

**Hudson-Spring Partnership v P+M Design
Consultants Inc.**

2020 NY Slip Op 30963(U)

April 12, 2020

Supreme Court, New York County

Docket Number: 652229/2010

Judge: Melissa A. Crane

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

PRESENT: MELISSA A. CRANE Justice

PART 15

Hudson-Spring Partnership

v.

P+M Design Consultants Inc.

INDEX NO. 652229/2010
MOTION DATE
MOTION SEQ. NO. 018
MOTION CAL. NO.

The following papers, numbered _ to _ were read on this motion to/for PAPERS NUMBERED
Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits
Replying Affidavits

CROSS-MOTION: YES NO

Melissa A. Crane, JSC

On April 3, 2019, this court rendered its decision after bench trial and awarded judgment totaling 231,661.00 to plaintiff. This award had everything to do with which side had the burden of proof for constructive eviction. This burden lies with defendants as tenants. Given: (1) the lease renewals defendants executed; (2) that defendants continued to conduct business at the premises, (3) the failure to call a disinterested witness to corroborate Mr. Poulin’s testimony, (4) the suspicious timing when defendants vacated the premises and (4) the dearth of documentary proof that would have been in defendant’s possession, such as complaints or reports to the Department of Buildings, the court held that defendants failed to establish constructive eviction. Therefore, they were liable to plaintiff for unpaid rent (see EDOC 313).

The relationship between counsel has been remarkable for its acrimony. Moreover, both sides have over-litigated. What was originally a simple rent collection case has spawned an additional lawsuit, 19 motions in this case and 11 in the additional case. These numbers do not

include the cross motions. The parties have been litigating for over ten years. At every turn, rather than cooperate, one side or the other takes an entrenched position on issues where the conclusion is inevitable. For example, defendant started a separate action over its security deposit, naming all sorts of additional parties, without letting the court know this new action was related to this case. Marking the case as related, or bringing a counterclaim, would have saved time and money. Defendant also moved to strike the complaint before discovery responses were due and filed a jury demand despite having waived trial by jury under the lease. Plaintiff then had to move to strike. Plaintiff was also forced to oppose a tenuous motion to dismiss by defendant, because the building had been sold, when all that had happened was a conversion from a partnership to an LLC. Mr. Chernoff, plaintiff's principal, remained an owner.

Even worse, knowing that Justice Madden had already pierced the corporate veil to hold Poulin + Morris, Inc. liable for the debts of P+M Design Consultants Inc., and that this court had overlooked Justice Madden's decision (edoc 293) when rendering the trial decision, defendant fought tooth and nail to convince the court not to modify the judgment to reflect what Justice Madden had already decided. Defendants even argued, with absolutely no support, that Justice Madden's decision was not law of the case, because plaintiff had not presented evidence to support its veil piercing theory at trial. Why would plaintiff make any presentation about an issue that had already been decided in its favor?

Plaintiff has behaved no better. For instance, had plaintiff called the court's attention to Justice Madden's decision earlier, that entire motion sequence could have been avoided. Moreover, it has been like pulling teeth to get plaintiff to produce documents. Indeed, defendant had to make several motions to obtain discovery that ultimately never materialized. At trial, it became apparent that there was substantial discovery that had not been produced. Further, in the

additional lawsuit, it took years for plaintiff to admit that it was not segregating defendant's security deposit.

This motion, number 18, for attorney's fees, is no different in terms of acrimony and recalcitrance. It is undisputed that the lease requires payment of costs and attorney's fees to the prevailing party. It is hard to avoid the conclusion that plaintiff is the prevailing party based on the court's decision of 4/3/2019 (EDOC 313), awarding it a substantial judgment. Defendants, once again, argue the merits and ignore their failure to prove constructive eviction from evidence that should have been in their own control. The naked assertion that it would have been able to demonstrate constructive eviction, if it had plaintiff's missing documents, is speculative.

Each side refused to engage in settlement discussions regarding attorney's fees. Digging in its heels, defendants argue that the course of this litigation, and plaintiff's conduct, warrants absolutely no attorney's fees whatsoever. Defendants do not quarrel with the hours or the reasonableness of the hourly rate. Defendants' only challenge to amounts broadly characterizes plaintiff's proof as lacking in detail: "invoices or lump sum amounts of \$20,000 to \$12,000 and so on and so forth without any attempt to indicate what time was expended performing which services." (Def Opp Aff. EDOC 346 at pg 2). Defendants ignore the extensive time sheets that plaintiff proffered as part of its moving exhibits (see EDOC 335). These time sheets are quite detailed.

In assessing the reasonableness of attorney's fees, a court should consider, *inter alia*, the requisite time, labor and skill, difficulty of the matter, the lawyer's experience, ability and reputation, the amount involved and the result (*see STA Parking Corp., v Lancer Ins. Co.*, 128 AD3d 479, 480 [1st Dep't 2015]). Given that this relatively simple case has turned into a world war largely through the actions of counsel and both parties, the court, in its discretion, awards to

plaintiff ½ of the fees reflected on the time sheets (EDOC 335). This takes into account plaintiff's litigation abuses, while also accounts for defendants' excessive litigation and that plaintiff is the prevailing party. **Therefore, the court awards \$137,651.25 in attorneys' fees.** However, the court will not be awarding attorney fees for anything before 2012, as there is insufficient back up documentation for those amounts.

In reaching this result, the court is mindful that defendants have charted their own course in this litigation. Not only have defendants over-litigated and engaged in excessive motion practice, but these were not unsophisticated parties. Defendants signed a commercial lease with an attorney fee provision. They should have seen an outcome where they could be responsible for attorney's fees and therefore risked being liable for heavy fees by over-litigating if they lost.

Accordingly, it is

ORDERED THAT the court grants plaintiff's motion for attorney's fees and awards \$137,651.25.

The clerk is directed to enter judgment accordingly.

Dated: April 12, 2020


Hon. Melissa Crane