



173 A.D.3d 488, 99 N.Y.S.3d 879
(Mem), 2019 N.Y. Slip Op. 04652

*1 Julia An-Jung, Respondent,

v

Rower LLC et al., Appellants.

Supreme Court, Appellate Division,

First Department, New York

152694/18, 9586

June 11, 2019

CITE TITLE AS: An-Jung v Rower LLC

HEADNOTE

[Accounts and Accounting](#)
[Account Stated](#)

Mound Cotton Wollan & Greengrass, LLP, New York
(Kenneth M. Labbate of counsel), for appellants.

Michael J. Redenburg, P.C., New York (Michael J. Redenburg
of counsel), for respondent.

Order, Supreme Court, New York County (Francis A. Kahn
III, J.), entered March 12, 2019, which, to the extent appealed
from, denied defendants' motion to dismiss the breach of
contract and breach of fiduciary duty claims, unanimously
reversed, on the law, without costs, and the motion granted.

The breach of contract claim should be dismissed in light
of defendants' account stated defense (*see Mintz & Gold
LLP v Daibes*, 125 AD3d 488 [1st Dept 2015]). The retainer
agreement required that objections to bills be raised within 30
days after receipt of the bills; plaintiff timely paid all the bills
and did not object to any of them until two months after she
received the last one. Moreover, the breach of fiduciary duty
claim should be dismissed on the ground that it is duplicative
of the breach of contract claim "since the claims are premised
upon the same facts and seek identical damages" (*Chowaiki
& Co. Fine Art Ltd. v Lacher*, 115 AD3d 600, 600 [1st Dept
2014]). Concur—Renwick, J.P., Manzanet-Daniels, Gesmer,
Kern, Singh, JJ. [**Prior Case History: 2019 NY Slip Op
30600(U).**]

Copr. (C) 2020, Secretary of State, State of New York