

**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL

Justice Supreme Court

-----X
**CENTURY AMBULANCE SERVICE, INC. and
DOMENICK MARINARO,**

Plaintiffs,

- against -

**TRIAL/IAS PART: 25
NASSAU COUNTY**

**Index No: 013427-08
Motion Seq. Nos: 2 and 3
Submission Date: 11/6/09**

**ROBERT J. AQUINO a/k/a ROBERT J. AQUINO, JR.;
CAS ACQUISITION, LLC; CAS ACQUISITION I, LLC
d/b/a CENTURY AMBULANCE SERVICE; ABRAMS,
FENSTERMAN, FENSTERMAN, EISMAN, GREENBERG,
FORMATO & EINIGER, LLP; MARK ZAFRIN, ESQ.;
BARBARA STEGUN PHAIR, ESQ.; PINNACLE HEALTH
CONSULTANTS, LLC; and ANDREW S. BLATT**

Defendants.

-----X
The following papers having been read on these Orders to Show Cause

**Order to Show Cause, Affirmation in Support,
Affidavit in Support and Exhibits.....X
Affirmation in Opposition and Attachment.....X
Memorandum of Law in Opposition.....X
Order to Show Cause, Affirmation in Support and Exhibits.....X**

This matter is before the Court for decision on 1) the Order to Show Cause by Plaintiffs Century Ambulance Service, Inc. and Domenick Marinaro, filed on September 25, 2009, seeking certain injunctive relief; and 2) the Order to Show Cause by outgoing counsel for Defendants

Robert J. Aquino a/k/a Robert J. Aquino, Jr., CAS Acquisition, LLC, and CAS Acquisition I, LLC d/b/a Century Ambulance Service (“Outgoing Counsel”), seeking to be relieved as counsel for Defendants Robert J. Aquino a/k/a Robert J. Aquino, Jr., CAS Acquisition, LLC, and CAS Acquisition I, LLC d/b/a Century Ambulance Service, filed on October 9, 2009, both of which were submitted on November 6, 2009. For the reasons set forth below, the Court 1) denies Plaintiff’s Order to Show Cause (Motion Sequence Number 2) in its entirety; and 2) grants the application of the law firm of Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP (“Outgoing Law Firm”) (Motion Sequence Number 3) to be relieved as counsel for Defendants Robert J. Aquino a/k/a Robert J. Aquino, Jr., CAS Acquisition, LLC, and CAS Acquisition I, LLC d/b/a Century Ambulance Service, fixes the fees owed to Outgoing Law Firm for legal services rendered in the sum of \$8,742.45, and grants the Outgoing Law Firm a charging lien in the sum of \$8,742.45. The Court further directs that, after it has received payment in the sum of \$8,742.45, Outgoing Law Firm shall immediately turn over its entire file to Lawrence P. Wolf, Esq., 6 Hemlock Hills, Chappaqua, New York 10514, substitute counsel for Defendants Robert J. Aquino a/k/a Robert J. Aquino, Jr., CAS Acquisition, LLC, and CAS Acquisition I, LLC d/b/a Century Ambulance Service (“Substitute Counsel”).

BACKGROUND

A. Relief Sought

In their Order to Show Cause, Plaintiffs Century Ambulance Service, Inc. (“Century”) and Dominick Marinaro (“Marinaro”) (collectively “Plaintiffs”) seek an Order ordering the Defendants Robert J. Aquino a/k/a Robert J. Aquino, Jr. (“Aquino”), CAS Acquisition, LLC, and CAS Acquisition I, LLC d/b/a Century Ambulance Service (“CAS”) (collectively “Defendants”) to cease and desist from: 1) exercising dominion and control over the assets of Century including, but not limited to, Century’s ambulance and ambulette operating authority; 2) exercising control over Century ambulance and ambulette operations; 3) diverting income due Century for services rendered by, or under the auspices of the Operating Authority [as that term is later defined], to any account other than an account in the name of Century; 4) diverting Medicare and Medicaid reimbursement for services rendered under Century’s Operating Authority to any Medicaid and/or Medicare provider account other than those established in the

name of Century; 5) seeking and/or maintaining Medicaid and/or Medicare provider number/accounts for any services rendered under the Operating Authority; 6) operating any entity providing ambulance and ambulette authority under the Operating Authority from operating under the assumed name of Century Ambulance Service; and 7) making any application for the transfer of the ambulance and ambulette operating authority issued to and/or held in the name of Century.

In their Order to Show Cause, Plaintiffs also seek an Order 1) directing Defendants to turn over to Plaintiffs all books, records, accounts, licenses, operating authority certificates, bank accounts and documents related to the operation, income and disbursements of Century and CAS; and 2) awarding Plaintiffs counsel fees and expenses incurred in filing the Order to Show Cause.

Defendants' oppose Plaintiffs' application.

In its Order to Show Cause, the Outgoing Law Firm of Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP moves for an Order 1) permitting the Outgoing Law Firm to withdraw as attorneys of record for Defendants Robert J. Aquino a/k/a Robert J. Aquino, Jr., CAS Acquisition, LLC, and CAS Acquisition I, LLC d/b/a Century Ambulance Service; 2) fixing the fees owed to Outgoing Law Firm for legal services rendered; and 3) granting the Outgoing Law Firm a charging lien in the sum of \$8,742.45.

No opposition or other response has been submitted in response to the Order to Show Cause filed by the Outgoing Law Firm.

B. The Parties' History

In support of their application for injunctive relief, Plaintiffs provide an Affidavit in Support of Marinaro dated September 24, 2009. Marinaro affirms as follows:

He is the owner of all of the issued and outstanding shares of Century, and has served as its sole director and only officer. Plaintiffs filed an Amended Verified Complaint ("Complaint") dated September 26, 2008 that contains thirteen (13) counts. The Complaint relates to Marinaro's transfer of his interest in Century to Defendants Aquino and CAS Acquisition. In connection with that transfer, Marinaro and Century entered into an Asset Purchase Agreement ("Purchase Agreement") with CAS dated July 12, 2007. In addition, Century, Marinaro and CAS

entered into a Management Agreement (“Management Agreement”) on the same date.

The thirteen counts in the Complaint allege as follows:

Count One: The Purchase and Management Agreements were void *ab initio* due to alleged misrepresentations by Defendants regarding the existence of CAS Acquisition I, LLC , for which Plaintiffs seek an Order declaring the Purchase and Management Agreements void *ab initio*,

Count Two: Defendants committed a prima facie tort and civil conspiracy by, *inter alia*, naming a non-existent entity (CAS Acquisition, LLC) as the Purchaser and Manager in the Purchase and Management Agreements, for which Plaintiffs seek damages of at least \$2 million and punitive damages against each Defendant of \$1 million,

Count Three: Defendants committed fraud and/or negligent misrepresentation in representing that CAS Acquisition, LLC was a duly organized and existing LLC, for which Plaintiffs seek damages of at least \$2 million and punitive damages against each Defendant of \$1 million,

Count Four: Defendants breached the Purchase Agreement, for which Plaintiffs seek damages of at least \$2 million,

Count Five: Defendants breached the Management Agreement, for which Plaintiffs seek damages of at least \$20 million,

Count Six: Defendants maliciously interfered with Plaintiffs’ contractual relationships, including those with the Department of Health and the service that processed Century’s reimbursement claims, for which Plaintiffs seek compensatory damages, as well as punitive damages against each Defendant in the sum of \$750,000,

Count Seven: Defendants wrongfully obtained a Certificate of Assumed Name permitting Defendant CAS Acquisition I, LLC to do business under the assumed name of Century Ambulance, thereby diluting the value of Century’s trade name, for which Plaintiffs seek compensatory damages, as well as punitive damages against each Defendant in the sum of \$750,000,

Count Eight: Defendants submitted fraudulent documentation in connection with its application for the transfer of Century’s operating authority, for which Plaintiffs seek

compensatory damages, as well as punitive damages against each Defendant in the sum of \$1 million,

Count Nine: Defendants breached the implied covenant of good faith and fair dealing, thereby depriving Plaintiffs of the benefits due them under the Purchase and Management Agreements, for which Plaintiffs seek an Order declaring that Defendants' down payment is forfeited, as well as compensatory damages and punitive damages against each Defendant in the sum of \$1 million,

Count Ten: Defendants intentionally interfered with Plaintiffs' attorney-client relationship, for which Plaintiffs seek compensatory damages, as well as punitive damages against each Defendant in the sum of \$750,000,

Count Eleven: Defendants engaged in outrageous conduct causing emotional distress to Marinaro, for which Plaintiffs seek compensatory damages, as well as punitive damages against each Defendant in the sum of \$750,000,

Count Twelve - Defendants defamed Marinaro, causing Marinaro to suffer emotional distress and damaging his reputation, for which Plaintiffs seek compensatory damages, as well as punitive damages against each Defendant in the sum of \$1 million, and

Count Thirteen: Defendants committed injurious falsehood by making defamatory remarks that cast doubt on Plaintiffs' integrity, for which Plaintiffs seek compensatory damages, as well as punitive damages against each Defendant in the sum of \$750,000.

The Complaint also outlines the procedure by which ambulance and emergency medical service providers may obtain authority to operate ambulances within the State of New York ("Operating Authority"). The Department of Health of the State of New York ("DOH") issues operating authority and the Regional Emergency Medical Service Councils ("Regional EMS Councils") decides whether to approve applications for a new or expanded ambulance service, and applications for the transfer of ten percent (10%) or more of an interest in the holder of an Operating Authority. These applications are also subject to DOH's approval. In the Complaint, dated September 26, 2008, Plaintiffs allege that Century first received its Operating Authority over twenty (20) years ago.

After execution of the Purchase and Management Agreements, but prior to Aquino

obtaining the necessary agency approvals, Aquino operated Century through CAS, pursuant to the Management Agreement, which Aquino personally guaranteed. Plaintiffs allege that, while managing the business during this transition phase, Defendants engaged in the wrongful acts and conduct described in the Complaint that, unless enjoined, will cause irreparable harm to Plaintiffs.

Relevant provisions of the Management Agreement include:

Paragraph 1:1 provides that, “except as may be specifically set forth in this Agreement or in an independent writing signed by a duly authorized representative of [Century], [CAS] shall not be authorized to act on behalf of and/or bind [Century][.]”

Paragraph 2:2 provides that, unless the parties agree otherwise, “during [CAS’] tenure, [Century] shall be operated by [Marinaro] who retains the absolute and unqualified right to make all decisions which, directly or indirectly may impact upon [Century’s] Ambulance Operating Authority, its Department of Transportation ambulette/para-transit authority, its Taxi and Limousine ambulette/para-transit authority, [Century’s] Medicare provider status and/or [Century’s] Medicaid provider status[.]”

Paragraphs 5.2 and 5.3 provide that CAS agrees that, in managing Century, CAS will not take any action that would put Century’s Medicare and Medicaid provider status in jeopardy. Paragraphs 8.1.1, 8.1.2 and 8.2 provide that CAS will deposit all income in a bank account, over which CAS has control, and that the proceeds will be used to operate Century. Pursuant to paragraphs 9.1 and 9.2, Century has the right to access its books and records during CAS’ tenure, assuming that it gives CAS at least twenty-four (24) hours notice of its desire to access those books and records.

Marinaro affirms that, when the closing of the sale did not occur, he became concerned about Defendants’ operation of Century. In May 2009, he learned of a bankruptcy proceeding involving Capital Health Management, Inc., a company he believed Aquino owned. Marinaro learned that his contract to sell Century was mentioned in that bankruptcy proceeding. In addition, Marinaro was not receiving mail or other documentation concerning the operation of the business.

By letter dated June 2, 2009, pursuant to the Management Agreement, Marinaro’s

attorney requested access to Century's books and records, as well as an explanation regarding the bankruptcy proceeding. Counsel for Defendants sent a responsive letter dated June 12, 2009, in which he advised Plaintiffs' counsel that the June 2, 2009 letter was being forwarded to an individual at Capital Health Management who was preparing the requested accounting and hoped to complete it within seven (7) days.

Marinero affirms that he did not receive the requested documents, and that his accountant had expressed concern about Marinero's potential exposure related to, *inter alia*, Medicaid and Medicare records. Plaintiffs' counsel sent a letter to Defendants' counsel on July 9, 2009 in which he again requested access to Century's books and records, and provided Defendants with a letter from Marinero's accountant outlining her need for certain books and records. In that letter, Plaintiffs' counsel advised Defendants' counsel that, due to Defendants' failure to produce the requested books and records, Defendants were in default, *inter alia*, of the Purchase Agreement.

Marinero affirms that Plaintiffs made additional requests on in July and August 2009 for the documents and received no response. On or about September 9, 2009, Marinero received a telephone call during which he learned that the ambulance business was closed and was no longer operating. He called Jimmy Panoiu, his former manager who subsequently worked for Defendants, who advised Marinero that he had been terminated and did not know the status of the company. Marinero called another former employee who subsequently worked for Defendants, who told Marinero that he had been fired. By letter dated September 11, 2009, Plaintiffs' counsel asked Defendants' counsel to advise him whether Defendants were operating the ambulance company. Plaintiffs received no response.

In support of their Order to Show Cause, Plaintiffs also submit an Affirmation of their counsel. Counsel affirms as follows:

The transaction involving the sale of Century's assets to Aquino and CAS has not closed. Century's principal assets are its Operating Authorities to operate ambulances and ambulettes in the City of New York, as well and Nassau and Suffolk Counties. Counsel submits that these operating licenses are unique and difficult to replace. Counsel affirms that Defendants have not complied with the terms of the Management Agreement, in part by their failure to provide Plaintiffs with access to Century's books and records. Counsel affirms that Marinero has

obligations to the DOH, as well as other governmental agencies, to determine the status of the business and run it appropriately.

Defendants oppose Plaintiffs' application, and provide an Affirmation in Opposition of Aquino, who affirms as follows:

Aquino began working with Marinaro in 2006, when Marinaro appointed him to be the Medical Director of Century. As Medical Director, Aquino was responsible for overseeing the pre-hospital Quality Assurance/Quality Improvement program for Century. Marinaro, because he was losing money in Century, wanted to sell the company, which included the Operating Authority for Century's ambulances and ambulette. After several months of negotiation, Marinaro and Aquino entered into an agreement for the sale of the company.

As Marinaro no longer wanted to operate the company, and it might take several months to effectuate the transfer of the Operating Authority for the ambulances and ambulette, Marinaro and Aquino entered into the Management Agreement, pursuant to which CAS would manage the day-to-day operations of Century pending the completion of the necessary documentation. Aquino submits that it was the actions of Marinaro and his counsel that prevented the transaction from closing, and adversely affected CAS' ability to manage the company.

Aquino disputes Plaintiffs' contention that it was Aquino's plan to obtain Century's Operating Authority without paying for it. CAS contracted to purchase the business for \$2 million, and has already paid \$200,000 towards that price, which is currently held in escrow pursuant to an Escrow Agreement executed on July 12, 2007. Aquino provides a copy of this Escrow Agreement.

Aquino also submits that he did not engage in any fraud in purchasing the business under the name "CAS Acquisition, LLC," which Plaintiffs allege is a non-existent company. Aquino affirms that the actual name of the company that was purchasing Century was CAS Acquisition I, LLC and that "the inadvertent omission of the Roman numeral 'I' from the [Purchase] Agreement was clearly no more than a scrivener's error (Aff. in Opp., ¶ 10)." Aquino also affirms that, during the year between the execution of the Purchase Agreement and Plaintiffs' filing of the instant Order to Show Cause, neither Marinaro nor his attorney objected to the name of the purchaser in the Purchase Agreement.

Aquino submits, further, that CAS retained Plaintiffs' counsel solely for the purpose of filing the necessary transfer documents, based on Plaintiffs' counsel's representation that he had influence with the Regional EMS Council, which was responsible for approving the transfer of the Operating Authority. Plaintiffs' counsel requested certain documentation from Aquino, and advised Defendants' counsel that he would proceed with the routine portions of those applications.

Aquino affirms that he attempted to comply with the request of Plaintiffs' counsel for certain documentation. In December 2007, however, Aquino met with his counsel to find out why the proposed sale had not closed. Aquino avers that Marinaro and his counsel then began raising tangential issues, which Aquino contends was done in an effort to terminate the transaction. As an example, despite a provision in the contractual documents permitting CAS to move Century's operations to Parkway Hospital, where Aquino is a principal, Marinaro claimed that CAS owed him \$5,000 for rent to house CAS' operations in Marinaro's building. Aquino affirms that he never agreed to rent space in Marinaro's building, but agreed to pay Marinaro \$3,500, which he paid by a check drawn on the account of CAS Acquisition I, LLC. Aquino submits that Marinaro's demand for this payment amounted to extortion. He also notes that Marinaro cashed the check, notwithstanding the fact that it was drawn on the account of a company that Marinaro now claims does not exist.

Aquino affirms that Plaintiffs and their counsel committed other acts designed to delay the sale of the company, including 1) Plaintiffs' counsel claimed that Aquino had not provided necessary proof of insurance, although it was Marinaro's improper characterization of Century as a not-for-profit business that caused the delay in obtaining insurance; 2) Marinaro and his counsel raised the issue of whether CAS had obtained a letter of credit to finance the acquisition, even though the Agreements did not require such a letter; 3) when Plaintiffs' counsel failed to file the necessary papers to complete the transaction, Aquino scheduled a meeting between his counsel and Plaintiffs' counsel for April 16, 2008, which Plaintiffs' counsel cancelled, and Plaintiffs' counsel failed to attend subsequently-scheduled meetings; and 4) when Aquino asked his attorneys to request the applications from Plaintiffs' counsel and to handle the filings themselves, Plaintiffs' counsel did not respond to Aquino's counsel, but rather raised unrelated

issues regarding the ambulance licenses. Aquino also affirms that he has not received information from the State of New York suggesting that the Operating Authority may be revoked.

With respect to the application of the Outgoing Law Firm to be relieved as counsel for Defendants Robert J. Aquino a/k/a Robert J. Aquino, Jr., CAS Acquisition, LLC, and CAS Acquisition I, LLC d/b/a Century Ambulance Service , Outgoing Counsel affirms that Defendants Aquino and CAS failed to respond to communications or to cooperate in the defense of this action. Outgoing Counsel also affirms that Defendants Aquino and CAS owe a balance to the Outgoing Law Firm in the sum of \$8,742.45 for legal services rendered. Outgoing Counsel provides a copy of an invoice regarding those legal services. Since the filing of this Order to Show Cause, Defendants Aquino and CAS have retained Substitute Counsel, but have not paid the Outgoing Law Firm the balance due.

C. The Parties' Positions

Plaintiffs submit that Defendants' refusal to provide documents, and its purported closing of the business, constitute evidence of breach of contract, and demonstrate irreparable harm to Plaintiffs. Plaintiffs argue that it is critical that the business' operations be returned to Plaintiffs so that Plaintiffs can operate the business, comply with its statutory responsibilities and preserve their Operating Authorities, which constitute Century's principal assets. Plaintiffs submit that ambulance and ambulette operating licenses are unique, and essentially irreplaceable, and cannot be replaced by money damages. Plaintiffs also contend that Defendants have no viable claim to the Operating Authorities, or to the company's books and records, and therefore an injunction would merely restore Plaintiffs' rights pending a final disposition of the case.

Defendants oppose Plaintiffs' application, submitting, *inter alia*, that 1) this matter is essentially a breach of contract action for which money damages provide a sufficient remedy; 2) Defendants have not demonstrated that the presence of the symbol "I" in the name of the purchaser was more than a typographical error; and 3) Plaintiffs have provided no documentation in support of their claim that their Operating Authority is in danger of revocation.

RULING OF THE COURT

A. Standards for Preliminary Injunction

A preliminary injunction is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and upon the relevant facts set forth in the moving papers. *William M. Blake Agency, Inc. v. Leon*, 283 A.D.2d 423, 424 (2d Dept. 2001); *Peterson v. Corbin*, 275 A.D.2d 35, 36 (2d Dept. 2000). Injunctive relief will lie where a movant demonstrates a likelihood of success on the merits, a danger of irreparable harm unless the injunction is granted and a balance of the equities in his or her favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860 (1990); *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *Merscorp, Inc. v. Romaine*, 295 A.D.2d 431 (2d Dept. 2002); *Neos v. Lacey*, 291 A.D.2d 434 (2d Dept. 2002). The decision whether to grant a preliminary injunction rests in the sound discretion of the Supreme Court. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 A.D.3d 1073 (2d Dept. 2008); *City of Long Beach v. Sterling American Capital, LLC*, 40 A.D.3d 902, 903 (2d Dept. 2007); *Ruiz v. Meloney*, 26 A.D.3d 485 (2d Dept. 2006). The Court concludes that Plaintiffs have not demonstrated their right to injunctive relief.

B. Plaintiffs Have Not Demonstrated a Likelihood of Success on the Merits

Proof of a likelihood of success on the merits requires the movant to demonstrate a clear right to relief which is plain from the undisputed facts. *Related Properties, Inc. v Town Bd. of Town/Village of Harrison*, 22 A.D.3d 587 (2d Dept. 2005); *Abinanti v Pascale*, 41 A.D.3d 395, 396 (2d Dept. 2007); *Gagnon Bus Co., Inc. v Vallo Transp. Ltd.*, 13 A.D.3d 334, 335 (2d Dept. 2004). Thus, while the existence of issues of fact alone will not justify denial of a motion for a preliminary injunction, the motion should not be granted where there are issues that subvert the plaintiff's likelihood of success on the merits to such a degree that it cannot be said that the plaintiff established a clear right to relief. *Advanced Digital Sec. Solutions, Inc. v Samsung Techwin Co., Ltd.*, 53 A.D.3d 612 (2d Dept. 2008), quoting *Milbrandt & Co. v Griffin*, 1 A.D.3d 327, 328 (2d Dept. 2003); *see also* CPLR § 6312(c).

In light of the factual disputes set forth at length above regarding the reasons that the

proposed sale did not close, the Court concludes that Plaintiffs have not established a clear right to relief. Indeed, those factual disputes are “to such a degree that it cannot be said that the plaintiff established a clear right to relief.” Thus, the Court concludes that Plaintiffs have not demonstrated a likelihood of success on the merits.

C. Plaintiffs Have Not Established Irreparable Injury

A plaintiff has not suffered irreparable harm warranting injunctive relief where its alleged injuries are compensable by money damages. See *White Bay Enterprises v. Newsday*, 258 A.D.2d 520 (2d Dept. 1999) (lower court’s order granting preliminary injunction reversed where record demonstrated that alleged injuries compensable by money damages); *Schrager v. Klein*, 267 A.D.2d 296 (2d Dept. 1999) (lower court’s order granting preliminary injunction reversed where record failed to demonstrate likelihood of success on merits or that injuries were not compensable by money damages). In the absence of documentation supporting Plaintiffs’ claim that there is a danger of revocation of their Operating Authorities, which they describe as Century’s primary assets, the Court concludes that Plaintiffs’ injury is compensable by money damages and, therefore, that injunctive relief is inappropriate.

D. The Equities do not Balance in Plaintiffs’ Favor

In light of the parties’ conflicting positions as to why the transaction did not close, and most especially in light of the Court’s conclusion that any harm to plaintiffs can be redressed by money damages, the Court concludes that the equities do not balance in Plaintiffs’ favor such that injunctive relief is warranted.

Accordingly, the Court denies Plaintiffs’ application for injunctive relief. The Court also denies Plaintiffs’ application for counsel fees and expenses incurred in filing the Order to Show Cause.

E. Outgoing Counsel is Entitled to a Charging Lien for Unpaid Fees

Outgoing Counsel affirms that Defendants Aquino and CAS owe a balance of \$8,742.45 for legal services rendered. Substitute Counsel has requested that Outgoing Counsel provide Substitute Counsel with its file regarding this matter. In *Picott v. ATA Housing Corp.*, 306

A.D.2d 393 (2d Dept. 2003), the Second Department addressed the appeal of outgoing counsel from an order granting defendant's motion to compel outgoing counsel to turn over the file relating to the action. The Second Department reversed the lower court's order, and denied the motion to compel. The Second Department held:

Where, as here, 'a client requests that papers in the possession of his former attorney be returned to him, and the attorney asserts a claim for compensation for services rendered, the attorney is entitled to a determination fixing the value of his services, and the amount so fixed must be paid or otherwise secured to the attorney before any such turnover may be enforced' [citation omitted]. Whether the fee so fixed shall be presently payable or secured by a lien on the cause of action rests in the sound discretion of the trial court [citation omitted]. Since it is undisputed that the defendant failed to pay outgoing counsel for its services, and no challenge has been raised as to the validity of [outgoing counsel's] bill, the Supreme Court erred in directing the law firm to turn over the file to incoming counsel.

Id. at 393-394.

Defendants Aquino and CAS have submitted no opposition or other response to this application, and have retained Substitute Counsel.

In light of the foregoing, the Court grants the application of the law firm of Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP (Outgoing Law Firm) to withdraw as counsel for Defendants Robert J. Aquino a/k/a Robert J. Aquino, Jr., CAS Acquisition, LLC, and CAS Acquisition I, LLC d/b/a Century Ambulance Service. The Court, further, fixes the fees owed to Outgoing Law Firm at \$8,742.45, grants the Outgoing Law Firm a charging lien in the sum of \$8,742.45 and directs Outgoing Law Firm to turn over the file to Substitute Counsel immediately after Outgoing Law Firm receives full payment of the \$8,742.45 fees owed to it.

All matters not decided herein are hereby denied.

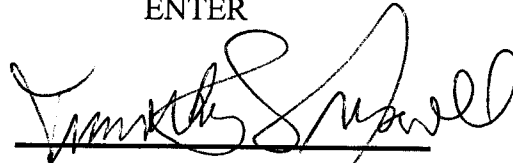
This constitutes the decision and order of the Court.

The Court reminds counsel of their required appearance before the Court on December 9, 2009 at 9:30 a.m. for a Preliminary Conference.

DATED: Mineola, NY

November 20, 2009

ENTER

A handwritten signature in black ink, appearing to read "Timothy S. Driscoll", written over a horizontal line.

HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED
NOV 24 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE