

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT

Kopelevich & Feldsherova, P.C. v. Art of Healing Medicine, P.C.

Kopelevich, 2026 NY Slip Op 01043 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2026) · No. 2024-05175 · Decided February 25, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the plaintiff law firm's motion for summary judgment in an action to recover unpaid legal fees. Although the plaintiff established a prima facie entitlement to judgment on an account stated, the defendants' submissions raised a triable issue as to whether they timely objected to the invoices. The court held that summary judgment was therefore properly denied.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; William G. Ford, J.; Lourdes M. Ventura, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	February 25, 2026
DOCKET	2024-05175
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order denying its motion for summary judgment on a complaint seeking unpaid legal fees.
STANDARD OF REVIEW	Summary judgment is proper only when the movant establishes entitlement to judgment as a matter of law and the opposing submissions fail to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Kopelevich & Feldsherova, P.C. v. Art of Healing Medicine, P.C., et al.

TOPICS

- summary judgment
- commercial litigation
- contracts
- breach of contract
- appellate procedure

PRACTICE AREAS

civil procedure

commercial litigation

contracts

QUESTIONS PRESENTED

1. Whether the plaintiff established entitlement to summary judgment on its account-stated claim.
2. Whether the defendants' submissions raised a triable issue of fact as to whether they objected to the invoices within a reasonable period.

HOLDINGS

1. Although the plaintiff met its prima facie burden by showing receipt of the invoices and an apparent lack of objection, the defendants' opposing submissions raised a triable issue of fact concerning whether they objected to the invoices within a reasonable period; therefore, summary judgment was properly denied.

KEY QUOTATIONS

*“An account stated is an agreement between parties, based upon their prior transactions, with respect to the correctness of the account items and the specific balance due” (*1)*

*“Although an account stated may be based on an express agreement between the parties as to the amount due, an agreement may be implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account” (*1)*

*“Whether a bill has been held without objection for a period of time sufficient to give rise to an inference of assent, in light of all the circumstances presented, is ordinarily a question of fact, and becomes a question of law only in those cases where only one inference is rationally possible” (*1)*

FACTUAL BACKGROUND

The plaintiff sought to recover unpaid legal fees for work allegedly performed for the defendants and relied in part on an account-stated theory. The plaintiff submitted invoices allegedly received by defendant Alexander Pinkusovich and evidence that the defendants did not object to them. In opposition, the defendants asserted that the plaintiff had been removed as counsel for wrongful action, that the only invoices sent were dated one day before the removal, that payment on a check had been stopped, and that a partial payment was made in settlement.

PROCEDURAL HISTORY

Kopelevich & Feldsherova, P.C. commenced an action in Supreme Court, Kings County, to recover unpaid legal fees, including fees allegedly due on an account stated. The Supreme Court denied the plaintiff's motion for summary judgment. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Michael B. Shulman & Assoc., P.C. v. Canzona, 201 AD3d 716, 717
- Citibank [South Dakota], N.A. v. Abraham, 138 AD3d 1053, 1056
- Legum v. Ruthen, 211 AD2d 701, 703

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