

Board of Directors of Windsor Owners Corp. v Platt
2018 NY Slip Op 30227(U)
February 2, 2018
Supreme Court, New York County
Docket Number: 155985/14
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

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BOARD OF DIRECTORS OF WINDSOR OWNERS CORP.,

Index No. 155985/14

Plaintiff,

-against-

ELAINE PLATT,

Defendant.

-----X

JENNIFER G. SCHECTER, J.:

In a May 13, 2016 decision and order (NYCEF DOC NO 612), defendant Elaine Platt was held in contempt and fined \$250 pursuant to Judiciary Law § 773.¹ The court awarded the Board of Directors of Windsor Owners Corp. (Board or Windsor) attorneys' fees and costs "incurred . . . in moving for contempt" that were to be determined after consideration of the parties' submissions (Affirmation in Support [Supp], Ex A at 7; NYCEF DOC NO 612).² The court awarded Windsor attorneys' fees simply to reimburse it for the reasonable amount that it spent because Ms. Platt violated the court's judgment.

Plaintiff seeks \$143,472.25 in attorneys' fees and costs. A judgment is awarded in the amount of \$32,374.13, which is inclusive of the \$250 fine.

¹ The contempt finding was affirmed on March 30, 2017 (148 AD3d 645 [1st Dept 2017]).

² The parties agreed to have the amount of fees determined on papers without a hearing (Supp at N 1; NYCEF DOC NO 831).

Parties' Contentions

In support of the Board's fees application, plaintiff's counsel explains that Ms. Platt sought to vacate the denial of her motion to renew or to vacate the injunction "as a way of challenging the contempt order [which appeal was dismissed] and the second [appeal, sought] to appeal the contempt Order, which was affirmed" (Supp at ¶ 5). Plaintiff urges entitlement to attorneys' fees, costs and disbursements based on 17 orders entered in this court and the Appellate Division "related to the finding of contempt against Platt, and copies of the principal papers either prepared on behalf of plaintiff or required by the Board's counsel to review" (Supp at ¶ 6).³

Plaintiff's counsel, Morrell I. Berkowitz, has over 30 years of experience in real estate and cooperative and condominium litigation and is the primary attorney. He is admitted to multiple courts in multiple states (Supp at ¶ 19). He explains that his billing rate was \$510 an hour in 2014 and

³ Plaintiff urges that it is also entitled to costs and expenses related to defendant's appeal of the injunction. The contempt determination is clear in holding that plaintiff is only entitled to "costs and expenses incurred by the Board in moving for contempt" (NYCEF DOC NO 612 [emphasis added]; see generally *1319 Third Ave. Realty Corp. v Chateaubriant Rest. Dev. Co., LLC*, 57 AD3d 340 [1st Dept 2008]; *317 West 87th Assocs. v Dannenberg*, 170 AD2d 250 [1st Dept 1991] [fees and expenses incurred in connection with contempt motion and appeal were proper]).

increased by \$10-\$15 an hour each year thereafter. As of June 9, 2017, the Board seeks \$143,472.25 in fees, costs and disbursements (Reply, Ex X). Mr. Berkowitz states that he did not bill for travel time and that any redacted entries are not related to contempt (Reply at ¶ 4).

Defendant urges that \$510 an hour is unreasonable. In addition, she contends, among other things, that fees not incurred directly as a result of the contempt proceedings should not be charged to her, that issues relating to the injunction should not be charged to her, that work performed was either billed excessively or was duplicative, that billing entries are vague, that the Board should not recover for unnecessary motion practice (for example, motions to adjourn, motion to strike Reply Brief and Appendix, motion to strike on grounds that brief exceeded page limit) and that any payment should be stayed until all of her claims are determined (Affidavit in Opposition [Opp]).

In reply, plaintiff's counsel urges that both his hourly rate and the time spent on this proceeding were reasonable and warranted (Reply).

Analysis

Pursuant to Judiciary Law § 773, where no actual loss or injury is shown, a party may still recover the reasonable

costs and expenses necessitated in prosecuting the contempt (*Jamie v Jaime*, 19 AD3d 330 [1st Dept 2005]). Counsel fees and other professional fees may be recovered so long as they are attributable to proving contempt or the damages flowing therefrom and are a direct product of the contempt proceeding (*Holskin v 22 Prince Street Assocs.*, 178 AD2d 347 [1st Dept 1991]; *317 West 87th Associates v Dannenberg*, 170 AD2d 250 [1st Dept 1991][fees and expenses incurred in connection with contempt motion and appeal were proper]). The fee applicant must submit an affidavit that specifies "in detail the time spent, the hourly rate and the nature and extent of the services rendered" (*Young Woo & Assoc. LLC v Kim*, 2012 WL 10008214 at *4 [Sup Ct, New York County 2012]). "Before ordering one party to pay another party's attorneys' fees, the court always has the authority and responsibility to determine that the claim for fees is reasonable" (*id.* at *4 citing *Solow Mgmt. Corp. v Tanger*, 19 AD3d 225, 226 [1st Dept 2005]).

The amount of attorneys' fees awarded is a matter of discretion and the court considers the nature and extent of the services, the actual time spent, the necessity therefor, the nature of the issues involved, the professional standing of counsel and the results achieved (*id.* at *5). The complainant has the burden to show by sufficient evidence that

the attorneys' fees sought are reasonable and that they are a direct product of the contempt proceeding (*id.*). The court "must limit recovery of attorneys' fees to those costs and fees related to the contempt" (*id.* at *5).

Plaintiff has not carried its burden of showing that all of the attorneys' fees sought are directly attributable to the contempt proceedings. For example, the court will not award fees related to defendant's attack on the injunction itself (*id.* [the issue is not whether the claims are inextricably intertwined, but whether it is shown by sufficient evidence that the fees and costs sought are necessary and a direct product of contempt])).

The court closely examined the record to determine the amount of contempt-related fees that are sufficiently supported. The pertinent work logs are attached to plaintiff's supporting papers as Exhibits 18, 19, Reply Exhibit X and an earlier submission dealing with the contempt motion, which can be found at NYCEF DOC NO 209.

Some of plaintiff's evidence is sufficient to allow for the award of attorneys' fees and costs. As a result, the court can reasonably conclude that a number of plaintiff's billing entries are directly attributable to the contempt proceedings. For example, Mr. Berkowitz's April 15, 2015

entry describes his work as "correspondence with Executive Committee-authorization to make contempt motion," "draft order to show cause affirmation and affidavit for contempt" and "review and prepare motion for e-filing" (NYCEF DOC NO 209). As a further example, Mr. Berkowitz's August 20, 2016 entry to "review Platt motion for preference on contempt appeal" (Supp, Ex 19 at 2). These entries demonstrate the specificity that supports an award of fees as the entries relate directly to contempt.

For the most part, however, plaintiff has not provided sufficient detail of the nature and extent of services rendered that would permit this court to conclude that the fees sought arose from the contempt proceedings and are reasonable so as to be recoverable.⁴ For example, plaintiff seeks reimbursement for 1.25 hours and 1.75 hours for "review respondent's appendix" and "review Platt brief" on September 21 and 22, 2016 (Supp, Ex 19 at 3). Another example is Mr. Berkowitz's May 18, 2015 entry for 1.85 hours to "review cross-motion by Platt" or \$64.94 for "Westlaw research" (Supp, Ex 18 at 4, 32). There are multiple entries for "duplication expense," "filing fees," "messenger service" and "copying" (Supp, Ex 18 at 4, 32-37). There are also countless vague

⁴ The lack of specificity is particularly problematic as plaintiff seeks fees based on "17 orders entered in this court and the Appellate Division" (Supp at ¶ 6).

entries similar to "draft summary affirmation," "review revise affirmation" (Supp, Ex 18 at 38), "letter to executive committee," "review files" and "correspondence with Executive Committee" (Supp, Ex 18 at 1). Additionally, entries that co-mingle issues and tasks are insufficiently detailed to allow for recovery (for example, Supp, Ex 19 at 6 [10/13/2016 "conference with M. Berkowitz re: appellant's application for extension of time to file reply; review of documents provided by M. Berkowitz; travel to and from First Dept. clerk's office; conference with clerk and appellant"]).

The vast majority of entries do not identify the issues that were worked on or what they related to. The nature of most correspondence with the Executive Committee and/or Windsor is not specified. Neither the issues (contempt or injunction) nor the motion sequence numbers worked on are specified. Westlaw searches performed do not indicate what issues were researched. Travel expenses as well as copying and filing fees do not indicate to what they relate. These examples show the types of entries that are too vague to allow this court to conclude that the record supports their inclusion in plaintiff's award of attorneys' fees.

Based on the foregoing, the court calculates attorneys' fees as follows:

4/15/15-4/23/15 (NYCEF DOC NO 209)

Plaintiff seeks to recover fees for 11.85 hours of legal work at \$510 an hour (\$6,043.50) in addition to \$105.45 in advances. Plaintiff is granted **\$1,479.00** in attorneys' fees calculated as follows:

- Attorneys' Fees: The court awards plaintiff 2.9 hours x \$510 (billing rate 2014) = \$1,479. The time includes all entries specifically listing contempt. It also includes a 50% reduction of .45 hours for entry 511, which notes time for "review status of contempt motion and cross-motion to reargue."
- Advances \$0.00: There is no award as all entries were vague and cannot be found to be attributable to the contempt motions.

4/24/15-4/27/17 (Supp, Ex 18)

Plaintiff seeks to recover for a total of 169.84 hours of legal work performed at various billing rates for \$83,945.90 in attorneys' fees and \$2,655.55 in costs. After an examination of the record, plaintiff is granted **\$19,242.25**. The court calculated the attorneys' fees and advances as follows:

- Attorneys' Fees:
 - Morrell I. Berkowitz (MIB) \$18,233.25: The full amount sought was calculated for 28.25 hours totaling \$14,831.25. A reduction of 50% was made for entries related to contempt but for which the court, in its discretion, finds that the time was unreasonable or not wholly attributable to contempt. Fees are awarded for 6.48 hours for such entries totaling \$3,402.00.

- Adam M. Felsenstein (AMF) \$0.00: There is no award for any fees as the one entry "legal research re: appeal from denial of renewal" is not attributable to the contempt motions or attorneys' fees motions.
- Maggie Farhoud (MF) \$1,009.00: Entries are attributable to attorneys' fees motion and the full amount sought is granted except for the 10/13/16 entry for which there is a 50% reduction as the entry is for "review time entries for court appearance and related issues for attorney review." (7.4 hours X \$125 [hourly rate] = \$925.00. and 1.05 hours X \$80 [stated rate on entry] = \$84.00.)
- Advances: \$0.00. No award for advances as entries are not specific enough to justify an award.

8/3/16-3/28/17 (Supp. Ex 19)

Plaintiff seeks to recover for 55.42 hours billed to MIB (\$29,109.00), 5.3 hours billed to Edward M. Cuddy (EMC) (\$1,990.50), 5.4 hours to MF (\$712.50) and 8.6 hours to Julian S. Brod (JSB) (\$2,322.00) in addition to \$4,066.00 in advances. Plaintiff is awarded **\$6,024.75** in attorneys' fees and **\$1,700.00** in advances as follows:

- Attorneys' Fees:
 - MIB: Plaintiff was awarded the full amount for entries specifically noting matters dealing with contempt totaling \$2,441.25. A reduction of 50% was made for entries related to contempt for which the court, in its discretion, finds that the time was not wholly attributable to contempt. These entries totaled \$2,950.50.

- EMC: Because the entries group multiple tasks and are vague, a 50% award on one entry calculated as 1.4 hours at \$375 (hourly rate) = \$525.00 is granted.
- MF: \$0.00 Entries are not sufficiently detailed to justify an award.
- JSB: .4 hours X \$270 = \$108 is granted for legal research on contempt.
- Advances: The court grants \$1,700 in advances because the entries are not sufficiently detailed. The amount consists of 50% of Counsel Press Fees as the document was not solely related to contempt.

5/4/17-6/7/17 (Reply, Ex X)

Plaintiff seeks to recover for 30.61 hours billed to MIB (\$16,376.35), 2.7 hours billed to Pamela Gallagher (PG) (\$877.50) and 2.7 hours to Adam J. Berkey (AJB) (\$769.50) in addition to \$600.26 in advances. Plaintiff is awarded \$3,678.13 as follows:

- Attorneys' Fees:
 - MIB \$3,678.13: Plaintiff is awarded the full amount for entries specifically noting attorneys' fee motion or contempt calculated as 2.25 hours at \$535 (hourly rate) = \$1,203.75. In addition, certain entries were reduced by 50% as the court, in its discretion, adjusted the time spent to a reasonable amount (3.75 hours X \$535 [hourly rate] = \$2,006.25). Additionally, an entry for 1.75 hours was reduced by 50% as the appearance in court included an adjournment for a separate sanctions motion (0.875 x \$535 [hourly rate] = \$468.13).

- PG \$0.00: There is no award for any fees as the one entry is vague and cannot be found to be attributable to the contempt motions or attorneys' fees motions.
- AJB \$0.00: There is no award for any fees as the three entries are vague and cannot be found to be attributable to the contempt motions or attorneys' fees motions.
- Advances \$0.00: There is no award for advances as the entries and the attached receipt are vague and cannot be attributable to attorneys' fees or contempt motions.

To the extent that the court did not award any amount for most entries or reduced the amount of others, the court finds that plaintiff did not meet its burden of establishing the relevance and/or reasonableness of those charges in connection with contempt proceedings. Plaintiff is granted \$1,700 in advances and \$30,424.13 in attorneys' fees for a total of **\$32,124.13**. These amounts were reached after reviewing and making the above noted adjustments in NYCEF DOC No 209, Supp, Exs 18 and 19 and Reply Ex X.

Additionally, the rates charged by plaintiff's counsel, as calculated in this decision, \$510-\$535 an hour, are reasonable based on his expertise and experience and based on the quality of the services provided (*DDG Warren LLC v Assouline Ritz 1, LLC*, 2016 WL 3454180 [Sup Ct, New York County]). Other attorneys and staff worked on this matter as

well at significantly lower rates, which was reflected in plaintiff's work logs.

Ms. Platt's contention that she should be indemnified for her misconduct because she was a board member or that payment should be stayed is unsupported and unwarranted.

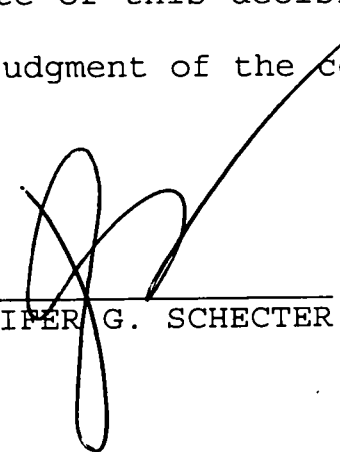
Accordingly, it is

ORDERED and ADJUDGED that plaintiff is awarded judgment in the amount of \$32,124.13 (which consists of \$30,424.13 in attorneys' fees and \$1,700 in other related costs); and it is further

ORDERED and ADJUDGED that in accordance with the May 13, 2016 decision and order, defendant must pay plaintiff a \$250 fine; and it is further

ORDERED that the Clerk is to enter judgment in favor of plaintiff and against defendant in the total amount of \$32,374.13 with interest from the date of this decision and judgment. This is the decision and judgment of the court.

Dated: February 2, 2018



HON. JENNIFER G. SCHECTER