Corporate Update

Red Robin CLO Exiting As Burger Chain Continues Turnaround Efforts

BY GREG ANDREWS

RED ROBIN Chief Legal Officer Sarah "Shippy" Mussetter, a fixture of the burger chain's legal department for most of the past 15 years, is moving on.

Her last day will be March 15, the company disclosed in a recent Securities and Exchange Commission filing.

The filing did not say why Mussetter was departing, and Mussetter did not immediately respond to a request for comment from Law.com.

Mussetter has had two stints with the Greenwood Village, Colorado-based chain. In the first go-round, she joined the company in 2011 and stayed until 2021, rising to deputy general counsel.

She then exited to join Nashua, New Hampshire-based digital learning platform Skillsoft, where she served as deputy general counsel for 15 months. Her departure coincided with the CLO post of Red Robin coming open. She snagged the job and has been CLO since December 2022.

Through all of that second stint, Red Robin has been in turnaround mode. It rolled out the first recovery effort, called Project North Star, in January 2023. Then came First Choice, launched in July 2025.

Both focused on improving the chain's operations, traffic, financing and physical restaurants after years of declines in traffic and stock price.

Those efforts are bearing fruit, Red Robin announced in February. In the fiscal year that ended Dec. 28, 2025, management stemmed the bleeding, with same-store sales for the 12 months slipping just 0.7%.

Especially encouraging was the performance of the $9.99 Big Yummm value meal combo, aimed at price-conscious customers. It debuted in July and accounted for 10% of sales in the fourth quarter.

The company operates about 475 restaurants, down from its peak of 550 in 2020.

Red Robin has not announced a successor to Mussetter.

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Agilent Plucks Its New CLO From Rival's Leadership Team

CONTRACTS

'Account Stated' Law in NY's First & Second Departments

By Steven G. Yudin

Lawyers and other professionals sometimes must make difficult decisions as to whether to try to collect unpaid fees from clients. There are many factors that go into the calculus, which is beyond the scope of this column. Here, the focus is on one tool that can be effective in fee collection litigation: the venerable account stated cause of action.

A client who receives and retains invoices from an attorney or other professional without objection within a reasonable amount of time, or makes partial payment of the invoices, will be deemed to have consented to the accuracy of the invoices. This is the foundation of the "account stated" cause of action.

The nature of a claim based upon an account stated has been explained by the Court of Appeals as follows:

"An account stated is nothing more or less than a contract express or implied between the parties... As a general rule where an account is made up and rendered, he who receives it is bound to examine the same or to procure someone to examine it for him. If he admits it to be correct it becomes a stated account and is binding on both parties. If instead of an express admission of the correctness of the account, the party receiving it keeps the same by him and makes no objection within a reasonable time, his silence will be construed into acquiescence in its justness, and he will be bound by it as if it were a stated account." *Rodkinson v. Haecker*, 248 N.Y. 480, 484-85 (1928).

An account stated is "an account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance." *Parker, Chapin, Flattau & Klimpl v. Daelen Corp.*, 59 A.D. 375, 377 (1st Dep't 1977) (quoting *Volkening v. De Graaf*, 81 N.Y. 268, 270 (1880)).

The cause of action is rooted in fairness. To permit a client to belatedly challenge invoices—sometimes even well after an attorney has completed his or her representation—would be unjust and unwise as a matter of public policy. An attorney dealing with a client who expresses only general discontent with the cost of litigation and its progress but nonetheless continues to employ the attorney (or voices no objections whatsoever) should expect to be fully compensated.

In New York's First and Second Judicial Departments, to establish an "account stated," the unpaid professional must offer proof of the client's receipt and retention of invoices without objection within a reasonable amount of time, or proof of partial payment of the invoices. Proof of either suffices. See *Aronson Mayefsky & Sloan v. Praeger*, 228 A.D.3d 182, 184-85 (1st Dep't 2024); *Michael B. Shulman & Assoc., P.C. v. Canzona*, 201 A.D.3d 716, 717 (2d Dep't 2022); Citibank (South Dakota), *N.A. v. Abraham*, 138 A.D.3d 1053, 1056 (2d Dep't 2016); *Morrison Cohen Singer & Weinstein, LLP v. Waters*, 13 A.D.3d 51, 52 (1st Dep't 2004); *Ruskin, Moscou, Evans & Faltischek, P.C. v. FGH Realty Credit Corp.*, 228 A.D.2d 294, 295 (1st Dep't 1996).

The proof offered typically is an affirmation of a person with knowledge of the client's account and the firm's billing practices, often offered together with copies of the invoices at issue, the means of delivery and if applicable, proof of partial payment. See *Berkman Bottger & Rodd, LLP v. Moriarty*, 58 A.D.3d 539, 539 (1st Dep't 2009); see also *D&N Lending, LLC v. Tachlis Corp.*, 221 A.D.3d 954, 955 (2d Dep't 2023) (plaintiff submitted a transaction record reflecting that regular invoices were issued to defendant and that defendant made partial payments on the invoices).

Relief on an account stated cause of action is commonly sought by summary judgment, and the motions most often turn on proof or absence of proof of an objection to an invoice.

The objection to an invoice, to defeat summary judgment, must be made timely. See *Abyssinian Dev. Corp. v. Bistricer*, 133 A.D.3d 435, 436 (1st Dep't 2015) ("[p]laintiff law firm is entitled to recover its fees based on an account stated in light of the fact that defendants retained its itemized bill without objection for four and a half months from the date it was first rendered"); *Rosenman Colin Freund Lewis & Cohen v. Neuman*, 93 A.D.2d 745, 746 (1st Dep't 1983) (defendant's belated objections to invoices were insufficient to raise genuine factual issues warranting denial of summary judgment); *Seidner & Assoc., P.C. v. Hemings*, 2020 N.Y. Misc. LEXIS 8990, at *3 (2d Dep't, App. Term 2020) (retaining invoices for three months without objecting may well establish cause of action for an account stated).

The objection must also be detailed and of substance. The question often arises whether the client's objection to an invoice must be in writing to defeat summary judgment. The short answer is not necessarily; but if the objection to an invoice is oral, there must be proof of more than a mere bare assertion of protest.

There are decisions suggesting proof of a written objection is necessary to defeat summary judgment. See *Ruskin, Moscou, Evans & Faltischek, P.C. v. FGH Realty Credit Corp.*, 228 A.D.2d 294, 295 (1st Dep't 1996) (while the defendant argued it had objected to the plaintiff's bills, it "failed to submit any writing, letter, note, documentation or evidentiary proof to support such a claim"); *Thelen LLP v. Omni Construction Co., Inc.*, 79 A.D.3d 695, 606 (1st Dep't 2010) ("even if defendant's president orally complained that plaintiff's bills were excessive, that is insufficient to avoid summary judgment").

More commonly, however, courts consider proof of oral protest to an invoice when assessing the merits of a summary judgment motion (see *Elmo Mgm't Corp. v. American Innovations, Inc.*, 44 A.D.3d 703, 704 (2d Dep't 2007); *Michael B. Shulman & Assoc., P.C. v. Canzona*, 201 A.D.3d at 717), but to defeat the motion, require the proof to be detailed and of substance (see *Titan Communications, Inc. v. Diamond Phone Card, Inc.*, 94 A.D.3d 740, 741 (2d Dep't 2012) ("self-serving, bald allegations of oral protests are insufficient to raise a triable issue of fact as to the existence of an account stated"); *Zanini v. Schvimmer*, 50 A.D.3d 445, 446 (1st Dep't 2008) (assertion that defendant orally objected to the bills is insufficient "because

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The unpaid professional, of course, should assess his or her proof against this backdrop before pursuing a claim for an account stated.

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she fails to state when she objected or the specific substance of the conversations in which the objections were made"); *Darby & Darby, P.C. v. VSI Intern., Inc.*, 268 A.D.2d 270, 273 (1st Dep't 2000), *aff'd*, 95 N.Y.2d 308, 315 (2000) (bare assertion of oral protest not enough to defeat summary judgment); *Fink, Weinberger, Fredman, Berman & Lowell P.C. v. Petrides*, 80 A.D.2d 781, 781 (1st Dep't 1981) (summary judgment granted on law firm's account stated claim where the defendant alleged, without specificity, that the invoice at issue "was the subject of many telephone conversations and that he did not accept it but disputed both the bill and the amount").

The unpaid professional, of course, should assess his or her proof against this backdrop before pursuing a claim for an account stated.

There are a few related points worth noting. First, it is not necessary to establish the reasonableness of the invoice sued upon. The "client's act of retaining the invoice without objection will be considered as acquiescence as to its correctness." *Aronson Mayefsky & Sloan v. Praeger*, 228 A.D.3d at 185; see *Garr Silpe, P.C. v. Weir*, 208 A.D.3d 1098, 1099 (1st Dep't 2022); *Bashian & Farber, LLP v. Syms*, 147 A.D.3d 714, 715 (2d Dep't 2017); *Cohen Tauber Spievak & Wagner, LLP v. Alnwick*, 33 A.D.3d 562, 562-63 (1st Dep't 2006).

Second, the account stated cause of action is an independent, viable cause of action. The First Department recently addressed the issue, clearing up inconsistencies within the department. In the case of *Aronson Mayefsky & Sloan v. Praeger*, the court announced it "wants to make clear that an account stated is an independent cause of action that can be asserted simultaneously with a breach of contract claim and that an account stated claim should not be dismissed as duplicative of a breach of contract claim." *Aronson Mayefsky & Sloan v. Praeger*, 228 A.D.3d at 187.

Thus, even if there is a retainer agreement between an attorney and a client and therefore, a solid breach of contract claim, an attorney may nonetheless pursue an account stated cause of action.

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Third, the account stated cause of action offers a path to recovery in an action for unpaid professional fees without having to engage in, or be bogged down by, lengthy discovery. See *Thelen LLP v. Omni Construction Co., Inc.*, 79 A.D.3d at 606 ("Although discovery had yet to be conducted in this matter, this does not require the denial of the motion as premature"); *Duane Morris v. Astor Holdings*, 61 A.D.3d 418, 418 (1st Dep't 2009) (Defendant failed to show that facts essential to justify opposition to the motion were within plaintiff's exclusive knowledge).

This makes sense because whether a client received and/or objected to an invoice would not be within the lawyer's exclusive knowledge. The client would not need to engage in discovery from the professional to unearth proof of its own protest.

Given the state of the law in the First and Second Departments and depending, of course, on the particular facts of a case, an account stated cause of action should be given serious consideration in an action for unpaid professional fees (and in fact, in any other action where an invoice is issued but not paid).

Buckner

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bachelor's in political science from Rutgers University.

Agilent did not disclose compensation for Buckner in its filing Monday with the Securities and Exchange Commission.

His predecessor, DiMarco, earned $3.7 million last year, making him the third-highest paid executive at Agilent. That included a salary of $679,808.

Agilent was spun out of Hewlett-Packard in 1999. The company has 18,000 employees and posted revenue last year of $7 billion, with a market capitalization of $32 billion.

Under the terms of his separation agreement, DiMarco will serve as a special adviser to Agilent until Dec. 1. In that role he will earn $29,166 per month. He will receive a severance of $1.2 million, less what he earned as special adviser.

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