

Attorney and Client--Unlawful Interference of Contractual Relations--Damages (Lurie v. New Amsterdam Casualty Co., 270 N.Y. 379 (1936))

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RECENT DECISIONS

ATTORNEY AND CLIENT—UNLAWFUL INTERFERENCE OF CONTRACTUAL RELATIONS—DAMAGES.—The plaintiff, an attorney at law, had a contract with his client, who had been injured by an automobile owned by one who had been insured, which provided for payment to the attorney of 25 per cent of the amount of any settlement. The client was induced by the defendant insurance company's agents to breach the contract of retainer, after which the client received \$25,000 by way of settlement. In this action the plaintiff seeks damages equal to the amount received by the client. *Held*, that the plaintiff has a cause of action¹ but is entitled to recover from defendants only such amount as he would be entitled to recover from his client, namely the reasonable value of his services.² *Lurie v. New Amsterdam Casualty Co.*, 270 N. Y. 379, 1 N. E. (2d) 472 (1936).

It is well settled, that a contract of retainer may be cancelled at any time and for any reason,³ but such an agreement cannot be partially abrogated. Either it wholly stands or totally falls. After cancellation, its terms no longer serve to establish the sole standard for the attorney's compensation. However, it may be taken into consideration in determining the amount of recovery under *quantum meruit*.⁴ Cancellation does not constitute a breach of contract, for implied in every such agreement is the right to discharge.⁵ This is so, because of the confidential relationship between attorney and client, which injects into the agreement special and unique features. If the client exercises this right he will be liable to the attorney for the reasonable value of the services already rendered by the attorney,⁶

¹ *Posner Co. v. Jackson*, 223 N. Y. 325, 119 N. E. 573 (1918); *Lamb v. S. Cheney & Son*, 227 N. Y. 418, 125 N. E. 817 (1920); *Hornstein v. Podwitz*, 254 N. Y. 443, 173 N. Y. 674 (1930).

² *In re Tillman*, 259 N. Y. 133, 181 N. E. 75 (1932); *Application of Krooks*, 257 N. Y. 329, 178 N. E. 548 (1931).

³ *Matter of Dunn*, 205 N. Y. 398, 98 N. E. 914 (1912). For a discharge of an attorney, during the course of actual litigation, to be effective, it must be by order of court which will fix the amount of the attorney's lien and may require security for attorney's fees. *U. S. v. McMurty*, 24 F. (2d) 145 (S. D. N. Y. 1927); *Martin v. Camp*, 219 N. Y. 170, 114 N. E. 46 (1916); *In re Tillman*, 259 N. Y. 133, 181 N. E. 75 (1932).

⁴ *In re Tillman*, 259 N. Y. 133, 181 N. E. 75 (1932).

⁵ *Martin v. Camp*, 219 N. Y. 170, 114 N. E. 46 (1916); *Johnson v. Baritch*, 113 App. Div. 810, 99 N. Y. Supp. 1059 (2d Dept. 1906).

⁶ This view represents the minority view with which New York is in accord, and it is criticized in 2 WILLISTON, CONTRACTS (1920) § 1029 and in (1917) 2 CORN. L. Q. 109; (1921) 30 YALE L. J. 514, supports it. In the majority of jurisdictions, a discharge without cause is held to be a breach of the retainer contract giving the attorney an action for damages. *Brodie v. Watkins*, 33 Ark. 545 (1878); *Webb v. Rrescony*, 76 Cal. 621, 18 Pac. 796 (1878). See note (1936) 21 CORN. L. Q. 455 for discussion of this subject.

and if the attorney has fully performed prior to the discharge, he may stand upon his contract so as to measure his damages. An action for breach of contract only arises from a contract of employment for a definite period.⁷

A client has the right to settle in good faith⁸ the litigation at any stage⁹ without the knowledge or consent¹⁰ of the attorney. The clause in the contract of retainer which prohibits the client from settling the litigation without the consent of the attorney is void as being against public policy.¹¹

In the instant case, the fact that the attorney has a cause of action against his client does not exonerate the parties who wrongfully induced the breach.¹² The attorney has chosen to bring action against them and the jury having found that they induced the client to repudiate the agreement, they are liable to the attorney for such amount as the attorney would have been entitled to receive from the client down to the date of cancellation. It is true that the attorney was mistaken as to the rule of damages in the case at bar; however, he is not precluded from recovering, because there is no requirement of law that the measure of damages alleged to have been sustained shall be stated in the complaint.¹³ It is sufficient if the complaint states facts from which damages can properly be inferred, without specifically enumerating the items of damages or the rules of law controlling the measure of damages.¹⁴

V. E. C.

BILLS AND NOTES—NOTE GIVEN AS FICTITIOUS BANK ASSET—DEFENSE OF LACK OF CONSIDERATION.—Action on a promissory note of which the defendant is the maker. The note was drawn by the defendant to his own order and indorsed over to the plaintiff bank so as to deceive the bank examiner by enhancing the bank's assets. The bank president, fearing a "run" on the bank, entreated and procured the defendant to execute the note, promising not to hold him liable on it. In an action by the bank to recover the value

⁷ *Greenberg v. Resnick & Co.*, 230 N. Y. 70, 129 N. E. 211 (1920).

⁸ *Matter of Levy*, 249 N. Y. 168, 163 N. E. 244 (1928); *Fisher-Hausen v. Brooklyn Heights R. R.*, 173 N. Y. 492, 66 N. E. 395 (1903).

⁹ *Matter of Levy*, 249 N. Y. 168, 163 N. E. 244 (1928).

¹⁰ *In re Snyder*, 190 N. Y. 66, 82 N. E. 742 (1907); *Lee v. Vacuum Oil Co.*, 126 N. Y. 579, 27 N. E. 1018 (1891); *Bailey v. Murphy*, 136 N. Y. 50, 32 N. E. 627 (1892).

¹¹ *In re Snyder*, 190 N. Y. 66, 82 N. E. 742 (1907); (1929) 6 N. Y. U. L. Q. REV. 201.

¹² *Hornstein v. Podivitz*, 254 N. Y. 443, 173 N. E. 674 (1930).

¹³ *Colrick v. Swinburne*, 105 N. Y. 503, 12 N. E. 427 (1887); *Winter v. American Airline Products Inc.*, 236 N. Y. 199, 140 N. E. 561 (1923).

¹⁴ *Winter v. American Airline Products Inc.*, 236 N. Y. 199, 140 N. E. 561 (1923).