

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

OPINION

Kopelevich & Feldsherova, P.C. v. Art of Healing Medicine, P.C. 2026 NY Slip Op 01043

PER CURIAM.

Kopelevich & Feldsherova, P.C. v Art of Healing Medicine, P.C. (2026 NY Slip Op 01043)

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Decided on February 25, 2026 Appellate Division, Second Department Published by New York
State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and
subject to revision before publication in the Official Reports. Decided on February 25, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department BETSY BARROS, J.P.

WILLIAM G. FORD

LOURDES M. VENTURA

DONNA-MARIE E. GOLIA, JJ. 2024-05175

(Index No. 509349/20) [*1]Kopelevich & Feldsherova, P.C., appellant, v Art of Healing Medicine, P.C., et al., respondents. Kopelevich & Feldsherova, P.C., Brooklyn, NY (Mikhail Kopelevich of counsel), appellant pro se. The Leyvi Law Group, P.C., Brooklyn, NY (Maksim Leyvi of counsel), for respondents. DECISION & ORDER In an action to recover unpaid legal fees, the plaintiff appeals from an order of the Supreme Court, Kings County (Caroline Piela Cohen, J.), dated March 28, 2024. The order denied the plaintiff's motion for summary judgment on the complaint. ORDERED that the order is affirmed, with costs. The plaintiff commenced this action to recover unpaid legal fees allegedly earned for work performed on behalf of the defendants. The plaintiff moved for summary judgment on the complaint, which sought, inter alia, to recover fees on an account stated. The defendants opposed the motion. The Supreme Court denied the plaintiff's motion in an order dated March 28, 2024. The plaintiff appeals. "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" (Michael B. Shulman & Assoc., P.C. v Canzona , 201 AD3d 716, 717 [internal quotation marks omitted]). "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" (Citibank [South Dakota], N.A. v Abraham , 138 AD3d 1053, 1056). "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" (*Legum v Ruthen* , 211 AD2d 701, 703). Here, the plaintiff met its prima facie burden of establishing its entitlement to judgment as a matter of law based upon an account stated by demonstrating that its invoices had been received by the defendant Alexander Pinkusovich and by submitting evidence that the defendants did not object to the invoices. However, the defendants' submissions in opposition, including the affidavit of Alexander Pinkusovich, alleging that the plaintiff had been removed as the defendants' counsel for "wrongful action" and that the only invoices sent to the defendants were dated one day prior to the plaintiff's removal as counsel, as well as evidence that the defendants [*2]stopped payment on a check that was drafted to the plaintiff and that the defendants paid a partial amount of one invoice "in settlement," raised a triable issue of fact as to whether the defendants objected to the plaintiff's invoices in a reasonable period of time. Accordingly, the Supreme Court properly denied the plaintiff's motion for summary judgment on the complaint. The plaintiff's remaining contentions are without merit. BARROS, J.P., FORD, VENTURA and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court