

2024 IL App (1st) 231075-U

No. 1-23-1075

Order filed March 22, 2024

Sixth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ADAM KINGSLEY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 21 M2 002421
)	
SETH PATINKIN,)	Honorable
)	Jeffrey L. Warnick,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices C.A. Walker and Tailor concurred in the judgment.

ORDER

¶ 1 *Held:* Affirming summary judgment to plaintiff on breach of contract claim.

¶ 2 Attorney Adam Kingsley sued to recover unpaid attorney's fees and costs from his former client, Seth Patinkin. The trial court granted Kingsley's motion for summary judgment and awarded him \$13,546. Patinkin appeals *pro se* arguing (i) the trial court lacked personal jurisdiction over him because he filed a motion to quash service before filing his answer and

(ii) the trial court erred in granting summary judgment because Kingsley concealed evidence from the court creating questions of material fact.

¶ 3 We affirm. Patinkin filed a motion to quash the initial service of process, but he submitted to the court's jurisdiction by not contesting the second service of process before answering. Further, the trial court did not err in granting summary judgment, as the parties' affidavits show no material question of fact regarding Patinkin's breach of a contract for legal services.

¶ 4 Background

¶ 5 Patinkin retained Kingsley to represent him in arbitration over a business dispute. Patinkin and Kingsley orally agreed Patinkin would pay a \$2,500 retainer fee and an hourly rate of \$250 plus court costs and fees. Kingsley sent Patinkin several invoices, which Patinkin refused to pay. About a year after retaining him, Patinkin terminated Kingsley, owing \$20,991 in attorney's fees and costs. Kingsley offset his damages with a \$7,642 refund check from the American Arbitration Association due to overpayment of arbitration fees.

¶ 6 Kingsley filed a three-count complaint to recover the remaining \$13,349 fees and costs, alleging breach of contract (count I), *quantum meruit* in the alternative (count II), and fraud (count III). After failing to serve the summons and complaint, Kingsley's moved for the appointment of a special process server. On September 10, 2021, the special process server filed an affidavit stating he served the summons and complaint on Patinkin's wife at their home on September 9, 2021.

¶ 7 On October 18, 2021, Patinkin filed a verified motion to quash service, alleging he and his wife were not home when the process server attested he served the complaint and summons. Patinkin did not notice the motion for presentation, and the trial court never ruled on it. The next day, October 19, the special process server filed a second affidavit attesting he served

Patinkin the summons and complaint on October 6, 2021, by leaving it at the front door after seeing Patinkin on the porch retrieving a newspaper.

¶ 8 When Patinkin did not appear at an initial status hearing on October 27, 2021, the trial court entered an order finding him in default and setting prove-up.

¶ 9 On November 8, 2021, Patinkin answered the complaint. The next day, he moved to vacate the default, which was granted. In his motion, he realleged the special process server's affidavit regarding the first service on his wife was false. Patinkin did not contest the second service, acknowledging that he "saw the Complaint in this matter for the first time on or around October 8, 2021, upon collecting the first page of a summons and the Complaint from his front porch."

¶ 10 After discovery, Kingsley moved for summary judgment as to count I alleging breach of contract, arguing the evidence established either an undisputed oral contract or an implied-in-fact contract. Kingsley's affidavit stated that (i) he orally agreed to represent Patinkin rather than ask for a signed engagement letter, as he usually does, because a colleague referred Patinkin, (ii) Patinkin agreed to a \$250 hourly rate, and (iii) he sent invoices to Patinkin detailing the hours and amount owed, but Patinkin repeatedly refused to pay. In May 2021, Kingsley asked Patinkin for 50% by a specified date. Patinkin sent Kingsley an email stating he wire transferred \$5,000 with supporting documentation that Kingsley alleges was falsified. Kingsley never received the \$5,000 or any payment. He claims Patinkin owed him \$20,991 in unpaid fees and costs, offset by the \$7,642 AAA refund check.

¶ 11 Patinkin filed a *pro se* response acknowledging he orally agreed to Kingsley representing him in the arbitration proceeding. But, he contended (i) the contract was induced by fraud because Kingsley held himself out falsely as a "securities law expert," (ii) Kingsley lacked standing to sue because his solo practice, Kingsley Law Group (KLG), was the proper party in

interest, (iii) a genuine dispute existed over the terms, namely the scope of the representation, (iv) no meeting of the minds was reached over the terms, (v) Kingsley did not perform under the contract, and (vi) Kingsley's exhibits to his motion for summary judgment were unreliable.

¶ 12 Patinkin's affidavit averred, in part, that he hired Kingsley based on his representations that he was a securities law expert and experienced with arbitration. Patinkin repeatedly asked for a written retainer agreement, but when Kingsley refused, he agreed to move forward without one. Patinkin acknowledged he agreed to the \$250 hourly rate, and Kingsley performed legal services, but he "delayed payment on [three invoices] under protest as to the questionable quality of the work product, the sloppy manner in which KLG had obtained my consent to undertake work and expenses on my behalf, the accuracy of the billed hours and the questionable necessity of the legal services rendered." Patinkin withheld payment on two other invoices because Kingsley did not follow his instructions in the arbitration. In addition, the court reporter bill surprised him because he believed Kingsley had agreed to pay those costs. Patinkin denied sending an email about a fictitious wire transfer but acknowledged he fired Kingsley in May 2021.

¶ 13 Kingsley replied that Patinkin conceded they had an oral contract and agreed to pay Kingsley \$250 hourly. He argues that this shows a meeting of the minds on a contract Patinkin breached by withholding payment. Kingsley argued Patinkin presented no evidence to support Kingsley having failed to perform under the contract. And, regarding allegations of fraud-in-the-inducement or lack of standing, both are affirmative defenses waived by not having been raised. Waiver aside, Kingsley asserted Patinkin offered no evidence supporting fraud and the standing argument lacked merit as Patinkin acknowledged Kingsley owned KLG. Kingsley

also asserted the claim he may have made regarding securities law experience was irrelevant because the arbitration involved a contract dispute.

¶ 14 The trial court granted Kingsley’s motion and entered judgment in his favor and against Patinkin for \$13,546. The trial court noted Patinkin had filed a motion for sanctions under Illinois Supreme Court Rule 219 (eff. July 1, 2002), which is “hereby withdrawn.”

¶ 15 Patinkin sought reconsideration, arguing, in part, that the trial court (i) erred in setting aside his affirmative defenses in response to Kingsley’s summary judgment motion and his motion for Rule 219 sanctions, (ii) “gave [Kingsley] an outrageously unfair free pass for serial misconduct;” and (iii) improperly refused to consider his Rule 219 motion for sanctions. Patinkin also alleged the trial judge was biased against him and filed a separate motion seeking substitution of the trial judge for cause. The trial court denied the motion to reconsider. A different judge denied the motion for substitution.

¶ 16 Analysis

¶ 17 Personal Jurisdiction

¶ 18 Personal jurisdiction can be established by service of process following the statute or by voluntary submission. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 18. We review *de novo* issues regarding jurisdiction. *Valent BioSciences Corp. v. Kim-CI, LLC*, 2011 IL App (1st) 102073, ¶ 19.

¶ 19 Section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301 (West 2022)) describes when a party has submitted to the jurisdiction. Section 2-301 provides, in relevant part, that before filing a pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court’s jurisdiction on the ground that the party is not amenable to process of a court in this State. 735 ILCS 5/2-301(a) (West 2022). Further, if

a party files any other pleading or motion before filing a motion objecting to the court's jurisdiction over them, he or she waives all objections to the personal jurisdiction prospectively unless the initial motion filed is either (i) a motion for an extension of time to answer or otherwise plead or (ii) a motion filed under sections 2-1301, 2-1401, or 2-1401.1. 735 ILCS 5/2-301(a-6) (West 2022).

¶ 20 The special process server averred he served Patinkin on September 9, 2021. Patinkin moved to quash service on October 18, 2021, before filing an answer, other pleading, or motion. As noted, Patinkin did not notice the motion or ask the trial court to rule on it, and it appears from the record that the trial court did not. Kingsley contends that because the trial court did not rule on the motion, Patinkin waived the jurisdiction on appeal. We need not address waiver because the special process server made a second service on October 6, 2021. Even assuming Patinkin properly challenged the first service, he did not challenge the second service before filing his answer on November 8, 2021. Indeed, he acknowledged receiving the summons and complaint. Thus, Patinkin submitted to the court's jurisdiction.

¶ 21 Summary Judgment

¶ 22 Summary judgment is appropriate when the pleadings, depositions, and admissions on file, together with the affidavits, show an absence of a genuine issue of material fact and entitlement to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2022); *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005). In deciding whether a genuine issue of material fact exists, the trial court strictly construes the pleadings, depositions, admissions, and affidavits against the movant and liberally in favor of the opponent. *Adames v. Sheahan*, 233 Ill. 2d 276, 295-96 (2009). The party moving for summary judgment need not prove its case or disprove the nonmovant's case. *Kellman v. Twin*

Orchard Country Club, 202 Ill. App. 3d 968, 974 (1990). Rather, summary judgment depends on demonstrating the absence of a genuine issue of material fact. *Id.* The nonmoving party may defeat a claim for summary judgment by showing a question of material fact exists. *Sheahan*, 233 Ill. 2d at 296. We review *de novo* an order granting summary judgment. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102, 180 (1992).

¶ 23 To prevail on a claim for breach of contract, Kingsley must allege and prove by a preponderance of the evidence: (i) the existence of a valid and enforceable contract; (ii) his performance; (iii) breach of the contract by Patinkin; and (iv) damages. *Gallagher Corp. v. Russ*, 309 Ill. App. 3d 192, 198 (1999). Patinkin alleges the trial court erred in granting summary judgment because Kingsley (i) misappropriated \$7,642 of Patinkin’s money when he retained the AAA refund; (ii) altered timestamps on email evidence regarding Patinkin’s purported wire transfer of \$5,000; and (iii) withheld messages from a text exchange to create the impression Patinkin admitted he owed \$5,000. He alleges this creates material questions of fact as to Kingsley’s breach of contract claim. We disagree.

¶ 24 In his affidavit, Patinkin conceded he had a valid oral contract with Kingsley. He also acknowledged Kingsley provided the legal services and, thus, performed under the contract. Kingsley’s affidavit stated that Patinkin did not pay and listed the amount owed, which he supported with documentary evidence. Patinkin acknowledged he “withheld payment” and provided no evidence contradicting the amounts claimed. Thus, the parties’ affidavits establish all four elements for a breach of contract claim.

¶ 25 As for Patinkin’s contention that Kingsley misappropriated the AAA refund, he cites no cases or other authority holding that Kingsley was not entitled to offset his damages in this manner. See Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020) (“Argument shall

contain the contentions of the appellant and the reasons therefor, with citation of the authorities *** relied on.”). Nor does Patinkin explain how his allegations that Kingsley falsified or withheld documentary evidence create a material question of fact on whether Kingsley established the elements of breach of contract, which, as noted, the parties’ affidavits confirm.

¶ 26 Accordingly, the trial court did not err in granting summary judgment.

¶ 27 Affirmed.