

**Licatesi v Maserati N. Am., Inc.**

2011 NY Slip Op 30791(U)

March 17, 2011

Sup Ct, Nassau County

Docket Number: 9080/08

Judge: John M. Galasso

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MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

.....  
ANTHONY LICATESI,  
Plaintiffs,

HON. JOHN M. GALASSO  
J.S.C.

Decision Reserved: 02/14/11  
Index No. 9080/08  
Part 37

- against -

MASERATI NORTH AMERICA, INC. and,  
FERRARI-MASERATI OF LONG ISLAND,  
Defendants,

Decision Date: 03/17/11

.....  
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.....  
This matter was transferred to the undersigned on February 7, 2011 for an inquest to determine the amount of an award for attorneys' fees for an underlying action brought pursuant to the so-called Lemon Law (see 15 U.S.C. 2310 (d) (2) and General Business Law 198-a (l)), settled in plaintiff's favor after jury selection but before the trial actually commenced with Justice Michele M. Woodard presiding.

The Court has considered the testimony of the witnesses, plaintiff's exhibits and the memoranda of law submitted herein on February 14, 2011 as well as the Nassau County Clerk's file which contains the motion papers for attorney's fees with attached exhibits and legal argument in making the following determination:

Plaintiff's counsel seek a total of \$108,567.04 for fees and costs for the combined efforts of 3 attorneys representing 262.2 hours of work. The firm of record, Bolz, Lovasz, Toth & Ruggiero (BLTR), specializes in commercial litigation, with offices in Massachusetts, New York City and Morristown, New Jersey. It is also known as Consumer Legal Services, P.C. in some other states.

The attorney who appeared for plaintiff for trial and at the inquest is Christopher Winkler, the head of BLTR's litigation bureau in the Michigan office of Consumer Legal Services. He has previously been lead trial counsel on approximately 25 cases. Compensation is claimed at \$425. per hour for 71.7 hours for his services.

Daniel Goldsmith Ruggiero is a partner in BLTR's New Jersey and New York offices; however, according to an affidavit he works out of the Massachusetts office where he is also admitted to the bar. He seeks \$385. per hour for 32.3 hours for his efforts in commencing the action and leading the litigation in its disclosure and preparation stages for a possible trial. \*

Carl Schwartz also appearing at the inquest is an associate of BLTR licensed to practice in New York, Michigan and New Hampshire but working out of the Massachusetts office. He was admitted to practice in January 2007 and evidently has worked in consumer protection law ever since. His efforts have been directed primarily toward written work: research, briefs, motion papers and the like. He asserts that his hourly rate of \$375. is reasonable and claims 124.7 hours in compensation.

Initially, the Court notes that the burden of proof is upon the fee applicant to demonstrate entitlement to the award asserted (see *Daimler Chrysler Corporation v. Karman*, 5 Misc. 3d 567, 782 NY Supp. 2d 342; see also *Diaz v. Audi*, 57 AD3d 828). All counsel agree that in lemon law cases such as the one at bar, the presumptive legal fee is determined by the so-called lodestar figure or calculation which requires that the total number of hours reasonably incurred be multiplied by a reasonable hourly rate to determine the award (*Rahmey v. Blum*, 95 AD2d 294; see also *Diaz v. Paragon Motors*, 2007 WL 2903920).

From the totality of the evidence and cited case law, the undersigned determines that the hourly rates for both Mr. Winkler and Mr. Ruggiero are reasonable and are to be employed in the amended calculation as directed below.

However, Mr. Schwartz' rate at only \$10. less per hour than Mr. Ruggiero who is a partner in the firm is excessive. \*\*

The Court concludes \$300. per hour is a reasonable rate for an associate who does not claim to have any prior specific expertise in lemon law cases, as opposed to experience in consumer law.

As far as the amount of hours for which compensation is awarded, the Court does not conclude, as plaintiff's counsel suggests, that the language in the settlement judgment for fees "based upon actual time expended" means that this jurist must simply multiply above figures by 262.2 hours. \*\*\*

Counsel's firm claims that because of its expertise in this select area known as lemon law litigation they would require very short time expenditures in performing legal tasks. Yet, in the cases cited by both sides no attorney has come close to asking for 262.2 hours of compensation, and some of those attorneys fee hearings included trials..

\* Mr. Ruggiero did not testify at the inquest.

\*\* That Mr. Schwartz recently has been made a partner in the firm is irrelevant for the calculations herein for work commenced on July 1, 2009 and continuing under the supervision of Mr. Ruggiero.

\*\*\* The undersigned agrees that there were no serious settlement discussions prior to the one before Justice Woodward. Defendant's late offer for \$5,000. was disingenuous at best.

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Further, the testimony of plaintiff, also an attorney, that he found no firms locally that specialize in lemon law is unconvincing. Even BLTR does not assert the entire firm specializes in lemon law but rather its focus is consumer protection law with a sub-speciality in this particular area. Consumer law firms abound in Nassau and in the surrounding counties. One needs only to search the internet, call the bar association or, indeed, research the firms cited in the various local state and federal jurisdiction decisions to find competent counsel in this specific area.

In any event, BLTS's letterhead featuring [www.LemonAuto.com](http://www.LemonAuto.com) in bold print also lists the New York City office.

Thus, the Court concludes that it was not reasonable for the Massachusetts office of the firm to be retained for a Nassau County case. \*

The undersigned also concludes that it was not reasonable to reach out to the Michigan office to find an attorney with trial experience. While lemon law cases might require additional research in the beginning, any trial attorney proficient in the consumer protection area could prepare for this specific type of case. In addition, local trial counsel would be the more reasonable choice because of his or her familiarity with the jurisdiction and perhaps the local judiciary.

As a result, the Court declines to award attorneys fees for the extensive travel of all three lawyers from Massachusetts and Michigan to and from New York \*\* as well as the costs resulting therefrom. The award herein is limited to travel costs as if incurred from plaintiff's Manhattan office and with 1 hour travel time allowed each way times ½ of each attorney's hourly fee.

Further, counsel may not receive an attorney's fee for duplicative services. For instance, there were occasions when two attorneys appeared on plaintiff's behalf when it was not reasonable to do so, such as at preliminary, compliance, and/or certification conferences. This contradicts the firm's fee justification based upon exceptional experience.

It was reasonable for Mr. Ruggiero alone to appear at the preliminary conference since it set the stage for all future disclosure. However, for all subsequent conferences the appearance of Mr. Schwartz would have been reasonable.

Once trial counsel entered the case, it was not reasonable to have Mr. Schwartz present with Mr. Winkler at expert meetings, jury selection, etc. where his admittedly more limited experience would not add to the process. Had this matter actually proceeded to trial, then one could reasonably expect Mr. Schwartz to second seat Mr. Winkler and help him with internet research and other tasks allowing trial counsel to focus on presenting the evidence to the jury (compare *Salinsky v. Chase Auto Exchange, Inc.*, Doc. BER-L-3532-08, Superior Court of New Jersey, Inquest Exhibit 3).

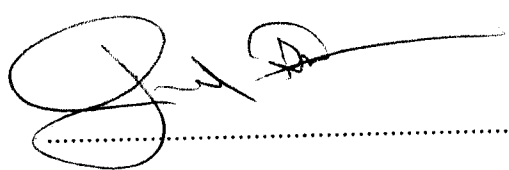
\* For that matter, it was not reasonable for Mr. Ruggiero, who is a partner in the New Jersey and New York offices, to charge for using Massachusetts as his home base for litigation in Nassau County. This also applies to Mr. Schwartz, who is admitted in New York. Moreover, an associate in the New York office could have performed his duties.

\*\* Including Mr. Winkler's charge of 4 hours for a late plane departure.

Finally, counsel may not seek attorney's fees for activities, such as filing stipulations and papers that may be accomplished by hiring a legal service or for picking up co-counsel to drive him to court. Public transportation such as trains or taxis is readily available locally and these activities may be reimbursed under costs.

The undersigned is cognizant of the philosophy that counsel fees should reflect the public's right to enforce consumer laws while encouraging competent counsel to represent plaintiffs' who ultimately may not prevail. Nevertheless, with all credit due to BLTR for the settlement result, requested attorney's fees must still be reasonable (see 15 U.S.C 2310 (d) (2); General Business Law 198-a (l); *Arbor Hill v. County of Albany*, 493 F. 3d 110 [2d Cir 2007]).

Counsel is directed to recompute the requested fees and to submit the superceding fee schedule to defendants.



J.S.C.

**ENTERED**  
MAR 25 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE

Settle Judgment On Notice