

Thomas v Weitzman
2019 NY Slip Op 31700(U)
June 14, 2019
Supreme Court, New York County
Docket Number: 151876/2016
Judge: Kathryn E. Freed
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Property

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

Deprivation

PRESENT: HON. KATHRYN E. FREED

PART IAS MOTION 2EFM

Justice

TIFFANY THOMAS,

Plaintiff,

- v -

RAPHAEL WEITZMAN and WEITZMAN LAW OFFICES, LLC.,

Defendants.

INDEX NO. 151876/2016

MOTION DATE 06/01/2019

MOTION SEQ. NO. 004

DECISION AND ORDER

WEITZMAN LAW OFFICES, LLC.,

Third-Party Plaintiff,

-v-

TIFFANY THOMAS, THE PERECMAN FIRM, L.L.C., BARON ASSOCIATES, P.C., RICHMOND UNIVERSITY MEDICAL CENTER, AKA RICHMOND MEDICAL CENTER, and MARK BRANDON, M.D.,

Third-Party Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 134, 135, 136, 137

were read on this motion to/for CONFIRM REFEREE REPORT

Plaintiff Tiffany Thomas brought an action for legal malpractice action against her former attorneys, defendants Raphael Weitzman (“Weitzman”) and Weitzman Law Offices, L.L.C. (“Weitzman Law”, together with “Weitzman”, “the Weitzman Defendants”), for their alleged failure to timely serve a summons and complaint in an underlying action for medical malpractice and personal injury. By order dated 3/26/2018 and filed with NYSCEF 4/03/2018 (Doc. Nos. 90 and 91), this Court granted third-party defendant Baron Associates, P.C. (“Baron”) reasonable expenses and attorneys’ fees, incurred in connection with the Monroe County action and the instant

action, against the Weitzman defendants and further, due to their frivolous conduct as defined in Section 130-1.1 (c) of the Rules of the Chief Administrator, held them jointly and severally liable to third-party defendant Baron for such expenses and attorneys' fees.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of this matter are set forth in detail in the order of this Court entered March 26, 2019. Doc. 31. Additional relevant facts are set forth below.

This Court ordered that the issue of calculating expenses and reasonable attorneys' fees incurred by Baron in defending the claims by the Weitzman defendants be referred to a Special Referee to hear and report. Baron now moves, pursuant to CPLR 4403, to confirm the Special Referee's Report. After a review of the papers and the relevant statutes and case law, the motion is decided as follows.

On July 26, 2019, Special Referee Jeremy R. Feinberg conducted a hearing regarding the amount of expenses and reasonable attorneys' fees owed to Baron by the Weitzman defendants. Doc. No.114. Baron was represented by counsel, and Weitzman appeared on behalf of himself and Weitzman Law. A complete copy of the transcript is filed as NYSCEF Doc. No. 118. Copies of the exhibits submitted by Baron are at the hearing are filed as NYSCEF Doc. Nos. 119-125. The invoices submitted by Baron had some portions redacted for reasons of privilege and privacy and because they involved other matters not at issue in this matter. Doc. No.116, fns. 4 and 5. However, Baron submitted unredacted copies of all the invoices to the Special Referee and to the Court for the Court to review *in camera*. Additionally, submitted as NYSCEF Doc. No. 130 is a Stipulation as to Undisputed Procedural History for submission to the Special Referee. Both parties submitted briefs on October 10, 2018, along with supporting exhibits. Doc. Nos. 103-111.

Finally, after a teleconference between the parties and the Special Referee, Baron agree to withdraw any invoices which may have duplicated the fees sought. Doc. No 116, ¶34, fn 6; Doc. No. 123. Special Referee Feinberg issued his Report and Recommendations on November 13, 2018. Doc. No. 114.

Baron now moves, pursuant to CPLR 4403, to confirm the Special Referee's Report and to direct that a judgment be entered in its favor and against the Weitzman defendants in the amount of \$16,418.82 for attorney's fees and \$442.07 in costs. Baron further moves for pre-judgment interest running from March 26, 2018. The Weitzman defendants oppose the motion and cross-move to reject the report in its entirety.

New York Courts will generally "look with favor upon a Referee's report, inasmuch as the Referee, as a trier of fact, is considered to be in the best position to determine the issues presented." *Namer v. 152-54-56 W. 15th St. Realty Corp.*, 108 A.D.2d 705, 706 (1st Dept. 1985) quoting *Matter of Holy Spirit Assn. for Unification of World Christianity v. Tax Commn. of the City of New York*, 81 A.D.2d 64 (1st Dept. 1981), *revd on other grounds* 55 NY2d 512 (1982). "It is well settled that where questions of fact are submitted to a [R]eferee, it is the function of the [R]eferee to determine the issues presented, as well as to resolve conflicting testimony and matters of credibility, and generally courts will not disturb the findings of a [R]eferee 'to the extent that the record substantiates his findings and they may reject findings not supported by the record.'" *Kardanis v Velis*, 90 AD2d 727, 727 (1st Dept 1982) quoting *Matter of Holy Spirit Assn.*, 81 AD2d, at 71.

The Weitzman defendants make several arguments against confirming the Referee's report, including the duplication of certain fees, the manner of plaintiff's attorneys' timekeeping device and against the Court accepting the redacted invoices which Referee Feinberg accepted.

This Court notes that the plaintiffs voluntarily agreed to drop the request for fees in the invoices which defendants alleged were duplications. Doc. No 112. Further, the Special Referee made additional specific reductions where he found the possibility of duplications in billing. As to defendants' arguments against plaintiff's bookkeeping, Special Referee Feinberg found the hourly billing rates of plaintiff's attorneys were reasonable but did recommend that a 10% across the board reduction of the attorneys' fees was warranted due to the lack of certain background evidence on the nature, extent and experience of the attorneys. See *Morgan & Finnegan v Howe Chem. Co., Inc.*, 210 AD2d 62 (1st Dept 1994) and *140 West 28th Street Assoc. LLC v 140 West Associates, LLC*, 32 Misc.3d 1239(A) (Civ Ct. NY County 2011). The Referee also gave an additional 10% reduction for fees that he found were block billed. The Court accepts the recommendation of the Special Referee and finds the defendants' arguments that the Court should make new rulings on the Special Referee's findings unpersuasive.

Although the defendants argue that the Court should reject the redacted invoices, they cite to no legal authority for this position. Both the Special Referee and the Court have reviewed the unredacted invoices and neither the Special Referee nor this Court found any incongruities or prejudice to the defendants, in allowing the submission and consideration of the redacted invoices, although the Referee did disallow some amounts which were possibly duplicative. The Referee also allowed all the costs and disbursements asked for by plaintiff, noting that they were relatively low and unexceptional.

Clearly, since Special Referee Feinberg "conducted a hearing that was fair and comprehensive, identified the issues, resolved all matters of credibility, and reached a conclusion that is supported by the evidence, the report must be confirmed." *Jan S. v Leonard S.*, 26 Misc3d 243, 884 NYS2d 848, 858-859 (Sup Ct New York County 2009) citing *Nager v Panadis*, 238

AD2d 135, 135-136 (1st Dept 1997). Thus, plaintiff's motion to confirm the report is granted and the report is confirmed.

As a final issue, Baron moves for pre-judgment interest from the date of this Court's order of March 26, 2018, which held that Baron was entitled to an award of reasonable attorneys' fees. The Weitzman defendants did not address this issue in their papers.

CPLR 5002 provides that "[i]nterest shall be recovered upon the total sum awarded, including interest to verdict, report or decision, in any action, from the date the verdict was rendered or the report or decision was made to the date of entry of final judgment. The amount of interest shall be computed by the clerk of the court and included in the judgment".

In *Love v State of New York*, 78 N.Y.2d 540 (1991), the Court of Appeals held that "we conclude that ...prejudgment interest under CPLR 5002 should be calculated from the date of the liability determination..." See also *Lopez v Sunrise One, LLC*, 39 Misc.3d 832 (2013); *Grob v Chernoff*, 63 A.D.3d 786 92nd Dept. 2009) *aff'd* 15 NY3d 525 (2010). Here, since the date of the order granting a final decision on the liability of the Weitzman defendants was March 26, 2018, interest runs from that date.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the Report of Special Referee Jeremy R. Feinberg, dated November 13, 2018, is hereby confirmed; and it is further

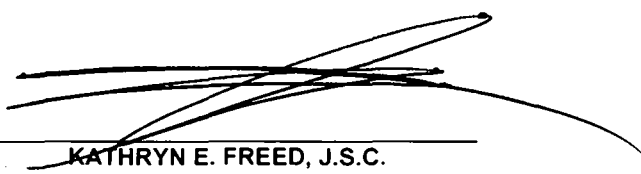
ORDERED that the Clerk is directed to enter judgment in favor of third-party defendant Baron Associates, P.C. and against defendants and third-party plaintiffs Raphael Weitzman and

Weitzman Law Offices, L.L.C. jointly and severally, in the amount of \$16,418.82 for attorneys' fees with interest at the statutory rate from March 26, 2018, as calculated by the Clerk, and \$442.07 in costs.; and it is further

ORDERED that, within twenty days, third-party defendant's attorney is to serve this order, with notice of entry, on defendant and third-party plaintiffs's attorney Raphael Weitzman and the Weitzman Law Offices, L.L.C. and on the Clerk of the Court (Room 141B); and it is further

ORDERED that this constitutes the decision and order of this Court.

6/14/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
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