

Abulayua v City of New York
2019 NY Slip Op 30935(U)
April 1, 2019
Supreme Court, New York County
Docket Number: 159769/2015
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

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MOHAMMAD ABULAYUA,

Plaintiff,

- v -

THE CITY OF NEW YORK, JOHN FAMILIARE, and NYC TAXI
LIMO COMM.

Defendant.

-----X

INDEX NO. 159769/2015

MOTION DATE 02/01/2019

MOTION SEQ. NO. 003

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 003) 43, 44, 45, 46, 47 were read on this motion to/for MISCELLANEOUS.

In this action to recover damages for personal injuries, the plaintiff moves pursuant to CPLR 5003-a for leave to enter judgment against the defendants City of New York, John Familiare, and New York City Taxi and Limousine Commission for their failure to comply with the prompt-payment provisions of that statute. The defendants do not oppose the motion. The motion is granted to the extent that the plaintiff may enter judgment against the defendants in the principal sum of \$175,000.00, plus statutory interest thereon from September 25, 2018, and costs in the sum of \$300.00, along with disbursements as provided for 8301(a), and the motion is otherwise denied.

On September 25, 2018, this action was called ready for trial before this court and a jury. On that date, the parties settled the action for the sum of \$175,000.00, and a stipulation of settlement was placed on the record in open court. On September 25, 2018, the plaintiff also forwarded general releases, a W-9 request for taxpayer identification form, and a proposed stipulation of discontinuance to the defendants. According to the plaintiff's attorney, more than 90 days have lapsed since these documents were tendered, and the defendants have yet to pay the plaintiff.

Pursuant to CPLR 2104, an agreement “made between counsel in open court,” including a stipulation of settlement, is binding on the parties (*see Birches at Schoharie, L.P. v Schoharie Senior Gen. Partner LLC*, ___AD3d___, 2019 NY Slip Op 01277 [3d Dept, Feb. 21, 2019]). Pursuant to CPLR 5003-a(b), [w]hen an action to recover damages has been settled and the settling defendant is a municipality or any subdivision thereof, . . . it shall pay all sums due to any settling plaintiff within ninety days of tender, by the settling plaintiff to it, of duly executed release and a stipulation discontinuing action executed on behalf of the settling plaintiff.”

“In the event that a settling defendant fails to promptly pay all sums as required by subdivisions (a), (b), and (c) of this section, any unpaid plaintiff may enter judgment, without further notice, against such settling defendant who has not paid. The judgment shall be for the amount set forth in the release, together with costs and lawful disbursements, and interest on the amount set forth in the release from the date that the release and stipulation discontinuing action were tendered”

(CPLR 5003-a[e]).

“[T]he phrase ‘costs and lawful disbursements’ means costs and disbursements in the action being settled incurred before and after the settlement. This is part of the ‘penalty,’ with interest, to be imposed on tardy payment and advances the cause of the legislation, whereas to limit costs and disbursements to only future expenses of relatively modest sums would thwart the legislative will”

(*O’Meara v A&P, Inc.*, 169 Misc 2d 697 [Sup Ct, Westchester County 1996]; *see Hadier v Remington Place Assocs., LLC*, 302 AD2d 428 [2d Dept 2003]). Costs to be awarded in an action are fixed at \$300.00 for each trial (*see* CPLR 8101; 8201[3]). Disbursements, as relevant here, include the legal fees of witnesses and of referees (CPLR 8301[a][1]), the reasonable expenses of printing the papers for a hearing, when required (CPLR 8301[a][6]), the prospective charges for docketing and entering a judgment (CPLR 8301[a][7]), and the reasonable expense of taking, and making two transcripts of testimony on an examination before trial, not to exceed \$250.00 (CPLR 8301[a][9]). Contrary to the plaintiff’s contention, however, CPLR 5003-a does not provide for an award of attorneys’ fees (*see Liss v Brigham Park Coop. Apts. Sec. No. 3, Inc.*, 264 AD2d 717 [2d Dept 1999]).

The plaintiff has established his entitlement to the entry of judgment in the principal sum of \$175,000.00 against the defendants, statutory interest thereon from September 25, 2018, and costs in the sum of \$300.00, plus disbursements as provided for 8301(a). Because the plaintiff has not submitted a proposed bill of costs setting forth proposed taxation of disbursements, the court refers the issue of the appropriate amount of disbursements to a referee to hear and report.

Accordingly, it is

ORDERED that the plaintiff's motion is granted, without opposition, to the extent that the plaintiff may enter judgment against the defendants in the principal sum of \$175,000.00, plus statutory interest thereon from September 25, 2018, and costs in the sum of \$300.00, along with disbursements as provided for 8301(a), and the motion is otherwise denied; and it is further,

ORDERED that the Clerk of the court shall enter judgment in favor of the plaintiff, Mohammed Abulayua, and against the defendants City of New York, John Familiare, and New York City Taxi and Limousine Commission, jointly and severally, in the sum of \$175,000.00, plus statutory interest thereon from September 25, 2018, along with an award of costs in the sum of \$300.00; and it is further,

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose: the issue of the amount due to the plaintiff for taxable disbursements; and it is further,

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon which the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to hear and report as specified above; and it is further,

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email, an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further,

ORDERED that the plaintiff shall serve a proposed accounting of the disbursements it seeks to tax within 24 days from the date of this order, and the defendants shall serve objections to the proposed accounting within 20 days from service of plaintiff's papers, and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further.

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further,

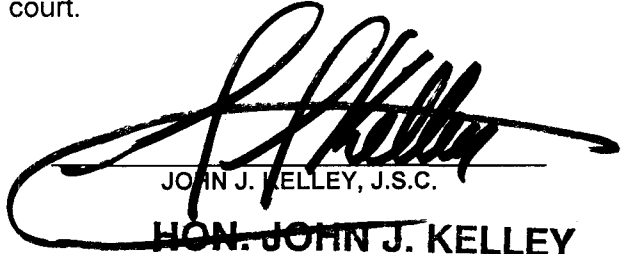
ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further,

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts, and, upon disposition of that motion, the plaintiff may enter an amended judgment adding the award of taxable disbursements to the amount recovered, if any; and it is further,

ORDERED that the plaintiff shall serve a copy of this order upon the defendants within 15 days of the entry of this order.

This constitutes the Decision and Order of the court.

4/1/2019
DATE


JOHN J. KELLEY, J.S.C.
HON. JOHN J. KELLEY
J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: