

Dominguez v Chase Group Alliance LLC

2014 NY Slip Op 30799(U)

March 25, 2014

Sup Ct, New York County

Docket Number: 116709/06

Judge: Joan A. Madden

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. JOAN A. MADDEN
J.S.C.

PRESENT: _____
Justice

PART 11

Index Number : 116709/2006
DOMINGUEZ, SOLEDAD
vs
ZINNAR, ILAN
Sequence Number : 021
CONFIRM/REJECT REFEREE REPORT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is *consolidated for*
determination with motion sequence no 022
And the consolidated motions are determined
in accordance with the annexed decision
and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S): _____

FILED
APR 01 2014
NEW YORK
COUNTY CLERKS OFFICE

Dated: March 25, 2014


_____, J.S.C.

HON. JOAN A. MADDEN

- 1. CHECK ONE: CASE DISPOSED NON-ENCL. DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
SOLEDAD DOMINGUEZ, et al,

INDEX NO. 116709/06

Plaintiffs,

-against-

CHASE GROUP ALLIANCE LLC, VINTAGE
VENTURES LLC and ESQUIRE GROUP ESTATES LLC,

Defendants.

-----X
JOAN A. MADDEN, J.:

FILED

APR 01 2014

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiffs' counsel Grimble & LoGuidice, LLC (hereinafter "G&L") moves for an order confirming the Report of Referee Louis Crespo, and directing the law firm of Kucker & Bruh LLP to release funds held in escrow (motion sequence no. 021). Plaintiff Elsia Vasquez opposes the motion, and cross-moves to modify the Referee's Report. Relying on the record developed at the hearing before the Referee, Vasquez also cross-moves for leave to renew this court's January 12, 2012 decision and order, which granted G&L's prior motion for an attorney's charging lien and referred the issue as to the amount of such lien to a Special Referee to hear and report. G&L separately moves by order to show cause to "supplement their submissions on the pending motions" (motion sequence no. 022). Although Vasquez originally objected to that motion, at oral argument both parties waived any issue as to the court's consideration of the post-hearing submissions. The motions and cross-motion are consolidated for determination.

It is well settled that a Referee's report "should be confirmed whenever the findings are substantially supported by the report, and the Referee has clearly defined the issues and resolved matters of credibility." Thomas v. Thomas, 21 AD3d 949 (2nd Dept 2005), app den 6 NY3d 704

(2006); accord Bubul v. Port Parties, Ltd, 83 AD3d 517 (1st Dept 2011); Steingart v. Hoffman, 80 AD3d 444 (1st Dept 2011); Baker v. Kohler, 28 AD3d 375 (1st Dept), lv app den 7 NY3d 885 (2006); Namer v. 152-54-56 West 15th Street Realty Corp, 108 AD2d 705 (1st Dept 1985).

“Generally, New York courts will look with favor upon a Referee’s report inasmuch as the Referee, as trier of fact, is considered to be in the best position to determine the issues presented.” European American Bank & Trust Co v. H. Frenkel, Ltd, 163 AD2d 154, 155 (1st Dept 1990) (quoting Holy Spirit Ass’n for Unification of World Christianity v. Tax Commission of the City of New York, 81 AD2d 64 [1st Dept 1981], reversed on other grounds, 55 NY2d 512 [1982]); accord Namer v. 152-54-56 West 15th Street Realty Corp, *supra*.

This Court’s January 12, 2012 decision and order, found that G&L was entitled to: 1) a statutory charging lien pursuant to Judiciary Law § 475 “on the proceeds of plaintiff Vasquez’s settlement”; and 2) a one-third contingency fee “with respect to Ms. Vasquez’s settlement, which purportedly includes a buyout payment and a forgiveness or waiver of rent arrears.” The court referred the issue as to the amount of such lien and the amount of Vasquez’s settlement, to a Special Referee, with the direction that the Referee “hear and report as to the amount of the one-third contingency fee to which Grimble & LoGuidice is entitled in connection with Elsia Vasquez’s settlement including a buyout payment and forgiveness or waiver of rent arrears, and in determining the amount of the settlement covered by the contingency fee agreement, the Special Referee shall determine, *inter alia*, the portion of the settlement, if any, attributable to the apartment leased to P.A.L.A.N.T.E. Harlem.”

In accordance with the court’s directions, Referee Crespo conducted a hearing on March 8, April 26 and April 27, 2012. Plaintiff Vasquez testified on her own behalf and called as

witnesses, Richard Levy, C.P.A., who testified that he provided accounting services for Vasquez's non-profit organization, P.A.L.A.N.T.E. Harlem (hereinafter "Palante"), and Robert Rosenberg, a principal of one of the defendants. Robin LoGuidice, a partner of G&L, testified on behalf of G&L. Both sides produced documents that were admitted into evidence. Following submission of post-hearing memoranda, Referee Crespo issued a 21-page Report & Recommendation dated December 28, 2012.

The Referee's Report carefully considers and analyzes the testimony of each witness, as well as the documentary evidence. In weighing the character, demeanor and interest of the witnesses, the Referee finds that "[i]t is beyond cavil that LoGuidice and Vasquez have an interest in the outcome of this case." He finds that Rosenberg, a principal of defendant landlord, is the "most disinterested party at this hearing," and while he states that "I see no bias or interest as to Levy," he finds Levy's "testimony is not material to the issues."

The Referee concludes, *inter alia*, that "[i]t is unequivocal that the proof reveals payments of \$25,000 and \$70,000 to Vasquez in her individual capacity and as president of Palante," and that "the very language of the surrender agreements provide that the payments are in settlement of the pending Civil Court actions and the instant action." The Referee also concludes that "[i]t is also unequivocal that the rental arrears were waived under the same agreements and for the same reasons – to settle all actions between Vasquez and the defendants," and that the "proof reveals that the rental arrears for Apartment B21 was \$15,345.38 and for Apartment A was \$8,563.66."

At the outset, the Referee notes that Palante is not named in the caption of this action or the Civil Court action, neither Palante's lease nor Apartment A is mentioned in G&L's

[5]

documents or exhibits, and the stipulations negotiated by G&L do not refer to Apartment A. The Referee, however, goes on to find that “[n]evertheless, Rosenberg, the most disinterested party at this hearing, testified that defendants viewed [G&L] as doing a ‘phenomenal job as the tenants’ attorney’ in both actions.” The Referee states that “Rosenberg testified to the stipulations in both actions, particularly the stipulation that allowed for tenants to ‘opt out’ or ‘opt in’ on settlements.” The Referee also states that Rosenberg testified that “defendants viewed Vasquez and Palante as ‘one,’ that is, they viewed Palante as an extension of Vasquez,” and for that reason “it was necessary to include language in one of the surrender agreements with respect to Vasquez, individually and as president as Palante.” The Referee finds that “[i]n short, the defendants (Rosenberg) viewed Apartment A as relating to both the Civil Court action and the instant action because Vasquez was related to both actions.”

The Referee further finds that “Rosenberg was also credible when he testified defendants settled with Vasquez as to Apartment B21 and Apartment A because defendants wanted ‘peace and harmony.’” The Referee concludes that Rosenberg’s “testimony supports the testimony by LoGuidice as to Vasquez’s influence in the litigation,” and LoGuidice’s testimony “supports the inference that Vasquez had influence over the other tenants in both actions to the extent of having several dissent and opt out of the settlement agreements negotiated by [G& L], which worked in favor of her obtaining a separate settlement with defendants as to the payouts and rent arrears waivers as to Apartment B21 and Apartment A.” The Referee states that “[i]t is reasonable for the fact finder to infer that Vasquez’s settlement technique as to the execution of the surrender agreements was to achieve, in the words of Rosenberg, ‘peace and harmony,’ and that “[i]t was only after Vasquez executed the surrender agreements that she and the other

dissenting tenants signed the stipulation of settlement negotiated by [G& L] in both the Civil Court action and this action four (4) days later. ”

The Referee notes that “although LoGuidice corresponded with Vasquez on May 10, 2011, informing her that the law firm was attempting to schedule a meeting with tenants of the subject premises to discuss their option to ‘opt in’ or ‘opt out’ of the settlement agreement, and therein unequivocally stated that [G& L] would not ‘meet with parties [it did] not represent, such as Palante or another tenants’ association or Mr. Collins. . . ’ does not mean that the services the law firm provided in the Civil Court action and the instant action did not benefit Vasquez in her individual capacity as well as in her capacity as president of Palante.”

The Referee concludes that the “credible testimony by Rosenberg, supported by the testimony of LoGuidice and as further demonstrated by the credible documentary proof as well as the unequivocal terms of the subject surrender agreements, coupled with the parallel settlement negotiations by [Grimble & LoGuidice] in both actions, demonstrate that the payments of \$25,000 and \$70,000 and the rent arrear waivers for Apartment B21 and Apartment A were the result of the litigation brought by [G& L], and the benefit that flowed from such litigation favored Vasquez.” The Referee notes that it is “undisputed that after approximately five years of litigation (2006 - 2011) [G& L] legal fees under *quantum meruit* [i.e. \$496,000] exceed the contingency fees paid under the ‘engagement letter’ with respect to the above payments and arrears waivers.” The Referee finds that “[i]n view of the above conclusions, I do not credit Vasquez’s testimony or proof to the contrary.”

Based on his findings and conclusions, Referee Crespo “reports that payments of \$25,000 and \$70,00- paid to Vasquez in both her ‘individual capacity’ (emphasis added) and as president

of Palante and the rent arrears waivers of \$15,345.38 and \$8,563.66 as to Apartment B21 and Apartment A constitute the amount subject to the 'one-third contingency fee to which Grimble & LoGuidice LLC is entitled in connection with plaintiff Elsia Vasquez's settlement including a buyout payment and forgiveness or waiver of rent arrears.'" The Referee further reports that "in determining the amount of the settlement covered by the contingency fee agreement,' the 'portion of the settlement, if any, attributable to the apartment leased to P.L.A.N.T.E Harlem," is the \$70,000 payment and the \$8,563.66 in rent arrears waiver." The Referee lastly reports that "under 'the contingency fee agreement' the contingency fee to be allocated to [G&L] is 1/3 of such sums (\$25,000 + \$70,000 + \$15,345.38 + \$8,563.66)," i.e. \$39,636.35.

Based on the foregoing, the Court concludes that Referee Crespo clearly defined the issues and resolved matters of credibility, and his findings and recommendation are substantially supported by the record. See Bubul v. Port Parties, Ltd, supra; Steingart v. Hoffman, supra; Baker v. Kohler, supra; Thomas v. Thomas, supra; Namer v. 152-54-56 West 15th Street Realty Corp, supra.

As a result, the motion by G&L to confirm the Referee's Report is granted, and the branch of Vasquez's cross-motion to modify the Referee's Report is denied.

Upon full review of the evidence, the court declines the branch of Vasquez's cross-motion seeking renewal and reconsideration of this Court's January 12, 2012 decision and order. Contrary to Vasquez's assertion, the evidence presented at the hearing does not in any way alter the Court's prior conclusions.

The separate motion by G& L for supplemental submissions on the instant motion, is denied as moot, as the Court need not rely, and therefore has not relied, on those supplemental

submissions in confirming the Referee's conclusions.

Accordingly, it is

ORDERED that the motion by Grimble & LoGuidice LLP to confirm the Referee's Report is granted (motion seq. no. 021) and the Report of Referee Louis Crespo is hereby confirmed; and it is further

ORDERED that the cross-motion by Elsia Vasquez is denied in its entirety; and it is further


ORDERED that the motion by Grimble & LoGuidice LLP to supplement the record is denied as moot (motion seq. no. 022); and it is further

ORDERED that a charging lien in favor of Grimble & LoGuidice LLP, pursuant to Judiciary Law §475, is fixed in the amount of \$39,636.35; and it is further

ORDERED that within ten (10) days of service of a copy of this order this notice of entry, Kucker & Bruh LLP shall release to Grimble & LoGuidice LLP the sum of \$39,636.35 from its escrow account.

DATED: March 25, 2014

FILED ENTER:
APR 01 2014
NEW YORK
COUNTY CLERK'S OFFICE


J.S.C.