holding in *Pace* and *Butler* (on pages 10 and 11). Furthermore, the memorandum again misrepresents the holdings in *Fontanetta* and *David* (on page 11) and *Gould* (on page 12). The memorandum further cites a

[8] There is a case named *Citibank v Suthers*, (68 AD2d 790 [4th Dept 1979]) but it's a 4th Department case from 1979 that does not involve sanctions.

fictitious case, *Matter of White Plains Plaza Realty, LLC v Cappelli*, (201 AD3d 689 [2d Dept 2022]) (on page 12).[9] The memorandum also misrepresents the holding in *Reading Int'l, Inc. v Oaktree Capital Mgmt*, (317 F Supp 2d 301 [SDNY 2003]) (on page 14). Finally, the memorandum again misrepresents the holding in *Kashi* (on page 15).

-Plaintiff's affirmation in reply (NYSCEF Doc 78) again misrepresents the holding in *Mineola Ford Sales Ltd.*, *Kashi*, and *Pace* (all on page 2). Plaintiff's reply affirmation also again cites to the fictitious case of *Feder Kaszvoitz LLP* (on page 9) and misrepresents the holdings in *Butler* (on pages 13 and 15)), *Gould* (on pages 17 and 18), *Kashi* (on page 18), *Pace* (on page 18) and again cites to the fictitious case of *Feder Kaszvoitz LLP* (on page 18). In addition, the reply affirmation again misrepresents the holding in *Butler* (on page 18). Notably, this affirmation was filed over two months *after* Defendant's counsel complained about Plaintiff misrepresenting the holdings in citations and citing to fictitious cases in his June 6, 2025 affirmation (NYSCEF Doc 54) yet Plaintiff continued to misrepresent the holdings in cases and to cite to fictitious cases.

-Plaintiff's affidavit in reply (NYSCEF Doc 79) again misrepresents the holding in *Mineola Ford Sales Ltd.* (on page 6), the holding in *Pace* (on page 11), the holding in *Butler* (on pages 12-13) and contains a fictitious quotation from *Gould* (on page 12).

[9] There are several reported cases under this name, but none of them was decided under this citation and none of them has anything to do with attachment.

-Motion Sequence 4 (Plaintiff's motion for summary judgment).

-Plaintiff's affirmation in support (NYSCEF Doc 31) again misrepresents the holding in *Fontanetta* (on page 5).

-Plaintiff's affidavit in support (NYSCEF Doc 32) again misrepresents the holding in *Gould* (on page 5). The affidavit again cites to the fictitious case of *Feder Kaszovitz LLP* (on page 5). The affidavit again misstates the holding in *Fontanetta* (on page 6). The affidavit again misrepresents the holding in *Pace* (on page 7).

-Plaintiff's memorandum of law in support (NYSCEF Doc 33) cites a fictitious case, *Madison Liquidity Invs. 119, LLC v Griffith*, (205 AD3d 826 [2d Dept 2022]) (on page 13).[10] The memorandum again cites the fictitious cases of *Rich* and *Carlucci* (on page 14). The memorandum again misrepresents the holding in *DRMAK Realty LLC* (on page 14). The memorandum also cites to a fictitious case, *Epstein v New York City Transit Auth*, (110 AD3d 493 [1st Dept 2013]) (on page 14). Finally, the memorandum misrepresents the holding in *Weintraub v Phillips, Nizer, Benjamin, Krim & Ballon*, (172 AD2d 254 [1st Dept 1991]) (on page 15).

-Motion Sequence 6 (Plaintiff's motion for a TRO)

-Plaintiff's proposed Order to Show Cause (NYSCEF Doc 37) cites to the fictitious case of *Loew v Smith* (182 AD3d 492 [1st Dept 2020]) (on page 3).

-Plaintiff's affirmation in support (NYSCEF Doc 38) again misrepresents the holdings of *Pace* (on page 4) and *VisionChina Media Inc.* (on page 5). The affirmation also

[10] There is a case with this name, but it is a First Department case from 2008 (*Madison Liquidity Investors 119, LLC v Griffith*, (57 AD3d 438 [1st Dept 2008]).

misrepresents the holding in *Computer Strategies v Commodore Bus. Machines*, (105 AD2d 167 [2d Dept 1984]) (on page 5). The affirmation also cites the fictitious case *Credit Argricole Indosuez v Rossy* (30 AD3d 1041 [1st Dept 2006) on page 6 and misrepresents the holding in *Societe Generale Alsacienne De Banque v Flemingdon Dev. Corp.* (118 AD2d 769 [2nd Dept 1986]) (both on page 6). Finally, the affirmation again cites to the fictitious case of *Loew* (on page 7).

-Plaintiff's affidavit in support (NYSCEF Doc 38) again cites the fictitious case of *Credit Agricole Indosuez* (on page 5) and misrepresents the holding in *VisionChina Media Inc.* (on page 8). In addition, the affidavit misrepresents the holding in *Barbes Restaurant Inc. v ASSRR Suzer LLC* (140 AD3d 430 [1st Dept 2016]). The memorandum cites the fictitious case of *Nassau Diagnostic Imaging v Hummel*, (201 AD2d 724 [2d Dept 1994]) (on page 8) and misrepresents the holding in *Yedlin v Lieb*erman (102 AD3d 769 [2d Dept 2013]).

-Plaintiff's memorandum of law in support (NYSCEF Doc 40) cites the fictitious case of *Banco Popular N. Am. v Christie*, (202 AD2d 385 [2d Dept 1994]) (on page 4) and again misrepresents the holding in *VisionChina Media Inc.* (on page 5). The memorandum again cites the fictitious *Lowe* case (on page 5) and cites the fictitious case *Matter of Winston & Strawn LLP* (21 NY3d 715 [2013]) (on page 5). The memorandum again misrepresents the holding in *Barbes Restaurant Inc.* (on page 5). The memorandum again cites the fictitious case of *Credit Agricole Indosuez* (on both pages 8 and 9) and misrepresents the holding in *Potter v North Shore University Hosp.* (7 NY3d 548 [2006]). (on page 8). The memorandum cites to the fictitious case of *Ma v Lien* 198 AD3d 567 [1st

Dept 2006]) (on page 8).[11] Plaintiff again misrepresents the holding in *Vision China Media Inc.* and again cites the fictitious cases of *Banco Popular N. Am.* and *Credit Agricole Indosuez* (both on page 8). In addition, the memorandum again cites the fictitious case of *Nassau Diagnostic Imaging* and cites the fictitious *Lowe* case (both on page 9). The memorandum misrepresents the holding in *JSC VTB Bank v Mavlyanov* (154 AD3d 560 [1st Dept 2017]) (on page *9).* The memorandum misrepresents the holding in *Marin v Constitution Realty, LLC* (28 NY3d 666 [2017]) (on page 10) and cites the fictitious case *Shukat Arrow Hafer Weber & Herbsman, LLP v Hutton* (43 AD3d 395 [1st Dept 2007]) (on page 10). The memorandum again cites the fictitious case *Matter of Winston & Strawn LLP* (on page 11) and cites the fictitious case *Edgeworth Food Corp. v Stephenson* (53 NY2d 962 [1981]).[12] The memorandum again misrepresents the holdings in *Fontanetta* and *David* (on page 11), again cites the fictitious case *Credit Agricole Indosuez* (twice on page 12) and again misrepresents the holding in *VisionChina Media Inc.* (twice on page 12). The memorandum again misrepresents the holdings in *JSC VTB Bank* and *Societe Generale Alsacienne De Banque* (on page 13) and cites the fictitious case of *Tash v Perlmutter* (453 NYS2d 61 [2nd Dept 1982]) (on page 13). The memorandum cites the fictitious case of *Matter of Witham v Witham* (122 AD3d 781 [2d Dept 2014]) (on page 13), again cites the fictitious case of *Edgeworth Food Corp.* and again misrepresents the holding in *JSC VTB Bank* (both on page 13). The memorandum again cites the fictitious case of *Credit Agricole*

[11] There is a case entitled *Ma v Lien* (198 AD2d 186 [1st Department 1993]).
[12] There is a case entitled Edgeworth *Food Corp. v Stephenson* (53 AD2d 588 [1st Dept 1976]).

Indosuez and again misrepresents the holding in *Barbes Restaurant Inc.* (on page 14). The memorandum again cites the fictitious case of *Ma v Lien* (on page 14) and the fictitious case of *Nassau Diagnostic Imaging* (on pages 14 and 15). The memorandum cites the fictitious case of *Matter of Index Stock Transfer v Blasnik* (57 AD3d 1080 [3d Dept 2008]) (on page 16). The memorandum again cites the fictitious case of *Nassau Diagnostic Imagine* (on both pages 16 and 17), misstates the holding in *Courthouse Corporate Ctr. LLC* (on both pages 16 and 17) and misrepresents the holding in *Yedlin v Lieberman* (102 AD3d 769 [2nd Dept 2013]) (on page 16). Finally, the memorandum again cites the fictitious case of *Loew* (on page 17).

-Plaintiff's December 8, 2025 Letter to the Court

-In his letter to the court (NYSCEF Doc 101), Plaintiff again misrepresents the holding in *Elisa Dreier Reporting Corp.* and again cites the fictitious cases of *Madison Liquidity Invs. 119, LLC* and *Epstein*. Defendant's counsel complained about Plaintiff misrepresenting the holdings in citations and citing to fictitious cases in his June 6, 2025 affirmation (NYSCEF Doc 54).