

*** FILED: BROWARD COUNTY, FL HOWARD FORMAN, CLERK 5/2/2013 2:56:01 PM.***

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO: CACE 13-07337
DIVISION: 21

RODIER & RODIER, P.A.,

Plaintiff,

vs.

DAVID CASSIDY,

Defendant,

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S
AMENDED COMPLAINT**

COMES NOW the Defendant DAVID CASSIDY, by and through the undersigned counsel and files his Answer and Affirmatives Defenses to Plaintiff RODIER & RODIER, P.A.'s Amended Complaint.

ANSWER

1. Defendant denies Paragraphs 6, 8, 10, 11, 13, 14 and 16 of Plaintiff's Amended Complaint and demands strict proof thereof.
2. Defendant admits Paragraph 1 for jurisdictional purposes only, but denies any amount is due.
3. Defendant admits Paragraph 3.
4. Defendant does not have sufficient knowledge to form a belief as to the truth of the claims in Paragraphs 2 and 4 of Plaintiff's Amended Complaint and therefore denies same.
5. In regards to Paragraph 5 of Plaintiff's Amended Complaint, Defendant admits

- that Defendant requested that Plaintiff perform legal services related to claims made by Edward Lipton. Defendant denies the remainder of the allegations in Paragraph 5 and demands strict proof thereof.
6. In regards to Paragraph 7 of Plaintiff's Amended Complaint, Defendant admits that Defendant made some monetary payments to Plaintiff consistent with the terms of representation. Defendant denies the remainder of the allegations in Paragraph 7 and demands strict proof thereof.
 7. In regards to Paragraph 9 of Plaintiff's Amended Complaint, Defendant admits that payments were made to Plaintiff pursuant to the terms of an oral agreement between the parties. Defendant denies the remainder of the allegations in Paragraph 9 and demands strict proof thereof.
 8. In regards to Paragraph 12 of Plaintiff's Amended Complaint, Defendant admits that Defendant requested that Plaintiff perform legal services related to claims made by Edward Lipton. Defendant denies the remainder of the allegations in Paragraph 12 and demands strict proof thereof.
 9. In regards to Paragraph 15 of Plaintiff's Amended Complaint, Defendant admits that payments were made to Plaintiff pursuant to the terms of an oral agreement between the parties. Defendant denies the remainder of the allegations in Paragraph 15 and demands strict proof thereof.

DEFENDANT DENIES ALL ALLEGATIONS NOT SPECIFICALLY ADMITTED ABOVE.

AFFIRMATIVE DEFENSES

First Affirmative Defense. Failure to state a cause of action upon which relief may be awarded. Under Florida Rules of Civil Procedure Rule 1.130:

All bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading.... *Fla.R.Civ.P. 1.130(a)*.

Plaintiff references an agreement, but does not plead whether such agreement is written

or oral. If written, Plaintiff failed to attach same to the Complaint, in violation of Florida Rules of Civil Procedure Rule 1.130(a). If Plaintiff is alleging an oral contract with Defendant, it must allege facts that, if true, demonstrate that the parties mutually agreed to certain and definite terms and that no essential terms were left open. *Rubenstein v. Primedica Healthcare, Inc.*, 755 So.2d 746 (Fla. 4th DCA 2000).

Second Affirmative Defense. Payment and Performance. Defendant has already satisfied the Plaintiff's claims through full performance pursuant to the terms of an oral agreement between the parties, including payment of money and non-monetary consideration agreed upon by Plaintiff to be full compensation for any and all legal services rendered.

Third Affirmative Defense. Estoppel. Defendant relied to his detriment on representations made by Plaintiff that payment and non-monetary consideration made by Defendant to Plaintiff satisfied the oral agreement between the parties.

Fourth Affirmative Defense. Statute of Frauds. Any agreement for legal services being rendered over a period of time of more than one year falls within the Statute of Frauds and must be in writing. Plaintiff does not allege a written contract exists and does not attach same to its Amended Complaint. Accordingly, Count I of Plaintiff's Amended Complaint, Breach of Agreement to Pay for Legal Services, is barred by the Statute of Frauds.

Fifth Affirmative Defense. Statute of Limitations. Plaintiff's claims are barred by the Statute of Limitations applicable to each claim.

Certificate of Service on next page.

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Defendant's Answer and Affirmative
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been sent via Email and U.S. Mail to: Brian M. Rodier, Esq., Rodier & Rodier, 400 N. Federal Highway, Hallandale, Florida 33009; serviceofpleadings@rodierlegal.com; this 2nd day of May, 2013.

s/ Jennie L. Colabelli

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