

Jfurti, LLC v Verschleiser

2017 NY Slip Op 32357(U)

November 3, 2017

Supreme Court, New York County

Docket Number: 650803/2014

Judge: Eileen Bransten

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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: IAS PART THREE

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 JFURTI, LLC, SUMMER INVESTORS, LLC,
 WINTER 866 UN LLC, JACOB FRYDMAN
 Plaintiff,

Index No. 650803/2014
 Motion Seq. No. 011

-against-

ELI VERSCHLEISER, EVURTI, LLC,
 EVE, LLC, EVUNP HOLDINGS LLC
 Defendants.

DECISION AND ORDER

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HON. EILEEN BRANSTEN:

The parties having come before the court on a motion for sanctions, and this court having determined that sanctioning the Defendant, Eli Verschleiser, for his conduct during depositions is proper in the May 10, 2017 record (Angela Bonello, SCR), this court now addresses the issue of whether the amount of sanctions sought from the Defendant, a total of \$48,367.22, in relation to the preparation of a discovery motion, is proper. This court found that the cost for the court reporter, \$1,882.50, and videographer, \$1,277.22, were proper but requested further proof documenting the appropriateness of Plaintiff's \$45,207.50 bill for attorney's fees. The court now addresses the issue of Plaintiff's attorney's fees.

I. BACKGROUND:

A. General Background

In 2011, Plaintiffs and Defendants started various real estate companies. By December of 2013, the relationship between the parties soured when Defendant Verschleiser's employment

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was terminated. Plaintiffs entered into a purchase and sale agreement of membership interests with the Defendants and revoked Defendant Verschleiser's termination provided that Verschleiser agreed to resign his position. This agreement further contained a non-disparagement clause, a non-solicitation clause, and a technology clause. The Defendants are alleged to have violated all three.

Plaintiffs filed a four-count complaint against the Defendants seeking a declaratory judgment (counts 1 – 3) and injunctive relief (count 4).

On November 28th, 2016, this court granted in part, Plaintiff's motion to compel discovery and sought sanctions, resulting from Defendant Verschleiser's conduct during his deposition, motion sequence 11. The sanctions include attorney's fees and costs for filing the motion, the court reporter, and videographer. On May 10, 2017, this court heard argument pertaining to the amount of the award, specifically, Plaintiff's submission of a \$45,207.50 bill.

On May 10, the court determined it needed to assess why nearly 100 hours were spent drafting a discovery motion and the hourly rate of the attorneys. *See Tr. 9:18 – 10:4, Angela Bonelo, SCR (May 10, 2017)*. This court requested Plaintiffs submit specific proofs which would justify the \$45,207.50 bill including: biographies for the partner and associate and a statement as to whether the submitted bill included entries for a similar motion filed in federal court. *See Id at 10:9-18*.

B. Plaintiffs Justification for \$45,207.50 in Fees

Plaintiffs' attorneys justify their fee of \$45,207.50 by comparing the present request for fees with a 2014 fee awarded to the Defendants.

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1. *2014 Fee Award to the Defendants*¹

Defendants, Eli Verschleiser et al., were awarded fees in the amount of \$28,033.99 for work performed on four motions.² *Jakoby Affirm. at Ex. A (Tr. 2:8-10) (May 16, 2017)*. A motion to strike those motions was brought by the Defendants, and the Plaintiff cross-moved to amend a 65-page long affidavit in its response. *See Id (Tr. 2:13-16)*.

On the first motion, Plaintiff supplied 45-page memoranda of law, and a 65-page affidavit with exhibits A-V. *See Id (Tr. 4:9-19)*. The court then spoke with the parties stating that commercial division rules call for memoranda and supporting affidavits of no more than 25 pages in length. *See Id (Tr. 4:20-25)*. This court granted the Plaintiff leave to amend and refile the motion once the deficiencies were cured.

Plaintiffs' second submission of this motion complied with the court rules on page length for a memorandum, *but* it was written in 11-point type with one-quarter inch (.25 inch) margins, which, when converted to proper 12-point font with 1 inch margins, amounted to a brief of 38 pages in length. *See Id (Tr. 5:3-8) (emphasis added)*.

The third version of the motion did comply with the memorandum page length requirement but insisted upon using the 65-page affidavit with Exhibits A – V. *Id (Tr. 5:22 – 6:5)*. Once the Defendants' moved to strike these motions, the Plaintiffs cross-moved to amend the 65-page Affidavit they had previously insisted upon using. *See Id (Tr. 2:13-16)*. As a result,

¹ The 2014 motion occurred in a related matter which has since been consolidated with this action. The related matter was under index number 650841/2014

² This sanction award was appealed to the First Department and was remanded for further proofs pursuant to the October 19, 2017 decision and order.

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the court awarded the Defendants fees for work performed on the *four* motions. *See Id (Tr. 7:3-7) (emphasis added)*.

The motion papers on the fourth motion, the motion to strike, included a twelve-page moving brief, a two-page affirmation with six exhibits, and a ten-page reply brief. *See Jakoby Affirm. ¶23 (May 16, 2017)*.

2. Present Application for Fees

In the present motion, the Plaintiffs sought an order sanctioning the Defendant in the amount of \$48,367.22 for his conduct in obstructing the discovery process. *See id at ¶2*. Specifically, Defendant Eli Verschleiser engaged in obstructive and abusive behavior during seven hours allotted for depositions, which included name calling and refusal to answer questions. *See Tr. 7:11-16, Angela Bonello SCR (May 10, 2017)*. This prompted the Plaintiff to file a motion to compel the Defendant to return for another day of deposition testimony.³ *See id at 7:5-11*. In addition, this discovery motion also sought to sanction the Defendant in the amount of attorneys' fees and costs related to the deposition. *See id*.

Plaintiffs' counsel, Arthur Jakoby, Elena McDermott, and D. Felmet⁴ logged a combined 97.6 hours of work on the underlying motion to compel Defendant Verschleiser to attend a second deposition. *Id at ¶¶ 4, 24*. Information for each of these individuals is outlined as follows:

³ This court granted an additional three hours of deposition testimony at the November 28, 2016 hearing. *See Tr. 10:7-11, Margaret Baumann OCR (November 28, 2016)*.

⁴ Pursuant to Mr. Jakoby's affirmation, "D. Felmet" is a paralegal employed at Herrick Feinstein LLP. No other information clarifying who D. Felmet is was supplied by the Plaintiff.

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Arthur Glenn Jakoby, a partner at Herrick Feinstein, is a 1984 graduate of Yeshiva University Cardozo School of law; he has no record of public discipline. *Jakoby Affirm. at Ex. G (May 16, 2017)*. Mr. Jakoby was a former SEC prosecutor, as well as a special Assistant U.S. Attorney in the Financial Crimes Unit for the District of New Jersey. *Jakoby Affirm. at Ex. H (May 16, 2017)*. Currently, his practice areas include: White Collar Defense and Investigations, Securities, Futures and Derivatives Litigation, Business Litigation, Title Insurance, Insurance and Reinsurance, General Litigation, Real Estate, and Israel⁵. *Jakoby Affirm Ex. H (May 16, 2017)*. For his time, Mr. Jakoby charges an hourly rate of \$750. *Jakoby Affirm at ¶4 (May 16, 2017)*. Mr. Jakoby states that he spent 18.6 hours working on the motion to compel. *Id.*

According to the Herrick Feinstein website, Elena T. McDermott is an Associate who was admitted to the New Jersey Bar in 2010 and to the New York Bar in 2012. *Jakoby Affirm at Ex. I (May 16, 2017)*. Before joining the firm, Ms. McDermott was an associate at Winston and Strawn and clerked for the Hon. Helen E. Hoens of the New Jersey Supreme Court. *Jakoby Affirm at Ex. I (May 16, 2017)*. Ms. McDermott's practice areas include: Business and Employment litigation as well as Real Estate Litigation and Dispute Resolution. *Id.* For her time, Ms. McDermott charges an hourly rate of \$350. *Id at ¶4*. Ms. McDermott logged 76.5 hours on this motion to compel. *Jakoby Affirm. ¶4 (May 16, 2017)*.

Additionally, a person by the name of "D. Felmet", a paralegal, is charged at an hourly rate of \$305 per hour and did 2.5 hours of work on this motion. *See id.*

⁵ The Herrick Feinstein website defines Israel on a separate page which states the "Israel" practice assists Israeli entrepreneurs seeking to do business in the U.S. It is an amalgam of different corporate and litigation practice areas.

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Plaintiffs stated that this motion to compel the Defendant to attend a second deposition required a review of a 474-page deposition transcript and the preparation of the moving papers which included a 22-page affidavit, 10-page Affirmation of Arthur Jakoby with 17 exhibits, and a 19-page memorandum of law. *Jakoby Affirm at ¶¶20-21 (May 16, 2017)*. Plaintiffs' reply Memorandum was 15 pages in length. *Id at ¶22*.

3. *Alleged "Double Dipping" of Fees*

This court will accept as part of the Plaintiffs' affidavit that the hours recorded are not the result of "double dipping" for attorney's fees awarded on a similar motion in the Federal court. *See Jakoby Affirm. at ¶¶28-20 (May 16, 2017); see also Jakoby Affirm. at Ex. J (May 16, 2017)*.

4. *Attorneys' Fees for the December 9th Deposition*

Plaintiff's motion for sanctions requesting attorney's fees and costs is to include the additional three hours of deposition time awarded pursuant to this Court's November 28, 2016 Order. *Jakoby Affirm. ¶4 (March 10, 2017)*.

II. ANALYSIS:

It is within the court's discretion to determine the reasonableness of an attorney's stated fee. *See Fairley v. Fairley*, 136 A.D.3d 432, 433 (1st Dep't 2016). Among the factors the court should consider when determining the reasonableness of fees are: "time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability and reputation; the amount involved and benefit resulting to the

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client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved.” *See In the Matter of Freeman*, 34 N.Y.2d 1, 9 (1974). In addressing these factors, this Court finds that the Plaintiffs have adequately justified the hourly rates for the partner and associate, yet there remains a vast, unexplained, disparity between the time and labor exerted with the nature of the services and relative difficulty, or lack thereof, of the underlying motion. *See id.* This court, however, accepts the statements made in the Jakoby Affirmation as well as the supporting timecard that there has been no “double dipping” of fees pertaining to this motion. *Jakoby Affirm.* ¶¶28-30; *see also Jakoby Affirm. Ex. J.*

Plaintiffs affirmation spends a significant number of pages, eight out of ten, comparing the amount of work done on this motion for sanctions with the alleged amount of work Defendants performed on the 2014 motion to strike. *See Jakoby Affirm.* ¶¶ 1-27. This court, however, declines to compare the present application for a fee award with the previous award.

Plaintiffs are unable to sufficiently demonstrate reasoning for the alleged amount of time needed to draft motion sequence 10, the motion to compel. *See Jakoby Affirm. Ex E.* (March 20, 2017). Plaintiffs have failed to give this Court an adequate breakdown of time worked on the motion, including any relevant call logs for conferences, time spent on legal research, and an express breakdown of time spent logged drafting of the document. They have also not stated that this particular discovery motion was unusually difficult or complex which required any particularly special skills to justify the nearly 100 hours of billing time. *See Freeman*, 34 N.Y.2d at 9; *see also Fairley*, 136 A.D.3d at 433. As the Court stated on the May 10, 2017 record, the underlying discovery related motion would justify twenty to twenty-five hours’ worth of work, at

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most. *See Tr. 9:18–23, Angela Bonelo, SCR (May 10, 2017)* (stating “if you stretched most mightily, you might make 25”). Plaintiffs have failed to provide any arguments or proofs that persuade this court to grant sanctions for more than the twenty hours work.

III. ORDER:

For the reasons set forth above, and in the May 10, 2017 record, it is hereby

ORDERED Defendant, Eli Verschleiser, is sanctioned for his conduct during depositions; and it is further

ORDERED Defendant pay a total of \$10,653.37 to the Plaintiffs. This calculation has been reached by this court’s opinion that the underlying motion to compel for which sanctions were deemed appropriate required 20 hours of work. Plaintiff is awarded 3 hours for the December 8, 2016 Deposition. The 23 hours shall be billed at a rate of \$463.19, the fee average between A. Jakoby, E. McDermott, and D. Felmet.

Dated: November 3, 2017

Signed: Eileen Bransten

HON. EILEEN BRANSTEN
J.S.C.