

**Genger v Genger**

2015 NY Slip Op 30603(U)

March 18, 2015

Supreme Court, New York County

Docket Number: 109749/09

Judge: Barbara Jaffe

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 12

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ORLY GENGER, in her individual capacity and on behalf  
of the Orly Genger 1993 Trust (both in its individual  
capacity and on behalf of D & K Limited Partnership),

Index No. 109749/09  
Motion seq. no. 042

Plaintiff,

**DECISION AND  
JUDGMENT**

-against-

DALIA GENGER, SAGI GENGER, LEAH FANG,  
D & K GP LLC, and TPR INVESTMENT ASSOCIATES,  
INC.,

Defendants.

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BARBARA JAFFE, JSC:

By decision and order dated June 9, 2014, I granted plaintiff's request for fees and costs incurred in connection with motion sequence 30. In that decision, I resolved several issues raised by defendants, and found that given the appellate affirmance of my holdings that TPR and D&K GP were properly ordered to pay plaintiff's fees and costs, and that the releases under the settlement agreements were voidable at plaintiff's option, "the fees and costs related to the appeal are properly awarded to plaintiff, to the extent that they are reasonable." I also held that the original amount of \$139,541.38 should be reduced by the matters attributable to plaintiff's motion for a pre-judgment order of attachment which I had denied, plaintiff's motion for sanctions against Sagi, Dalia, and Fang, and plaintiff's opposition to Fang's motion for summary judgment; and "other unrelated matters" filed under NYSCEF 464-466.

Given the parties' litigiousness and inability to settle their voluminous motions, I

appointed a Special Referee to hear and report to recommend the reasonable fees and costs to be awarded to plaintiff.

On October 8, 2014, the referee held a telephone conference with the parties during which he discussed his recommendation as follows:

- (1) The referee stated that in my order, “the sanction that [I] imposed is the attorney’s fees that were incurred in connection with the motion, that resulted in the order finding contempt . . .”
- (2) He also observed that plaintiff’s attorneys requested additional fees, “which, in [his] judgment, are not covered” by my order, and he therefore limited his recommendation to the fees that he believed fell within the terms of my order, by eliminating “fees relating to an appeal and fees relating to the contempt or the alleged contempt of the defendants who the Appellate Division determined were not guilty of contempt”;
- (3) The referee found that the hourly rates requested by plaintiff’s attorneys were not exorbitant and thus did not reduce them; and
- (4) The referee found that there was “substantial” block billing, which he reduced by 20 percent.

The referee thus recommended an award of \$104,735, and indicated that he did not include any costs that had been redacted from the billing statements. (NYSCEF 719).

By motion, plaintiff seeks an order confirming in part and rejecting in part the referee’s report and recommendation. By cross-motion, defendants TPR Investment Associates, Inc. and D&K GP LLC (collectively, defendants) move for an order rejecting the report.

Plaintiff argues that the referee erred in excluding the legal fees she incurred related to the appeal of my sanctions order, as I granted her the right to recover such fees in my June 2014 order. She submits proof that the fees incurred for the appeal totaled \$80,240.34 and, applying the referee’s 20 percent reduction for the block billing, requests that I grant her \$64,192.27 in

fees. Plaintiff therefore requests that I confirm the referee's report to the extent of directing entry of judgment in her favor in the amount of \$168,927.27. (NYSCEF 718).

Defendants object to the award of appellate costs, arguing that the referee properly determined that the reasonable fee to be awarded did not include such costs, and observe that I found that the costs may, rather than must, be awarded. They also argue that an award of appellate costs is unwarranted as the Appellate Division did not award costs on the appeal. They otherwise agree with the referee's recommendation. However, they also maintain that no fee award is reasonable given events post-dating my order, specifically, that the lawsuit "has now been revealed to be brought on by false pretenses." (NYSCEF 776).

As I specifically directed that fees and costs related to the appeal may be awarded to the extent that they are reasonable, the referee erred in excluding them on the ground that they were not covered in my order. And, as both parties agree with the referee's reduction of the billing by 20 percent, plaintiff has established her entitlement to the additional \$64,192.27. Defendants' current argument that no fees should be awarded based on plaintiff's alleged fraud on the court is fatally conclusory and has no bearing on her entitlement to costs here. Moreover, their argument regarding the Appellate Division's decision not to award appeal costs is untimely.

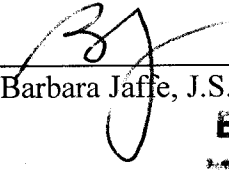
Accordingly, it is hereby

ADJUDGED and ORDERED, that plaintiff's motion is granted and the referee's report of October 8, 2014 is confirmed to the extent of directing judgment in favor of plaintiff and against defendants TPR Investment Associates, Inc. and D&K GP LLC, jointly and severally, in the sum of \$168,927.27, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED, that defendants TPR Investment Associates, Inc.'s and D&K GP LLC's

cross motion is denied.

ENTER:

  
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Barbara Jaffe, J.S.C.

**BARBARA JA**  
J.S.C.

Dated: March 18, 2015  
New York, New York