

74 Eldert LLC v Sharp Realty LLC

2013 NY Slip Op 32509(U)

June 24, 2013

Sup Ct, Kings County

Docket Number: 502964/2012

Judge: Miriam P. Sunshine

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CIVIL TERM: PART 82

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74 ELDERT LLC,

Plaintiff,

-against-

Index No. 502964/2012

SHARP REALTY LLC, LINDA SHARP, CIE SHARP
SHARP FAMILY REALTY LLC, MICHAEL SHARP,
and BRUCE CAPUTO,

Defendants.

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At the request of Justice Carolyn E. Demarest, this case was referred to hear and determine the issue of attorney fees.

The following findings are based upon the credible evidence adduced at the hearing held.

This is an action to set the attorney fees for the outgoing attorneys, Chittur & Associates, who represented Linda Sharp and Cie Sharp and were relieved from representing them on consent pursuant to an order dated February 13, 2013.

Where a fee dispute is between attorneys, rather than between a client and former attorney, the rules allow the outgoing attorney to "elect to take compensation on the basis of a presently fixed dollar amount based upon quantum meruit for the reasonable value of services or, in lieu thereof, the discharged attorney has the right to elect to receive compensation immediately based on quantum meruit or on a contingent percentage fee based on the proportionate share of the work performed on the whole case" (*see Lai Ling Cheng v Modansky Leasing Co., Inc.* 73 NY2d 454 [1989]; *see Byrne v Leblond*, 25 AD3d

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640 [2006]). The Court of Appeals teaches that the determination of fees is left to the election of the departing attorney (*see Cohen v Grainiger, Tesoriero & Bell*, 81 NY2d 655 [1993]; 7 NY Jur 2d Attorneys at Law §229).

The standard is for the court to determine the amount of the contingency fee based upon the proportionate share of the work performed by the Chittur & Associates firm on the whole case taking into consideration the relative contributions of the lawyers thereto (*see Lai Ling Cheng v Modansky Leasing Co., supra; see Byrne v Leblond, supra*).

It is within the sound discretion of this court to determine the reasonable percentage of attorney fees to be apportioned between outgoing and current counsel, based upon factors such as time and labor required, difficulty of the questions involved, skill required to handle the matter, attorney's skills and experience, effectiveness of counsel in bringing the matter to resolution, and other circumstances and equities involved in the particular case (*Warren v Meyers*, 187 Misc2d 668 [2001]).

In the case herein, Krishnan S. Chittur (hereinafter "Chittur"), testified and submitted into evidence a retainer agreement dated September 4, 2012 and signed by Linda Sharp and Cie Sharp stating that the Sharps were to pay \$10,000.00 upon execution of the agreement and thereafter would be billed at the rate of \$650.00 per hour for work done by himself and \$400.00 per hour for work done by an associate. Chittur testified that the \$10,000.00 advance was never paid. The Sharps told him that they had a contract with Mr. Sinay for the purchase price of \$1,325,000.00, which closing did not take place. There was an emergency temporary restraining order (hereinafter "TRO"), which led the Sharps to contact Chittur again and on October 4, 2012, they signed an amendment to the original retainer agreement whereby the law firm would receive fifty (50%) percent over and above the \$1,325.00.00 in the contract.

Chittur drafted a memo of law, affidavit, cross claim, and a notice of deposition. There was a settlement of \$1,400,000 and Chittur was to do the closing which was to take place by September 30, 2012. On October 8, 2012, Linda Sharp sent him an email stating that "You are an absolute genius". On October 18, 2012, Tahanie A. Aboushi advised Chittur that she was the new attorney for the Sharps yet he was not formally discharged. Chittur advised all parties on October 22, 2012 of the notice of the charging lien he placed on the file and on October 25, 2012, Tahanie Aboushi emailed Chittur that the client can have as many attorneys as they wish to hire. On February 13, 2013, he was formally relieved as counsel by Justice Demarest.

Chittur testified that the approximate time he spent opposing the TRO was fifty (50) hours. He submitted his bill sent on October 18, 2012 evidencing that he spent 43.2 hours on the case at the rate of \$650.00 per hour totaling \$28,080.00 and that his associate spent 11.2 hours at the rate of \$400.00 per hour totaling \$4,480.00. Additionally, pursuant to the amended retainer dated October 4, 2012, he was entitled to fifty (50%) percent of the difference between the contract price of \$2,400,000.00 and \$1,325,000.00 totaling \$37,500.00. He testified that the sums owed for work done until October 18, 2012 total \$67,060.00. Chittur further testified that he spent approximately 40.3 hours from October 18, 2012 until the present for a total of \$38,270 and he is not seeking reimbursement for his costs and disbursements. Both those sums total \$105,330.00.


When considering the amount of time spent by an attorney on the case, the court considers the work performed, and the amount of recovery for the client (*see Lai Ling Cheng v Modansky Leasing Co.*, 73 NY2d 454 [1989]). The issue of the attorney fees to be set is fact specific and the court's role is to consider evidence of the time,

skill required, complexity of the matter, and the attorney's experience, skill, and reputation.

Based upon the totality of the evidence and equitable considerations applicable to the facts of this particular case, the court finds that the Krishnan Chittur's law firm, Chittur & Associates, P.C., is entitled to the reduced sum of **\$29,200.00** (40 hours at the rate of \$650.00 per hour (\$26,000.000) in addition to 8 hours at the rate of \$400.00 per hour (\$3,200.00)). The court further finds that Chittur is entitled to the reduced sum of **\$26,000.00** representing work done from October 18, 2012 to the date of the hearing (40 hours at \$650.00 per hour). The amended retainer states that Chittur is to receive 50% of the difference over the contract price. However, the property has not been sold and the retainer agreement states that Chittur is entitled to the contingent fees when the Sharps receive their monies which to date has not occurred. In any event, Linda Sharp and Cie Sharp own 50% of the property so that Chittur would receive not the sum of \$37,500 but half that amount in the sum of **\$18,750.00** if and when the property is sold.

Accordingly, after a hearing and upon the papers submitted, it is hereby determined that the Law Office of Chittur & Associates, P.C. have earned a fee of **\$55,200.00** to date and an additional \$18,750.00 if and when the subject property is sold.

This constitutes the decision and order of the court.



Miriam P. Sunshine
Referee

Dated: June 24, 2013