

Young Su Hwangbo v Nastro
2014 NY Slip Op 33913(U)
August 7, 2014
Supreme Court, Queens County
Docket Number: 27264/10
Judge: Kevin J. Kerrigan
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FILED

AUG 22 2014

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Short Form Order

COUNTY CLERK QUEENS COUNTY QUEENS COUNTY

AUG 22 2014

Present: HONORABLE KEVIN J. KERRIGAN Justice

Part 10

COUNTY CLERK QUEENS COUNTY

-----X
Young Su Hwangbo, Jung Mi Gimm and Erin Gimm,

Index
Number: 27264/10

Plaintiffs,

- against -

Motion
Date: 7/30/14

Daniel Nastro, the City of New York and F.D.N.Y.,

Motion
Cal. Number: 73

Defendants.
-----X

Motion Seq. No.: 5

The following papers numbered 1 to 9 read on this motion by Sim & Park, LLP, for renewal.

Papers
Numbered

Notice of Motion-Affirmation-Exhibits.....	1-4
Affirmation in Opposition-Exhibit.....	5-7
Reply.....	8-9

Upon the foregoing papers it is ordered that the motion is decided as follows:

Motion by Sim & Park, LLP, prior attorneys for plaintiffs, to renew their motion for a charging lien and allocation of attorneys fees between them and plaintiffs' new counsel, Charles C. Khym & Company, fixing the percentage of the overall attorneys fees to be paid to them by Charles C. Khym & Company, which motion was denied without prejudice to moving again for said relief upon submission of a copy of the retainer agreement between movant and plaintiffs, pursuant to the order of this Court issued on January 6, 2014, is deemed to be a new motion for the original relief requested rather than a motion to renew.

Plaintiffs' counsel represents that the retainer agreement entered into between them and plaintiffs has been lost and cannot be located despite diligent effort, and for that reason, cannot be annexed to their moving papers as directed by this Court. Counsel also annexes a copy of his firm's retainer statement bearing proof that it was filed with the Office of Court Administration. The

retainer statement indicating that compensation pursuant to the retainer agreement was a straight 33 1/3 percent. This evidence, in conjunction with the stipulation between Sim & Park and Charles C. Khym upon substitution of the latter as plaintiffs' counsel wherein they agreed that they would set the lien for attorneys fees at the conclusion of the case, which this Court finds to be an implicit acknowledgment that Sim & Park's legal fees were to be allocated on a contingent fee basis and not a quantum meruit basis, satisfies this Court that Sim & Park have elected to receive compensation on a contingent fee basis at the customary 33 1/3 %. In light of the foregoing, in conjunction with this Court's observation that it is completely unprecedented in this Court's experience that the compensation arrangement between a plaintiff in a personal injury action and counsel retained to represent plaintiff would be on anything other than a contingent fee basis, this Court hereby finds that Sim & Park are entitled to compensation on a contingent fee basis at the rate of 33 1/3% of the proportionate share of their work in representing plaintiffs. The Court also notes that Charles C. Khym have submitted copies of their retainer agreement with plaintiffs demonstrating that they are entitled to compensation on a contingent fee basis at the rate of 33 1/3%.

As stated in this Court's order issued on August 12, 2013, however, the Court must determine the amount of the contingent fee based upon the proportionate share of the work performed on the whole case by Sim & Park. Moreover, in its order issued on April 1, 2013, this Court provided guidance to respective counsel as to how it would make said determination. This Court indicated that a hearing would not be conducted to determine the amount of the lien, but that Sim & Park must submit proof of the work expended by them in this case and Charles C. Khym must provide proof of the work expended by them, after their substitution, in the settlement of this case, and that the Court would fix the the charging lien based upon such submitted proof. Charles C. Khym have not submitted any proof of their relative efforts in procuring the settlement of this case.


Accordingly, motion by Sim & Park, LLP, for a charging lien and allocation of attorneys fees between them and Charles C. Khym & Company, fixing the percentage of the overall attorneys fees to be paid to them by Charles C. Khym & Company, is granted to the extent that this Court shall fix the proportionate share of attorneys fees to which Sim & Park shall be entitled upon submission by respective counsel of their respective work performed. Said proof shall be submitted to chambers no later than September 4, 2014, at which time this Court, based upon the proof submitted, will determine the proportionate share of the attorneys fees to which Sim & Park shall be entitled. Respective counsel

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shall then calculate and stipulate between themselves the actual sum of Sim & Park's legal fees to be paid to them out of the net amount of the settlement based upon their proportionate share determined by the Court.

Dated: August 7, 2014

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