

**Madison Sullivan Partners LLC v PMG Sullivan St.
LLC**

2019 NY Slip Op 31613(U)

June 7, 2019

Supreme Court, New York County

Docket Number: 650930/2017

Judge: Jennifer G. Schechter

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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 54

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MADISON SULLIVAN PARTNERS LLC, on behalf of
Itself and derivatively on behalf of PMG-MADISON
SULLIVAN DEVELOPMENT LLC, PMG-MADISON
DEVELOPER LLC, SULLIVAN MEMBER LLC, and
SULLIVAN CONDO LLC,

Index No.: 650930/2017

DECISION & ORDER

Plaintiff,

-against-

PMG SULLIVAN STREET LLC, KM SULLIVAN LLC,
PMG SULLIVAN CONSTRUCTION LLC, and
KEVIN MALONEY,

Defendants,

-and-

PMG-MADISON SULLIVAN DEVELOPMENT LLC,
PMG-MADISON DEVELOPER LLC, SULLIVAN
MEMBER LLC, and SULLIVAN CONDO LLC,

Nominal Defendants.

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JENNIFER G. SCHECTER, J.:

By order dated December 31, 2018, the court withdrew a reference to compute defendants' reasonable attorneys' fees and decided, for reasons explained therein, that the court would determine the appropriate amount to be awarded to PMG (Dkt. 163 [the December 2018 Decision]).¹ On January 11, 2019, Madison moved for reargument (Seq. 005), contending that Section 7 of the Amendment does not permit PMG to recover its attorneys' fees in this action. On January 22, 2019, in accordance with the December

¹ Capitalized terms not defined herein have the same meaning as in the December 2018 Decision. The court also assumes familiarity with its January 11, 2018 decision granting defendants' motion to dismiss (*see* Dkt. 153 [the MTD Decision]).

2018 Decision, PMG moved (Seq. 006) by order to show cause for an award of reasonable attorneys' fees attributable to the claims asserted against it (as opposed to the other defendants not entitled to attorneys' fees under Section 7). The parties opposed each other's respective motions, which are consolidated for disposition. For the reasons that follow, Madison's motion is denied and PMG's motion is granted.

Madison's Motion (Seq. 005)

Madison's motion for reargument is denied. On June 6, 2019, the Appellate Division affirmed the MTD Decision in its entirety, including the portion which held that Section 7 entitles PMG to recover its attorneys' fees (2019 WL 2375110 [1st Dept June 6, 2019] ["The relevant contractual provision plainly contemplates that in an action to enforce the operating agreement or amendment thereto, even where no damages are sought, the prevailing party—whether plaintiff or defendant—is entitled to its cost of collection"]). Thus, PMG's entitlement to recover its reasonable attorneys' fees in this action is now an affirmed appellate determination that cannot be disturbed.²

PMG's Motion (Seq. 006)

Now that it has been determined that PMG, and only PMG, is entitled to its reasonable attorneys' fees, the court must assess how much of defendants' total attorneys' fees are reasonably attributable to PMG. This is not an exact science (*see* December 2018 Decision at 4-5).

² In any event, for reasons the court need not set forth, the motion would otherwise have been denied on the merits (and not simply on timeliness grounds) because nothing was overlooked or misapprehended.

PMG seeks an award of attorneys' fees of \$275,455.44. It supports its request with a thorough 18-page affirmation from its counsel, Adrienne Koch (Dkt. 189). Ms. Koch explains that, through March 27, 2018, her firm, Katsky Korins LLP, billed defendants \$345,312.24 in fees and disbursements. From that amount, in accordance with the December 2018 Decision, she deducted \$69,856.80 allocable to work performed in connection with claims against defendants other than PMG and for work associated with the reference and this motion (Dkts. 191 [highlighting excluded work], 192 [allocation chart]). Ms. Koch discusses, among other things, reviewing the original complaint (*see* Dkt. 189 at 8) and the attachment motion (*id.* at 9), drafting a motion to dismiss the original complaint (*id.* at 9-12), revising the motion to dismiss after Madison filed an amended complaint (*id.* at 12-14) and preparing for and attending oral argument (*id.* at 15).

Having reviewed the bills and Ms. Koch's explanations, the court finds the amounts billed to be reasonable. As previously discussed, this case raised complex issues under Delaware law and required skilled advocacy to demonstrate why Madison's factual and legal contentions were without merit. The court, moreover, highlighted on the record how impressed it was with defense counsel's work (*see* December 2018 Decision at 3). And ultimately, PMG successfully defended the dismissal of the case on appeal.

This case presented PMG with significant financial exposure. Madison's amended complaint sought \$30 million in damages. Had the case proceeded to discovery, the best-case scenario for PMG would have been prevailing on summary judgment. That likely

would have taken years and cost potentially millions of dollars in discovery. PMG's counsel, through legal advocacy that was particularly notable even among the relatively high-caliber counsel that appear in the Commercial Division, obtained an exceptional result by cutting this case off at the outset. It did so at a cost of approximately 1% of PMG's potential exposure. It is hard to quibble with such a result. To be sure, while it is theoretically possible for PMG's counsel to have cut corners and, with less meticulous and thorough papers, perhaps it still could have managed to convince the court of the correctness of its position. The court, however, cannot deem the decision not to do so unreasonable. The relevant inquiry is not how little PMG's counsel could have spent to obtain the same outcome, but rather whether the amount spent was reasonable. Considering the quality of the work and the result obtained, it surely was (*Matter of Freeman*, 34 NY2d 1, 9 [1974]; see *In re Energy Transfer Equity L.P. Unitholder Lit.*, 2019 WL 994045, at *3 [Del Ch Feb. 28, 2019] ["the most important (factor) is the benefit achieved"]). In contrast to cases where there is churning or work clearly performed purely for leverage, PMG's counsel's approach was a breath of fresh air. Finding its fees reasonable sends the right message about the sort of advocacy that is aspirational.

Ms. Koch's approach for determining the fees attributable to PMG is well founded. There is no question that the gravamen of this case concerned PMG's actions. And even though there surely was some overlap between work concerning claims affecting PMG and the other defendants, so much of it, as Ms. Koch explains, was

required because it would have been necessary even if PMG was the only defendant that was sued. It is inequitable to stiff PMG for necessary work merely because Madison chose to sue other defendants on overlapping claims that, as we now know, lacked merit. Madison, not PMG, chose to assert sprawling, baseless claims. Madison, not PMG, made the decision to file a conclusory original complaint in a baseless effort to secure an attachment. Thus, Madison, and not PMG, is the reason that there was so much work that needed to be done. Madison proffered arguments that were contrary to settled law, factual contentions that were clearly false and legal theories that made no sense.³ Rather than resort to rhetoric and misdirection, PMG's counsel responded to these issues with detailed, analytically sound arguments.

In conclusion, \$275,455.44 is a reasonable amount of legal fees for PMG to have incurred in defending this action.

Accordingly, it is ORDERED that Madison's motion for reargument is denied, PMG's motion to set the amount of its reasonable attorneys' fees is granted and the Clerk is directed to enter judgment in favor of PMG and against Madison in the amount of \$275,455.44.

Dated: June 7, 2019

ENTER:



Jennifer G. Schecter, J.S.C.

³ See, e.g., MTD Decision at 15 n 15 [Madison's reliance on abrogated pleading standard], 19 [Madison's theory of the case is illogical], 20 [damages sought by Madison are clearly precluded by the governing agreements], 20 n 21 [facts alleged by Madison shown to be false on prior attachment motion]).