

SHORT FORM ORDER

**SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:**

HON. ANTHONY L. PARGA
JUSTICE

-----X **PART 6**
JAVIER FLORES,

Plaintiff,

INDEX NO. 15224/10

-against-

MOTION DATE: 01/25/12
SEQUENCE NO. 001

ANDREA BOOTH and ANDRE BOOTH,

Defendants.

-----X

Order to Show Cause, Affs. & Exs.....	<u>1</u>
Affirmation in Opposition & Exs	<u>2</u>
Affirmation in Opposition & Exs	<u>3</u>
Reply Affirmation & Exs.....	<u>4</u>

Upon the foregoing papers, it is ordered that the motion, brought by Order to Show Cause by the law firm of Sanford L. Pirotin, P.C., for a quantum meruit attorney's charging lien for work performed as legal fees on behalf of plaintiff, Javier Flores, is granted to the extent directed below.

Plaintiff's outgoing counsel, Sanford L. Pirotin, P.C., seeks a charging lien for work performed on behalf of the plaintiff in the instant personal injury action. Plaintiff Javier Flores alleges that he sustained personal injuries as the result of a motor vehicle accident which occurred on March 24, 2010, as a result of the negligence of the defendants. It is undisputed that Sanford L. Pirotin, P.C. filed and served the summons and verified complaint for this action and that said firm was attorney of record for plaintiff, Javier Flores, prior to Mr. Flores's retention of his incoming counsel, Framer Law Offices. Sanford L. Pirotin, Esq. contends that he performed legal work relating to the instant action on behalf of Javier Flores and that he obtained a settlement offer of the defendants' policy limits of \$25,000.00 to settle the instant action. Mr. Pirotin also contends that he represented Javier Flores in prior criminal court and traffic court

cases, which have since been resolved by Sanford L. Pirotin, P.C., and that, as a courtesy to Javier Flores, said firm agreed to wait until the ultimate resolution of the within personal injury lawsuit to receive payment for fees in connection with the criminal court and traffic court matters. Mr. Pirotin contends that the written agreement between Javier Flores and Sanford L. Pirotin, P.C. was for payment of approximately \$2,000.00 to be paid out of any recovery in the instant matter.

Plaintiff's incoming counsel, the Framer Law Offices, opposes the application for a lien by Sanford L. Pirotin, P.C., arguing, *inter alia*, that Javier Flores discharged Sanford L. Pirotin, P.C. for cause, and that Sanford L. Pirotin, P.C. did not file a retainer statement with the Office of Court Administration. Plaintiff's initial counsel, prior to Sanford L. Pirotin, P.C., the law firm of Mallone, Tauber & Sohn, P.C., also opposes the instant application and contends that it is entitled to be included in any quantum meruit hearing to determine a fair apportionment of the attorneys' fees. Mallone, Tauber & Sohn, P.C. were discharged by plaintiff, Javier Flores, prior to the filing of the summons and complaint in this action.

Sanford L. Pirotin, P.C. is entitled to a charging lien by virtue of his status as the attorney of record in this action. (*Rodriguez v. City of New York*, 66 N.Y.2d 825, 489 N.E.2d 238 (1985); *Mello v. City of New York*, 303 A.D.2d 564, 756 N.Y.S.2d 471 (2d Dept. 2003); *Cataldo v. Budget Rent A Car Corp.*, 226 A.D.2d 574, 641 N.Y.S.2d 122 (2d Dept. 1996)). The affidavit submitted by Javier Flores is insufficient to evidence that Sanford L. Pirotin, P.C. was discharged for cause. The Court also notes that Sanford L. Pirotin, P.C. submitted proof that a retainer statement was filed with the Office of Court Administration on or about July 21, 2010 and was assigned an O.C.A. number on August 3, 2010.

In addition, Mallone, Tauber & Sohn are not entitled to a charging lien in this action, as they were not the attorneys of record prior to the commencement of this action and as their name does not appear on any of the pleadings herein. An attorney's charging lien exists only in favor of an attorney who appears for a party, that is, an attorney of record, and will not attach otherwise. (N.Y. Judiciary Law §475)). Since Mallone, Tauber & Sohn neither appeared as attorney of record in this action, pursuant to Judiciary Law §475, nor filed a proper notice of lien pursuant to Judiciary Law §475-a, it is not entitled to a charging lien. (See, N.Y. Judiciary Law §§475 and 475-a; *Jaghab & Jaghab v. Marshall*, 256 A.D.2d 342, 681 N.Y.S.2d 330 (2d Dept.

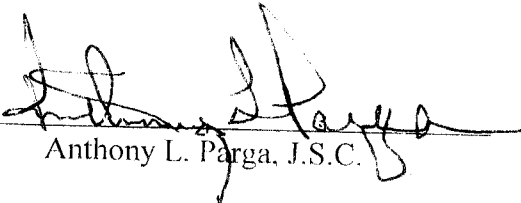
1998)). The notice of lien letter sent by Mallone, Tauber & Sohn to defendants' insurance carrier, on or about July 13, 2010, was sent by certified mail, not by registered mail or personal service, was not signed by counsel, and was not signed by the client, or a person on his behalf, in front of a disinterested witness, as required by Judiciary Law §475-a where an attorney serves notice of lien prior to the commencement of an action. Further, the retainer statement, and the rules requiring its filing, are regulatory in nature and are designed for the supervision of attorneys, rather than to determine their status as the attorney of record. (*Rodriguez v. City of New York*, 66 N.Y.2d 825, 489 N.E.2d 238 (1985)). As such, no attorney's charging lien may be asserted by Mallone, Tauber & Sohn herein.

Accordingly, Sanford L. Pirotin, P.C.'s application for a charging lien against plaintiff's recovery herein is granted to the extent that a hearing shall be held to determine the amount of same after the conclusion of this matter.

It is further ordered that the Fremer Law Offices serve a copy of this Order upon the Differentiated Case Management ("DCM") Coordinator of the Nassau County Supreme Court, and upon counsel for defendants herein, within twenty (20) days. **The parties shall appear in the DCM Part of Nassau County Supreme Court on May 17, 2012 at 9:30 A.M. for a preliminary conference** to schedule all discovery proceedings in this matter.

This constitutes the decision and Order of this Court.

Dated: March 16, 2012


Anthony L. Parga, J.S.C.

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ENTERED
MAR 21 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE

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