

**Denaro v Rosalia**

2007 NY Slip Op 30033(U)

March 1, 2007

Supreme Court, Queens County

Docket Number: 0019512

Judge: David Elliot

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M E M O R A N D U M

**SUPREME COURT - QUEENS COUNTY**  
**I.A.S. PART 10**

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CAROL DENARO AND SCOTT DENARO,

Index No. 19512/05

Plaintiffs,  
-against-

By: **ELLIOT, J.**

Date: March 1, 2007

STEPHANIE ROSALIA, SALVATORE  
LIPARI, RALPH PERFETTO  
INDIVIDUALLY AND THE CITY  
OF NEW YORK,

Motion Date: June 6, 2006

Motion Cal. No. 10

Motion Seq. No. 3

Defendants.

Hearing Dates: June 29,  
July 13, and August 21, 2006

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Plaintiffs moved by order to show cause to hold defendants in contempt for failure to obey a prior order of the court (Polizzi, J.) dated March 21, 2006.

The initial issue before this court was whether defendants violated the prior order by using high intensity outdoor lights to illuminate their backyard so as to impact negatively on the backyard of their neighbors, the plaintiffs. A hearing on the contempt issue was conducted before this court on June 29, 2006 and July 13, 2006. Based upon the credible evidence adduced thereat, this court found on the record on July 13, 2006, that the defendants had violated the order dated March 21, 2006. The court imposed a penalty of \$250.00 plus reasonable attorney's fees to be determined at a subsequent

hearing unless the parties agreed to a certain amount.

As the parties could not reach an agreement as to the amount of such fees, the matter was set down for a hearing on August 21, 2006.

The court fully credits the testimony of plaintiffs' attorney, Michael H. Reich, with respect to the services billed by him. Defendants' attorney does not contest such charges. Mr. Reich testified that there was a written fee agreement which delineated the attorney's fees that plaintiffs agreed to pay the firm. He submitted actual time records compiled from his firm's computer records. He testified that he has practiced law in New York State for 26 years. His usual and customary hourly rate is \$550.00. However, his partner David Gallo signed this case and, based upon the way it came in, Mr. Reich agreed to do it at a reduced rate of \$350.00 for his time. A lot of the work was done by his associate John Wolthoff who billed at \$300.00 per hour. Each of the items in the computer records pertained only to the contempt proceeding and amounts to \$21,655.00 with out of pocket expenses of \$485.00. The expert's fee was \$3,200.00.

On cross-examination, Mr. Reich testified that there are clients who retained him years ago who he charges a lower fee but nothing less than \$450.00. Plaintiffs have been making payment on the bills on a regular basis. He and Mr. Wolthoff reviewed the bills to decide what time items should be redacted as not pertaining to the contempt proceeding. The first entry

was for June 6, 2006 charging his time at the first hearing date. On June 29, 2006, 6 hours were billed for him and 4 hours for Mr. Wolthoff who did not question any witnesses.

He further testified that on June 27, 2006, there was a charge for a meeting with the plaintiffs, Mr. Wolthoff and a partner Frank Bolz. Only Mr. Wolthoff's time was charged. On June 2, 2006, 6.9 hours were charged to Mr. Wolthoff for reviewing the opposition, speaking to the client and preparing the reply affidavit. On June 5, 6.8 hours were charged for preparing the documents. On May 12, 2006, 2.2 hours were charged for preparing an affidavit of service, blue back and making final changes to the papers. The client pays for traveling time. On May 23, 2 ½ hours were charged for telephone calls. Mr. Reich mentioned that there remained a \$3,200.00 bill with respect to the electrician/expert services rendered herein. However, no documentation with respect thereto was submitted to the court.

John Wolthoff testified that he prepared the affidavit of legal services from the firm's computer system. When he sits down to work on a matter, he runs the clock on the computer. When he stops working, he stops the clock. The computer sets the time. With respect to this matter, he worked from a computer and prepared just what related to it. On July 18, 2006 one hour was charged for attorney discussion and telephone conversation about a possible appeal. On March 27, 2006 he spoke with Mrs. Denaro

for almost 2 hours. On April 3, 2006, 1 ½ hours were billed for a telephone conversation with Mrs. Denaro and preparing a one page letter. One hour was charged for speaking with an electrician, preparing his affidavit of 2-3 pages and reviewing pictures. He spoke with Mrs. Denaro on May 11 to make changes to the contempt papers for 2 ½ hours. Telephone conversations with the process server and the client occurred on May 23 for 2 ½ hours. On June 2 and June 5, 13.7 hours were billed for reviewing the opposition and preparing the reply. On June 15, there was 1 ½ hours for a conversation with the client and he spoke with defense counsel for only 10 minutes. He spoke with the clients for the rest of that time. He billed 4 hours for the first day of the hearing as second chair.

Plaintiff's counsel argued that the affidavit of services and the testimony given outlines the items of times incurred in the prosecution of this action which are reasonable under the circumstances and given the expertise of the attorneys and law firm involved. Defendants' counsel argued that the amount sought is excessive and not reasonable. In particular, with respect to the rate for the junior associate a more appropriate rate would be \$150.00 per hour rather than \$300.00 per hour and the number of hours should be reduced based upon his inexperience.

Based upon the credible evidence adduced at the hearing, this court finds that plaintiffs are entitled to

reasonable attorney's fees in the amount of \$18,960.00 and costs and disbursements in the amount of \$485.00. The attorney's fees are based upon the uncontested sum of Mr. Reich's services of \$5,460.00 plus the reduced sum of \$13,500.00 for the contested services of Mr. Wolthoff. The court has reduced the hours charged for certain services rendered by Mr. Wolthoff. This reduction is not based upon a finding that Mr. Wolthoff did not work those hours. Rather, it is based upon this court's opinion that the hours charged exceeded the reasonable amount of time that was necessary to perform the services listed in the schedule or were duplicative. The court has, therefore, made the following reductions:

April 3, 2006 from 1.5 hours to 1 hour; April 25 from 1 hour to .5 hour; May 11 from 2.50 hours to 0 hours, as; June 2 and 5 from 13.7 hours to 7 hours; and June 15 from 1.5 hours to 1 hour.

Accordingly, the defendants are found in contempt of the prior court under (Polizzi, J.) dated March 21, 2006 and ordered to pay the sum of \$250.00 as a fine. Further, plaintiffs are awarded the sum of \$18,960.00 as and for attorney's fees plus the sum of \$485.00 for costs and disbursements with respect to this contempt proceeding.

Settle judgment.

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J.S.C.