

General Motors Corp. v Warner

2007 NY Slip Op 30796(U)

March 15, 2007

Supreme Court, Albany County

Docket Number: 0030202/0041

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

GENERAL MOTORS CORPORATION,

Petitioner,

-against-

JAMES WARNER,

Respondent.

DECISION and ORDER
RJI NO.: 0104078159
INDEX NO.: 3020-04

Albany County Supreme County All Purpose Term, March 30, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Michael E. Catania, Esq.
The Rose Law Firm, PLLC
Attorneys for the Petitioner
501 New Karner Road
Albany, NY 12205

Francis Bigelow, Esq.
Sadis & Goldberg, LLC
Attorneys for the Respondent
551 Fifth Avenue, 21st Floor
New York, NY 10176

TERESI, J.:

Respondent, Mr. James Warner, brings this motion for an award of reasonable attorneys' fees, costs and expenses pursuant to the New York Lemon Law, GBL § 198-a and for an entry of a final judgment. Petitioner, General Motors, opposes the motion.

After fully reviewing the record, this Court affirms its May 11, 2006 grant of attorneys' fees and will grant additional attorneys' fees accrued after May 11, 2006 upon a proper submission to this Court, on notice, of only those fees that accrued after May 11, 2006. Within

fourteen (14) days of the day of this Decision and Opinion Petitioner's attorney shall file and serve an affidavit of services setting forth the nature of the services, the date on which each service was provided, a description of the service and the amount sought per hour and for each service. The attachment of computer printouts is not acceptable. In addition, a list of any disbursements incurred shall be provided identifying the disbursements individually and the amount paid. Within fourteen (14) days of receipt of that affidavit, Respondent's counsel may submit to the Court any affidavit in opposition to the application for attorney's fees in respect to their reasonableness or necessity. Further, this Court finds respondent's proposed Order of Judgment to be unacceptable.

Initially, Respondent commenced an arbitration proceeding against General Motors resulting in an arbitration award which was vacated pursuant to CPLR § 7511 on November 8, 2004 by the Supreme Court, Albany County (Benza, J.). The Appellate Division, Third Department reversed the Supreme Court Order and reinstated the arbitration award. This Court then, on May 11, 2006, awarded Respondent reasonable attorneys' fees amounting to \$18,370.80, but rejected Respondent's proposed Judgment. Subsequent to this Court's granting attorneys' fees, the New York State Court of Appeals affirmed the third Department's decision overturning this Court's vacatur of the arbitration award. Mr. Warner's current motion seeks an award of attorneys' fees for the entire representation without noting the \$18,370.80 that was previously awarded by this Court for legal work up to May 11, 2006. To this end, Mr. Warner has resubmitted the same records upon which this Court based its May 11, 2006 award as well as those billing records that reflect work completed after May 11, 2006.

New York Business Law § 198-a(1) provides,

“[a] court may award reasonable attorney fees to a prevailing plaintiff or to a consumer who prevails in any judicial action or proceeding arising out of an arbitration proceeding held pursuant to subdivision (k) of this section. In the event a prevailing party is required to retain the services of an attorney to enforce collection of an award granted pursuant to this section, the court may assess against the manufacturer reasonable attorneys’ fees for services rendered to enforce collection of said award.”

Here, the Respondent was successful in his arbitration proceeding and has been forced to further defend that award at the New York Court of Appeals so is, therefore, entitled to be awarded reasonable attorneys’ fees (See Safari Movor Coaches v. Corwin, 225 AD2d 921 [3d Dept 1996]). It is unacceptable, however, for Respondent to re-submit bills upon which this Court has already ruled and attempt to reargue this Court’s May 11, 2006 grant without a proper motion. The burden is on Respondent to provide this Court with contemporaneous records of legal expenses accrued after May 11, 2006 (In the Matter of Michael Katzer, as Special district Attorney v. County of Rensselaer, 1 AD3d 764 [3d Dept 2003]; Santiago Gutierrez v. Direct Marketing Credit Services, Inc., [2d Dept 1999]).

The Order of Judgment proposed by Respondent is identical to the one rejected by this Court on May 11, 2006 and nothing in the decision issued by the New York State Court of Appeals on December 14, 2006 warrants renewed consideration of that same proposed Order or alters this Court’s Decision that pursuant to Business Law § 198-a(1), the parties must coordinate payment of the arbitration award and the surrender of the vehicle to occur simultaneously.

Accordingly, this Court affirms its May 11, 2006 grant of attorneys’ fees and will grant attorneys’ fees accrued after May 11, 2006 upon a proper submission to this Court, on notice, of only those fees that accrued after May 11, 2006 and rejects Respondent’s proposed Order of

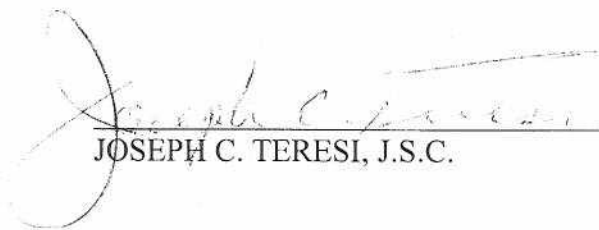
Judgment.

All papers, including this Decision and Order, are being returned to the attorney for the Respondent. The signing of this Decision and Order shall not constitute entry or filing under CPLR § 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED!

Dated: April 7, 2007

Albany, New York



JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Respondent's Notice of Motion, dated February 21, 2007 with Attached Exhibits A-H..
2. Petitioner's Affirmation in Opposition, dated March 6, 2007 with Attached Exhibits A-E.
3. Respondent's Reply, dated March 15, 2007 with Attached exhibits 1 and 2.