

**Cruz v Nieves**

2013 NY Slip Op 33705(U)

October 21, 2013

Supreme Court, Bronx County

Docket Number: 18834/07

Judge: Mary Ann Brigantti-Hughes

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX TRIAL TERM - PART 15

Present: Hon. Mary Ann Brigantti-Hughes

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WILLIAM CRUZ,

Plaintiff,

-against-

MIGUEL NIEVES,  
TOWNHOUSE MANAGEMENT a/k/a  
FASHION WEAR REALTY CO., INC.,  
R&D 1487 TELLER LLC, and  
AP-AMSTERDAM 1487 TELLER LLC,

Defendants.  
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**DECISION/ORDER**

Index No.: 18834/07

The following papers numbered 1 to 7 read on the below motions noticed on March 5, 2013 and duly submitted on the Part IA15 Motion calendar of **June 21, 2013**:

<u>Papers Submitted</u>	<u>Numbered</u>
Pl.'s Affirmation in Support of Motion, with Exhibits	1,2
Def.'s Affirmation in Opposition, Cross-Motion	3,4
Pl.'s Reply Affirmation, Exhibits	5,6
Def.'s Reply Affirmation	7

Upon the foregoing papers, plaintiff William Cruz ("Plaintiff") moves for an Order awarding attorneys' fees and costs in the amount of \$480,484.00, pursuant to NYC Admin. Code §8-502(f), and pursuant to the parties' Pre-Retrial Stipulation of Settlement and Order. Defendants Townhouse Management a/k/a Fashion Wear Realty Co., Inc., R&D 1487 Teller LLC and 1487 Teller LLC ("Defendants") oppose and, in the alternative, cross-move for an Order of Reference to hear and report pursuant to CPLR 4212. Plaintiff opposes the cross-motion.

I. Background

This is a matter where Plaintiff alleged certain State and City Human Rights Law violations on the part of Defendants and co-defendant Miguel Nieves ("Nieves"). On February 1,

2011, following trial, the jury returned a special verdict which found liability for discrimination and retaliation against defendant Nieves, an employee of Defendants. The jury also found that the Townhouse Defendants themselves did not encourage, condone, or approve the alleged discrimination. The jury awarded Plaintiff \$10,000 in compensatory damages and \$25,000 in punitive damages. Pursuant to stipulated facts that were part of the jury instructions, Townhouse acted as agent for the two other defendant entities, R&D 1487 Teller LLC and AP-Amsterdam 1487 Teller LLC.

Plaintiff thereafter moved to enter a judgment against all Defendants based on this special verdict pursuant to CPLR 5016(b). In the alternative, Plaintiff moved pursuant to CPLR 4404(a) to set aside that portion of the jury verdict that failed to find all corporate defendants liable for the acts of their employee, because that verdict was contrary to the weight of the evidence. By Decision and Order dated April 16, 2012, this Court set aside the jury's verdict and ordered a new trial, finding that the jury was incorrectly charged with the vicarious liability standard under the New York State Human Rights Law, rather than City Human Rights Law. The parties cross-appealed the decision. On February 5, 2013, in an attempt to expeditiously resolve the matter, the parties then entered into a "pre-retrial stipulation," wherein the Defendants agreed to pay Plaintiff \$35,000 as a "pre-retrial settlement." The parties also agreed to submit their dispute regarding reasonable attorneys' fees and costs to the Court for decision. The stipulation also provided that Plaintiff is the "prevailing party" in this action within the meaning of NYC Admin. Code §8-502(f) and N.Y. Exec. Law §297(10). The instant motion and cross-motion followed.

II. Analysis

Plaintiff argues that, as the prevailing party, they are entitled to an award of full attorneys' fees under the New York City Human Rights Law. It provides, pertinently, that

In any action commenced pursuant to this section, the court, in its discretion, may award the prevailing party costs and reasonable attorneys' fees. For the purposes of this subdivision, the term "prevailing" includes a plaintiff whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been implemented voluntarily, as a result of a settlement or as a result of a judgment in such plaintiff's favor. NYC Admin. Code §8-502(f).

Plaintiff notes that the pre re-trial stipulation and order provided that, to avoid the court-ordered new trial of this matter, the parties agreed to resolve Plaintiff's claim for damages against the Defendants, agreed, *inter alia*, to pay Plaintiff the amount of \$35,000 with no admission of liability, and pursuant to NYC Admin. Code §8-502(f), the parties agreed to submit their dispute regarding attorneys' fees and costs to the court for resolution. The parties also agreed that, for purposes of the motion for costs and fees only, and without any finding or admission of liability on the part of defendants, the plaintiff is a "prevailing party" within the meaning of §8-502(f) and N.Y. Exec. Law §297(10). Defendants argue, however, that Plaintiff is not entitled to attorneys fees because the award of \$35,000 was rendered against defendant Nieves, only, and no liability was found on the part of these Defendants. The parties' stipulation of settlement agreed to pay Plaintiff this sum, but also expressly did not constitute an admission of liability on the part of these Defendants. Defendants therefore contend, in effect, that there was never an award of damages against them, and thus recovery of attorneys fees against Defendants is appropriate only if Plaintiff's judgment served a significant public purpose (citing *McGrath v. Toys "R" Us, Inc.*, 409 F.3d 513 [2<sup>nd</sup> Cir. 2005], which it did not. Defendants also argue that the attorneys fee demand is unreasonable, excessive, and must be denied as it is unconscionable under these circumstances.

This Court finds that Plaintiff was indeed a "prevailing party," as stipulated by the parties, that Plaintiff's recovery in this case was not "nominal," and that Plaintiff's recovery did not need to serve a "public purpose" to warrant recovery of fees (*see Fortunado v. Nisi*, 84 A.D.3d 617 [1<sup>st</sup> Dept. 2011]). Although the now-vacated jury verdict was only rendered against defendant Nieves, the Townhouse defendants eventually agreed to settle the matter by paying the amount of the judgment and to submit the attorney-fee dispute for this court's resolution. A party who prevails through a settlement, rather than through litigation, is still entitled to seek recovery of its attorneys fees (*see Baird v. Boiles, Schiller & Flexner LLP.*, 219 F.Supp. 2d 510 [S.D.N.Y. 2002]). Indeed, the Senate Report of 42 U.S.C. §1988 expressly stated that, for purposes of the award of counsel fees, parties may be considered "prevailing" when their rights are vindicated through a consent judgment without obtaining formal relief." (*Maher v. Gagne*, 448 U.S. 122 [1980]). Considering the broader protections afforded by City and State Human Rights Law, it logically follows that this

federal precedent applies to the instant matter (*see Williams v. New York City Hous. Auth.*, 61 A.D.3d 62 [1<sup>st</sup> Dept. 2009], *lv. den.*, 13 N.Y.3d 702 [2009]). So long as the settlement is not “nominal” or “de minimus,” the plaintiff is entitled to an attorneys’ fee award (*McGrath v. Toys “R” Us, Inc.*, 409 F.3d 513 [2<sup>nd</sup> Cir. 2005]). This court’s research has not revealed any caselaw finding a total award of, or near, \$35,000 to be “nominal” in similar circumstances. Accordingly, Plaintiff is not required to demonstrate that his victory has served a public purpose to recovery attorneys fees (*Fortunado v. Nisi, supra.*).

This Court will, however, grant the alternative relief sought in Defendant’s cross-motion, and will direct this matter to a Referee to ascertain the reasonableness of the attorneys fees sought, and to compute and report the total amount due to Plaintiff (CPLR 4212 and 4311).

III. Conclusion

Accordingly, it is hereby

ORDERED that Plaintiff’s motion for attorneys’ fees and costs, and Defendants’ cross-motion for an order of reference, are resolved to the extent that this matter is referred to a Referee to (1) ascertain the reasonableness of the attorneys’ fees sought, and (2) calculate and report with recommendations the total amount of attorneys fees and costs due Plaintiff, and it is further,

ORDERED, that the movant shall serve a copy of this Order with Notice of Entry on Defendants, and on the Clerk of the Judicial Support Office (Room 217) to arrange a date for the reference to a Special Referee, and it is further,

ORDERED that all other relief sought is denied.

This constitutes the Decision and Order of this Court.

Dated: 10/21, 2013

  
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Hon. Mary Ann Brigantti-Hughes, J.S.C.