

Harman Professional, Inc. v TCTW Intl. Co. Ltd.

2018 NY Slip Op 31925(U)

August 8, 2018

Supreme Court, New York County

Docket Number: 656208/2016

Judge: Saliann Scarpulla

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SALIANN SCARPULLA
Justice

PART 39

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HARMAN PROFESSIONAL, INC., HARMAN HOLDING LIMITED
(HONG KONG)

INDEX NO. 656208/2016

Plaintiffs,

MOTION DATE 6/28/2018

- v -

MOTION SEQ. NO. 005

TCTW INTERNATIONAL CO. LTD.,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 62, 63, 64, 65, 66, 67, 68 were read on this application to/for Confirm/Disapprove Award/Report.

Upon the foregoing documents, it is

In this action, *inter alia*, to recover damages for breach of contract, plaintiffs Harman Professional, Inc. (“Harman Professional”) and Harman Holding Limited (Hong Kong) (“Harman Holding”) move for an order confirming the June 13, 2018 report of Special Referee Jeremy R. Feinberg and awarding Harman Professional and Harman Holding \$103,427.74 in attorneys’ fees together with \$11,962.00 in disbursements.

On March 12, 2018 Harman Professional and Harman Holding moved for a default judgment against defendant TCTW International Co. Ltd. (“TCTW”) for failing to appear and defend this action. In their motion, Harman Professional and Harman Holding sought: (i) \$1,474,378.62 in damages owed to Harman Professional for breach of contract and account

stated plus costs and interest; (ii) \$1,079,746.42 in damages owed to Harman Holding for breach of contract and account stated plus costs and interest; and (iii) attorneys' fees.

I granted Harman Professional and Harman Holding's motion for a default judgment against TCTW in my Decision and Order dated March 22, 2018, and entered: (i) a judgment in favor of Harman Professional in the amount of \$1,474,378.62 with interest at 18% per annum from January 21, 2016 to the date the judgment was entered together with costs and disbursements; and (ii) a judgment in favor of Harman Holding in the amount of \$1,079,746.42 with interest at 18% per annum from January 21, 2016 to the date the judgment was entered together with costs and disbursements. In the same Decision and Order, I referred the issue of attorneys' fees to which Harman Professional and Harman Holding's was entitled to a Special Referee to hear and report.

Special Referee Jeremy R. Feinberg ("Referee Feinberg") presided over the hearing on May 17, 2018, in which only counsel for Harman Professional and Harman Holding appeared. In a ruling from the bench, Referee Feinberg recommended that the court award Harman Professional and Harman Holding \$616.50 per hour for partners and \$416.00 - \$495.00 per hour for associates. Referee Feinberg denied Harman Professional and Harman Holding's request for fees related to work performed for the fee application and deducted Harman Professional and Harman Holding's estimated fees on fees calculation, which was an hour of a partner's time and 0.4 hours of an associate's time amounting to \$783.26. In his report entered on June 13, 2018, Referee Feinberg recommended that Harman Professional and Harman Holding be awarded \$103,472.74 in attorneys' fees along with \$11,962.00 in disbursements.

Harman Professional and Harman Holding now move, unopposed, for an order confirming the June 13, 2018 report and awarding them \$103,427.74 in attorneys' fees together with \$11,962.00 in disbursements.

Discussion

The recommendations and report of a referee will be confirmed "whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility." *Stone v. Stone*, 229 A.D.2d 388, 388 (2nd Dept. 1996). Here, Harman Professional and Harman Holding argue that Referee Feinberg's report should be confirmed because he properly found that Harman Professional and Harman Holding were entitled to attorney's fees.

During the hearing on May 17, 2018, Harman Professional and Harman Holding's attorneys, Ms. Luo and Mr. O'Brien, testified as to the billing rates they charged their clients and as to the amount and the nature of the legal services they provided. Ms. Beverly Shin, the Vice President of Harman Professional and Harman Holding, testified as to the authenticity of the operative agreements between Harman Professional and Harman Holding, and TCTW. TCTW was notably absent during the hearing on May 17, 2018, thereby waiving any rights it had to cross-examine Harman Professional and Harman Holding's witnesses regarding the amount of attorney's fees owed.

Referee Feinberg found that the witnesses at the May 17, 2018 hearing were credible, and that the attorneys' rates for the complex work performed were appropriate and reasonable. Those findings are amply supported. Lastly, Harman Professional and Harman Holding do not contest Referee Feinberg's recommendation that this court deny Harman Professional and Harman Holding's request for attorney's fees for the drafting and submission of the fee

application. Fees on fees are awarded in limited circumstances and only under a specific statute or specific agreement between the disputing parties. *Hempstead Gen. Hosp. v. Allstate Ins. Co.*, 106 A.D.2d 429, 431 (2nd Dept., 1984).

In sum, Referee Feinberg's report and recommendations are amply supported by the record, and I therefore confirm the Referee's Report.

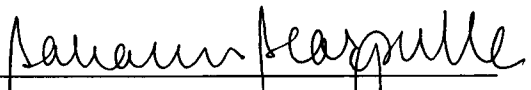
In accordance with the foregoing, it is hereby

ORDERED that plaintiffs Harman Professional and Harman Holding's motion to confirm the Referee Report is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiffs Harman Professional Inc., and Harman Holding Limited (Hong Kong), jointly and severally, and against defendant TCTW International Co., Ltd., in the amount of \$103,427.74 in attorneys' fees together with \$11,962.00 in disbursements.

This constitutes the decision and order of the court.

8/8/2018
DATE


SALIANN SCARPULLA, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE