

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

RALPH DeSENA AND MICHAEL KAUFER,
Individually and DeSENA & KAUFER, P.C.,

Plaintiffs,

-against-

JERROLD S. PARKER and HERBERT L. WAICHMAN,
individually and d/b/a PARKER & WAICHMAN,
a law partnership, JERROLD S. PARKER, P.C.,
HERBERT L. WAICHMAN, P.C., and PARKER &
WAICHMAN, a Partnership of Professional
Corporations,

Defendants.

CM

: Index No.
: Date Purchased: 01605595

: Plaintiff Designates
: New York County as
: Place of trial

: Basis of Venue is
: Plaintiff's Place of
: Business

SUMMONS

: Plaintiff has a place
: of business at 225
: Broadway, New York,
: New York 10007

FILED

NOV 21 2001

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service of this summons, or within 30 days after service of this summons is complete if this summons is not personally delivered to you within the State of New York.

In case of your failure to answer this summons, a judgment by default will be taken out against you for the relief demanded in the complaint, together with the costs of this action.

Dated: New York, New York
, November 20, 2001



ARMAND FRIED, ESQ.
FRIED, IOSEPOVICI & POPESCU
Attorney for Plaintiffs
225 Broadway - Suite 1901
New York, New York 10007
(212) 766-9696

Defendants' Address:
111 Great Neck Road, 1st Floor
Great Neck, New York 11021-6665

NEW YORK
COUNTY CLERK'S OFFICE

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

RALPH DeSENA AND MICHAEL KAFER,
Individually and DeSENA & KAFER, P.C.,

Index No.

Plaintiffs,

-against-

VERIFIED COMPLAINT

JERROLD S. PARKER and HERBERT L. WAICHMAN,
individually and d/b/a PARKER & WAICHMAN,
a law partnership, JERROLD S. PARKER, P.C.,
HERBERT L. WAICHMAN, P.C., and PARKER &
WAICHMAN, a Partnership of Professional
Corporations,

01605595

Defendants.

Plaintiffs, RALPH DeSENA AND MICHAEL KAFER, individually and as principals in DeSENA & KAFER, P.C., and DeSENA & KAFER, P.C., by their attorneys, FRIED, IOSEPOVICI & POPESCU, complaining of the Defendants, state and allege:

FACTS COMMON TO ALL CAUSES OF ACTION

1. At all times relevant hereto, Plaintiffs RALPH DeSENA and MICHAEL KAFER are and were attorneys duly licensed to practice law in the State of New York, and were engaged in the business of practicing law and maintained an office for that purpose at 225 Broadway, Suite 1901, New York, New York 10007.
2. At all times relevant hereto, DeSENA & KAFER, P.C. (hereinafter, Ralph DeSena and Michael Kafer, and DeSena & Kafer, P.C., collectively being referred to as "D&K") was a duly constituted New York State professional corporation with

offices located at 225 Broadway, Suite 1901, New York, New York 10007 engaged in the practice of law.

3. At all times relevant hereto, Defendant JERROLD S. PARKER was and is an attorney duly licensed to practice in the Courts of the State of New York, with offices at 233 Broadway, 38th floor, New York, New York 10279.
4. At all times relevant hereto, HEBERT L. WAICHMAN was and is an attorney duly licensed to practice in the Courts of the State of New York, with offices at 233 Broadway, 38th floor, New York, New York 10279.
5. At all times relevant hereto, Defendant JERROLD S. PARKER, P.C. was and is a professional corporation created and existing by virtue of the laws of the State of New York, with offices at 233 Broadway, 38th floor, New York, New York 10279.
6. At all times relevant hereto, Defendant JERROLD S. PARKER, P.C. was and is a professional corporation created and existing by virtue of the laws of the State of New Jersey, with offices at 233 Broadway, 38th floor, New York, New York 10279.
7. At all times relevant hereto, HEBERT L. WAICHMAN, P.C. was and is a professional corporation created and existing by virtue of the laws of the State of New York, with offices at 233 Broadway, 38th floor, New York, New York 10279.
8. At all times relevant hereto, HEBERT L. WAICHMAN, P.C. was and is a professional corporation created and existing by virtue

- of the laws of the State of New Jersey, with offices at 233 Broadway, 38th floor, New York, New York 10279.
9. At all times relevant hereto, Defendants JERROLD S. PARKER and/or JERROLD S. PARKER, P.C. and Defendant HERBERT L. WAICHMAN and/or HERBERT L. WAICHMAN, P.C., were doing business as "PARKER & WAICHMAN, A PARTNERSHIP OF PROFESSIONAL CORPORATIONS," with offices at 233 Broadway, 38th floor, New York, New York 10279 (hereinafter, JERROLD S. PARKER, JERROLD L. PARKER, P.C., HERBERT L. WAICHMAN, HERBERT L. WAICHMAN, P.C., and PARKER & WAICHMAN, a partnership of professional corporations, being collectively referred to as "P&W").
 10. On or about December 12, 1993, D&K were retained by an individual named CONSTANTIN GIMA in connection with serious personal injuries suffered by Mr. GIMA in an auto accident.
 11. D&K commenced representation of Mr. GIMA and continued to expend work, labor services and incur disbursements on Mr. GIMA's behalf approximately until November 30, 1994, when a letter was received from P&W advising that P&W had been retained by Mr. GIMA, enclosing a duly executed substitution of attorney form, and demanding a transfer of the file.
 12. D&K complied with the demands of P&W as incoming substituted attorneys and the two firms began to discuss an equitable division of the fees in light of the extensive efforts and sums expended by D&K prior to the substitution.
 13. On January 5th, 1995, P&W forwarded to D&K and the parties

executed a Stipulation, a true and correct copy of which is attached hereto as Exhibit A, providing in relevant part that upon the completion of the case, D&K would be paid 25% of all fees recovered, representing the agreed upon proportion of the work, labor and services provided by D&K to date on the GIMA file.

14. On or about January 26, 1995, the entire GIMA file was transferred from D&K to P&W.
15. On July 3, 1997, P&W advised D&K that the matter had been settled for the sum of \$1,085,000.00 and forwarded a check in the amount of \$89,168.30 to D&K representing the agreed upon amount of 25% of the net legal fee (less some relatively minor adjustments for expenses).
16. On or about September, 2000, D&K learned that in fact the GIMA matter was settled for a sum in excess of \$3,100,000.00, and that they had been misled by P&W as to the true value of the settlement.
17. Upon information and belief, P&W engaged in a scheme and plan designed and intended to defraud D&K of their agreed upon share of the proceeds of the GIMA case.
18. On or about September 8, 2000, D&K demanded that P&W honor its contractual obligation to pay 25% of the full settlement amount, as provided for in the contract (stipulation) executed between the parties hereto.
19. By letter dated September 14, 2000, P&W refused to pay any

additional fees due to D&K (see Exhibit B hereto).

AS AND FOR A FIRST CAUSE OF ACTION

20. Plaintiff's repeat and reallege the allegations made in paragraphs 1 through 19 hereof, with the same force and effect as if herein set forth at length.
21. P&W breached its contractual obligations to Plaintiff by failing to pay 25% of the legal fee recovered on a gross settlement of \$3,100,000.00.
22. By virtue thereof, Plaintiff has been damaged in the amount of \$255,276.13, representing the difference between the sum paid (\$89,168.30) and the sum that should have been paid pursuant to the written stipulation between the parties.

AS AND FOR A SECOND CAUSE OF ACTION

23. Plaintiffs repeat and reallege the allegations made in paragraphs 1 through 22 hereof, with the same force and effect as if herein set forth at length.
24. P&W, in order to enrich themselves by failing to pay to D&K all of the sums they were contractually obligated to pay, embarked upon a fraudulent plot and/or scheme to defraud D&K of the sums due them by concealing the true value of the settlement of the GIMA case from Plaintiffs.
25. In furtherance of said fraudulent plot and/or scheme, P&W caused the GIMA settlement to be made in two separate actions, notwithstanding that the damages recovered for were for the same persons, were based upon the same injuries, and flowed

from the same occurrence or event.

26. In furtherance of their fraudulent scheme to defraud D&K, P&W separately settled the actions involving the GIMA Plaintiffs as stated above notwithstanding that all of the separate actions flowing from the occurrence in issue in the GIMA case were consolidated into one action by order of the Supreme Court, Queens County.
27. P&W fraudulently and falsely represented to D&K that the GIMA case was settled for a sum \$2,002,500.00 less than it was actually settled for and concealing the true value of the settlement from D&K.
28. P&W made the above representations with knowledge of their falsehood and in the full expectations that D&K would in fact rely upon said representations to their detriment, which D&K did.
29. By virtue thereof, Plaintiff has been damaged in the amount of \$255,276.13, representing the difference between the sums paid (\$89,168.30) and the sum that should have been paid pursuant to the written stipulation between the parties.

AS AND FOR A THIRD CAUSE OF ACTION

30. Plaintiff's repeat and reallege the allegations made in paragraphs 1 through 29 hereof, with the same force and effect as if herein set forth at length.
31. The actions of P&W complained of above were intentional, fraudulent and shock the conscience, particularly in light of

the fact that these actions were taken for venal reasons of self gain by officers of the Court.

32. By virtue of the above, D&K is entitled to punitive damages in a sum to be determined at trial, but upon information and belief in no event less than \$250,000.00.

WHEREFORE, Plaintiff demands judgment as follows:

- a) on the First Cause of Action, a money judgment against the Defendants in the amount of \$255,276.13; and
- b) On the Second Cause of Action, a money judgment against the Defendants in the amount of \$255,276.13; and
- c) On the Third Cause of Action, punitive damages in an amount to be determined by the Court, but upon information and belief in no event less than \$250,000.00,

together with the costs and disbursements of this action.

Dated: New York, New York
November 20, 2001



ARMAND FRIED, ESQ.
FRIED, IOSEPOVICI & POPESCU
Attorneys for Plaintiffs
225 Broadway, Suite 1901
New York, New York 10007
(212) 766-9696

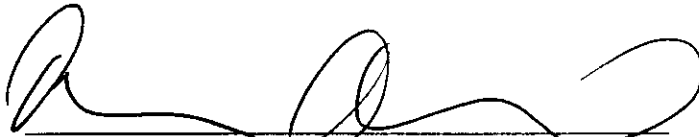
STATE OF NEW YORK, COUNTY OF NEW YORK, ss.

I, RALPH DeSENA, am one of the Plaintiffs in the within action. I have read the foregoing Complaint and know the contents thereof. The contents of the Complaint are true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



RALPH DeSENA

Subscribed and sworn to before me
on November 20, 2001



Notary Public

ARMAND FRIED
Notary Public, State of New York
No. 31-3769929
Qualified in New York County
Commission Expires Feb 28, 2003

**Larker &
Waichman**
Attorneys & Counselors at Law

A Partnership of Professional Corporations

111 Great Neck Road, 5th Floor
Great Neck, New York 11021-5402
516-466-6500 Fax 516-466-6665

MANHATTAN OFFICE:

The Woolworth Building
233 Broadway, 38th Floor
New York, NY 10279
212-267-6700

Please Reply to Great Neck Office

January 5, 1995

Via Facsimile Transmission & Regular Mail

Ralph DeSena, Jr., Esq.
DeSena & Kafer, P.C.
225 Broadway
New York, new York 10007

Re: Gima v. Callan

Dear Mr. DeSena:

Pursuant to our telephone conversation, enclosed please find a Stipulation I have prepared regarding the above matter.

Kindly review and execute the stipulation, returning a copy to our office via facsimile transmission. Please provide the original stipulation with the file upon its transfer to our office.

Very truly yours,


HERBERT L. WAICHMAN

HLW:amg
encl.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CONSTANTIN GIMA and PEPA GIMA,

Plaintiff(s),

STIPULATION

-against-

Index No.: 12498/94

THOMAS CALLAN,

Defendant(s),
-----X

**IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE
UNDERSIGNED ATTORNEYS, as follows:**

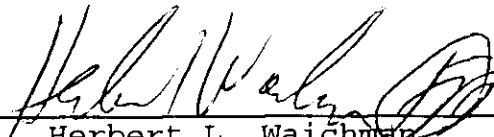
That DeSena & Kafer, P.C., maintain a lien for attorney's fees in the above referenced case, which lien shall be equal to twenty five (25%) percent of net attorneys fees (after the deduction of all disbursements), which lien shall be paid upon the conclusion of the within action; and it is further

AGREED that DeSena & Kafer, P.C., agree that their disbursements shall be paid upon the conclusion of the within action; and it is further


AGREED, that the lien held by DeSena & Kafer, P.C., for the purchase of a prothesis device for plaintiff, shall be paid upon the conclusion of the within action; and it is further

AGREED, that DeSena & Kafer, P.C., shall forward the file maintained by their office relating to the within matter available immediately to plaintiffs' new attorneys.

Dated: Great Neck, New York
January 5, 1995



Herbert L. Waichman
PARKER & WAICHMAN



Ralph DeSena, Jr., Esq.
DeSena & Kafer

Parker & Waichman

Attorneys & Counselors at Law

A Partnership of Professional Corporations

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233 Broadway, 38th Floor
New York, NY 10279
212-267-6700

NEW JERSEY OFFICE:
One Gateway Center
Suite 2500
Newark, NJ 07102
973-297-1020

September 14, 2000

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Michael S. Kafer, Esq.
DeSena & Kafer
225 Broadway, Suite 1901
New York, New York 10007

Re: Constantin Gima
Our File #: 41111

Dear Mr. Kafer:

I am in receipt of your letter of September 8, 2000 as to attorneys' fees in the above referenced matter.

Please note that no adjustment is required as to the fee received by your office. When our office substituted your firm in August, 1994, you had commenced legal action in Gima v. Callan, Supreme Court-Queens County under index # 12498/94. Our fee agreement was as to that litigation.

Subsequent to our substitution of your office, we discovered that additional defendants may be liable to the Gima family. Our office commenced a second action, Gima v. Jaguar, in Supreme Court-Queens County under index # 18206/95. In effect, our office prevented a potential legal malpractice action against your firm with the commencement of this second action.

At the time of settlement, the Callan defendant paid \$1,085,000.00. The attorneys' fee was based upon the legal action commenced by your office, for which we substituted your firm. The subsequent action was neither contemplated nor commenced by your office, nor was that defendant identified by you. As such, our fee arrangement could not possibly have included your firm's sharing in the fee on that second action. Your lien as to attorney's fees was based on the case that you had commenced against the Callan defendant and for that case, you have been fully compensated.

Very truly yours,

Fred R. Rosenthal

Fred R. Rosenthal
Managing Attorney

FRR/kao