

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D15345
Y/cb

_____AD3d_____

Submitted - April 13, 2007

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
PETER B. SKELOS
THOMAS A. DICKERSON, JJ.

2005-10295

DECISION & ORDER

Xanboo, Inc., etc., appellant-respondent, v Michael
Ring, et al., respondents-appellants.

(Index No. 13617/00)

Jeffrey H. Roth, New York, N.Y., for appellant-respondent.

Morrison Cohen, LLP, New York, N.Y. (David A. Piedra and Mary E. Flynn of
counsel), for respondents-appellants.

In an action, inter alia, for a judgment declaring the parties' rights and obligations under an agreement to lease real property, the plaintiff appeals from a judgment of the Supreme Court, Westchester County (Lefkowitz, J.), entered September 9, 2005, which, after a hearing, awarded the defendants an attorney's fee in the sum of \$142,000, plus disbursements in the amount of \$8,000 and the defendants cross-appeal, on the ground of inadequacy, from so much of the judgment as awarded them an attorney's fee in the sum of only \$142,000.

ORDERED that the judgment is affirmed, without costs or disbursements.

In support of their claim for an attorney's fee, the defendants presented the testimony of the partner in the law firm which represented them. This partner, who had supervised all aspects of the case during the approximately four years of litigation between the parties, testified as to the services performed, and as to the generation of the firm's records detailing those services. The records, which indentified the attorneys who worked on the case, the tasks that they performed, and the time spent on each task, were created contemporaneously with the services performed, and were properly admitted into evidence pursuant to the business records exception to the hearsay rule (*see*

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CPLR 4518[a]; *People v Kennedy*, 68 NY2d 569). Contrary to the plaintiff's contentions, this evidence was sufficient to support the Supreme Court's determination without the necessity of calling multiple witnesses who would have merely offered cumulative testimony at best (*see Shaw, Licitra, Eisenberg, Esernio & Schwartz v Gelb*, 221 AD2d 331).

Moreover, although each side disputes the ultimate amount awarded by the Supreme Court as an attorney's fee, it cannot be said that the Supreme Court's determination was an improvident exercise of discretion under the circumstances of this case (*see Clifford v Pierce*, 214 AD2d 697).

MASTRO, J.P., SANTUCCI, SKELOS and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court