

**General Motors Corp. v Warner**

2007 NY Slip Op 31754(U)

June 11, 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

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GENERAL MOTORS CORPORATION,

*Petitioner,*

-against-

JAMES WARNER

*Respondent.*

**DECISION and ORDER**

**RJI NO.: 0104078159**

**INDEX NO.: 3020-04**

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Albany County Supreme County All Purpose Term, May 25, 2007  
Assigned to Justice Joseph C. Teresi

**APPEARANCES:**

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**TERESI, J.:**

Respondent, James Warner, brings a motion to reargue this Court's April 17, 2007 Decision pursuant to CPLR § 2221(d)(2) and a motion for reasonable attorneys' fees of \$46,620.11. Petitioner, General Motors, opposes both motions and requests an award of fees and costs for Respondent's February 2007 fee petition.

After fully reviewing the record, this Court denies Respondent's motion to reargue, grants Respondents motion for an award of attorneys' fees, as modified, amounting to \$18,160.65 and

denies Petitioner's request for an award of fees and costs.

Initially, Respondent commenced an arbitration proceeding against General Motors resulting in an 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, General Motors the New York State Court of Appeals (*General Motors Corporation v. James Warner*, 7 NY3d 702 [2006]) affirmed the Third Department's decision (*General Motors Corporation v. James Warner*, 24 AD3d 869 [3d Dept 2005]) 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 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 in his February 2007 fee petition.

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 Moyor Coaches v. Corwin, 225 AD2d 921 [3d Dept 1996]). This Court found that Mr. Warner’s February 2007 fee petition was an unacceptable attempt 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 current motion is a motion to reargue the February 2007 fee petition which was rejected in this Court’s April 17, 2007 Decision.

CPLR § 2221(d)(2) permits a party to reargue a decision where the court has either overlooked or misapprehended a fact or misapplied a controlling principle of law. Respondent contends that this Court, by limiting Respondent’s fee petition to those fees incurred after May 11, 2006, has incorrectly denied Respondent attorney’s fees incurred in preparing the fee petition leading to the May 11, 2007 grant of attorney’s fees. While the parties disagree vehemently as to whether General Business Law §198-a(1) allows for an award of attorney’s fees for the pursuit of attorney’s fees, it is not relevant to the outcome of this motion because Respondent never raised this argument in the February 2007 fee petition. This Court’s April 17, 2007 Decision was prompted by Respondent’s attempt to reargue the limitations of the May 11, 2006 fee award by resubmitting all attorneys’ fees that were submitted in the prior motion a second time. Similarly, Respondent attempts, in this motion, to resubmit attorneys fees at rates already rejected by this Court.

As per this Court’s April 17, 2007 Decision, Respondent is entitled to reasonable

attorneys' fees for work conducted after May 11, 2007. Respondent has submitted evidence outlining the nature and times of service. As a general rule when calculating attorney fees recoverable by the prevailing party in a Lemon Law proceeding, the reasonable hourly rate is based on the customary fee charged for similar services by lawyers in the community with like experience and of comparable reputation to those by whom the prevailing party was represented (*See, Gamache v. Seinhaus*, 7 AD3d 525 [2d Dept 2004]). New York Courts and the Northern District of New York have determined on a consistent basis that the prevailing rates for experienced attorneys with numerous years of practice is \$175 per hour, \$125 for attorneys with four or more years of experience, \$100 for attorneys with less than four years of experience and \$65 per hour for work performed by paralegals (*See, New York State Teamsters Conference Pension & Retirement Fund v. United Parcel Service, Inc.*, 2004 WL 43747 [ND NY, Feb 27, 2004]; *DiSorbo v. City of Schenectady*, 2004 WL 115009 [ND NY Jan 9, 2004]; *Daimler Chrysler Corporation v. Karman*, 5 Misc3d 567 [Albany County Supt Ct. 2004]). Accordingly, Respondents are entitled to the following rate of compensation: Douglas R. Hirsch, Esq. \$175 per hour, Dennis Hirsch, Esq. \$125.00 per hour, David Kasell, Esq. \$100 per hour, Francis Bigelow, Esq. \$100 per hour, Jarett Kahn, Esq. \$100 per hour, Christine Koo, Esq. \$100 and the paralegals \$60 per hour. This amounts to \$20,178.50.

Petitioner contends that the attorneys fees should be further reduced for work that is deemed secretarial in nature, duplicative and non-compensable. This Court finds merit in some of Petitioner's objections and, as an act of discretion, reduces the final award of attorney fees by 10% as this Court finds that the reduction is warranted by the number of tasks included in Respondent's fee petition that are secretarial (Respondent routinely has attorneys perform

secretarial functions and bill as attorneys for that time), duplicative and otherwise non-compensable, amounting to \$18,160.65.

Accordingly, this Court denies Respondent's motion to reargue, grants Respondents motion for an award of attorney's fees as modified amounting to \$18,160.65 and denies Petitioner's request for an award of fees and costs.

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: June // 2007

Albany, New York



JOSEPH C. TERESI, J.S.C.

**PAPERS CONSIDERED:**

1. Respondent's Notice of Motion, dated April 30, 2007 with Attached Exhibits A and B.
2. Respondent's Notice of Motion, dated April 27, 2007 with Attached Exhibits A-I.
3. Petitioner's Affirmation in Opposition, dated May 14, 2007 with Attached Exhibits A-D.
4. Petitioner's Affirmation in Opposition, dated May 14, 2007 with Attached Exhibits A-C.
5. Respondent's Affirmation in Reply, dated May 25, 2007.
6. Respondent's Affirmation in Reply, dated May 25, 2007.