

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

384

CA 18-00706

PRESENT: SMITH, J.P., PERADOTTO, CARNI, LINDLEY, AND TROUTMAN, JJ.

CELLINO & BARNES, P.C., PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

BRIAN CHAPIN YORK, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

BRIAN CHAPIN YORK, DEFENDANT-APPELLANT PRO SE.

CELLINO & BARNES, P.C., BUFFALO (GREGORY V. PAJAK OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Tracey A. Bannister, J.), entered January 8, 2018. The judgment, among other things, awarded plaintiff the sum of \$32,028.28 as against defendant.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: In this fee dispute between attorneys, defendant attorney appeals from a judgment that awarded plaintiff law firm one third of the attorneys' fees in the underlying personal injury litigation. We reject defendant's contention that Supreme Court abused its discretion in fashioning the award. In fixing the percentages to be awarded to the parties, the court properly considered "such factors as the amount of time spent by each lawyer on the case, the work performed and the amount of recovery" (*Lai Ling Cheng v Modansky Leasing Co.*, 73 NY2d 454, 458 [1989]; see *McCarthy v Roberts Roofing & Siding Co., Inc.*, 45 AD3d 1375, 1375-1376 [4th Dept 2007]).

Entered: March 22, 2019

Mark W. Bennett
Clerk of the Court