

At the Commercial Intake Part IAS, of the Supreme Court of the State of New York, held in and for the County of Nassau, at the Courthouse located at 100 Supreme Court Dr., Mineola, New York, on the _____ day of June, 2018

P R E S E N T :

HON: _____ Justice

JEROME C. MURPHY, Supreme Court Justice

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

Index No.: 605835/14

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CHIN TSUN YANG, QUEI YU YANG, QAMAR ZAMAN, and
KAUSAR ZAMAN, EACH INDIVIDUALLY and DERIVATIVELY
AS PARTNERS IN AND ON BEHALF OF THE PARTNERSHIP
S.Y.Z. ASSOCIATES, CO.,

**ORDER TO SHOW
CAUSE**

Plaintiffs,

-against-

SNEH PRABHA SHUKLA

Defendant.

-----X

Upon the annexed Affirmation of Thomas Stanziale, Esq., dated the 14th day of June, 2018 and the prior Order to Show Cause to be relieved from Counsel, the Order granting such relief and the So Ordered minutes of the Decision of Hon: Jerome C. Murphy dated June 7, 2018.

LET the Plaintiffs, Defendant, Receiver and this Honorable Court show cause at a Commercial, Part IAS of the Supreme Court of the State of New York, County of Nassau, located at 100 Supreme Court Dr. Mineola, New York, on the _____ day of June, 2018 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the following relief should not be issued:

Pursuant to Judiciary Law §475 and basis of quantum meruit.

1. Ordering the Receiver to issue payment of \$41,750.00 to THOMAS STANZIALE, ESQ, of the Law Office of Henry Stanziale, Esq. out of the \$499,871.77 to be disburse to defendant, Mrs. Sneh Shukla based on the attached hourly billing (See Exhibit "A") pursuant to the Judiciary Law §475 and basis of quantum meruit.;
2. And for such other and further relief as this Court deems just and proper.

Sufficient cause being alleged therefor, it is hereby

ORDERED, that Defendants and/or their attorneys shall serve any affidavits or other papers in opposition to this motion upon Thomas Stanziale, Esq. attorney for Plaintiffs, on or before _____ by electronic filing on the New York State Courts Electronic filing System ("NYSCEF") as designated by Plaintiffs' counsel for such purpose in the Notice of Commencement of Action Subject to Mandatory Electronic Filing pursuant to Section 202.5bb of the Uniform Rules for the Trial Courts, or, if an exemption from electronic filing is claimed, by mail, personal delivery or delivery service to 585 Stewart Avenue, Suite 546 Garden City, NY 11530.

AND IT IS FURTHER ORDERED that service of a copy of this Order upon the defendant, Sneh Shukla at 293 Hempstead Ave. West Hempstead, NY 11552, Stuart Serota, Esq. Kaufman & Serota 119 North Park Avenue, Ste 308, Rockville Centre, NY 11570 and Receiver, Hon. Edward McCabe (Ret) at 333 Earle Ovington Boulevard, Ste. 601 Uniondale, NY 11553. By certified mail, return receipt requested before the ____ day of June, 2018, be deemed good and sufficient service.

ENTER :

J. S. C.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
CHIN TSUN YANG, QUEI YU YANG, QAMAR ZAMAN, and
KAUSAR ZAMAN, EACH INDIVIDUALLY and DERIVATIVELY
AS PARTNERS IN AND ON BEHALF OF THE PARTNERSHIP
S.Y.Z. ASSOCIATES, CO.,

Index No.: 605835/14

Plaintiffs,

AFFIRMATION

-against-

SNEH PRABHA SHUKLA

Defendant.

-----X

THOMAS STANZIALE, ESQ., an attorney admitted to practice in the State of New York, affirms that the following statements are true under the penalties of perjury:

That I was the attorney for the defendant Sneh Shukla and as such I am fully familiar with all the facts and proceedings had herein.

1. This Affirmation is made in Support for the application for payment of attorneys charging lien due and owing in the amount of \$41,750.00 by the defendant pursuant to the Judiciary Law §475 and basis of quantum meruit. *See billing invoice attached hereto as Exhibit "A"*.
2. This application requests that this Honorable Court Order the Receiver to issue payment of \$41,750.00 to THOMAS STANZIALE, ESQ, of the Law Office of Henry Stanziale, Esq. from the \$499,871.77 to be disburse to defendant, Mrs. Sneh Shukla based on the attached hourly billing (*See Exhibit "A"*) and charging lien pursuant to Judiciary Law 475 and on the basis of quantum meruit.
3. As the former attorney of record for the defendant, the law firm is entitled to maintain a charging lien attached to any verdict, report, determination, decision,

judgment, or final order rendered in defendant's favor, including any settlement of the action, if such a favorable result is ultimately achieved by Defendant. As held by the court in *Ruta & Soulios LLP v. Litman & Litman, PC*, 9 Misc 3d 1123(A) [Sup Ct 2005] affd, 27 AD3d 236 [1 Dept 2006]:

4. "A charging lien is a security interest in the favorable result of litigation giving the attorney equitable ownership interest in the client's cause of action and ensuring that the attorney can collect his fee from the fund he has created for that purpose on behalf of the client." *Chadbourne & Parke, LLP v. AB Recur Finans*, 18 AD3d 222, 223 (1st Dept.2005) citing *LMWT Realty Corp. v. Davis Agency*, 85 N.Y.2d 462, 467-468 (1995); *Butler, Fitzgerald & Potter v. Gelmin*, 235 A.D.2d 218 (1st Dept.1997). "

5. In a recent decision, *Stair v. Calhoun*, 722 F.Supp. 258 [E.D.N.Y. 2010], the court analyzed the motion of a law firm to withdraw as counsel for the plaintiff and for both charging and retaining liens, holding:

"Under New York law, an attorney who is discharged is statutorily entitled to a charging lien on any monetary recoveries obtained by the former client in the proceedings in which the attorney had rendered legal services. *See* N.Y. Judiciary Law Section 475. The Second Circuit in *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 177 (2d Cir.2001) explained the rationale behind the charging lien: New York's statutory charging lien, *see* N.Y. Judiciary Law Section 475 (McKinney 1983), is a device to protect counsel against "the knavery of his client," whereby through his effort, the attorney acquires an interest in the client's cause of action. *In re City of New York*, 5 N.Y.2d 300, 307, 184 N.Y.S.2d 585, 157 N.E.2d 587

(1959). The lien is predicated on the idea that the attorney has by his skill and effort obtained the judgment, and hence “should have a lien thereon for his compensation, in analogy to the lien which a mechanic has upon any article which he manufactures.” *Williams v. Ingersoll*, 89 N.Y. 508, 517 (1882).

Section 475 of the New York Judiciary Law provides:

“From the commencement of an action ... the attorney who appears for a party has a lien upon his client’s cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, award, settlement, judgment or final order in his or her client’s favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien”.

6. Under New York law, a client may discharge an attorney at any time, with or without cause (*Matter of Montgomery*, 272 N.Y. 323, 326, 6 N.E.2d 40; *Reubenbaum v. B. & H. Express*, 6 A.D.2d 47, 48, 174 N.Y.S.2d 287 [Breitel, J.]). When a client discharges an attorney without cause, the attorney is entitled to recover compensation from the client measured by the fair and reasonable value of the services rendered whether that be more or less than the amount provided in the contract or retainer agreement (*Matter of Montgomery, supra*, 272 N.Y. at 326–327, 6 N.E.2d 40). As between them, either can require that the compensation be a fixed dollar amount determined at the time of discharge on the basis of quantum meruit (*Reubenbaum v. B. & H. Express, supra*, 6 A.D.2d at 48, 174 N.Y.S.2d 287) or, in the alternative, they may agree that the attorney, in lieu of a presently fixed dollar amount, will receive a contingent percentage fee determined either at the time of substitution or at the conclusion of the case (*id.*). See, *Lai Ling Cheng v. Modansky Leasing Co., Inc.*, 73 NY2d 454, 457-58 [1989].

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