

**Butler v Knights Collision Experts, Inc.**

2020 NY Slip Op 33780(U)

November 13, 2020

Supreme Court, New York County

Docket Number: 650631/2015

Judge: Shawn T. Kelly

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT:** HON. SHAWN TIMOTHY KELLY PART IAS MOTION 57

*Justice*

-----X

BRETT BUTLER, JUAN SMITH, ELLIOT WATERS,  
BERNARD WHITE, ALTON SMITH, BART BUTLER,  
HELPIG GARCIA

Plaintiff,

INDEX NO. 650631/2015

MOTION DATE N/A

MOTION SEQ. NO. 009

- v -

KNIGHTS COLLISION EXPERTS, INC., KNIGHTS TOWING  
CORP., JOSEPH ROBLES, ADAM ROBLES,

Defendants.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 009) 145, 146, 147, 148, 149, 150, 151, 152, 153

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

Upon the foregoing documents, it is

Defendants move to reargue its opposition to Plaintiffs' motion for attorneys' fees (motion sequence number 008) and this court's subsequent decision to grant attorneys' fees in the amount of \$400,788.14 to plaintiff. Specifically, Defendants argue that the court overlooked the fact that five of the nine Plaintiffs settled their claims with the Defendants before trial and executed releases by which they released any claim for attorneys' fees and that plaintiffs' counsel had already been paid in accordance with their retainer agreements. In opposition, Plaintiffs contend that Defendants' motion papers improperly introduce an alleged analysis of Plaintiffs' attorneys time records that was not present in the underlying motion.

Pursuant to CPLR §2221(d), "a motion for leave to reargue: ... (2) shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining

the prior motion.” A motion to reargue is addressed to the court's discretion, and permission to reargue will only be granted if the court believes some error has been made (*see* CPLR § 2221 [d][2]). In order to succeed on a motion for reargument the movant must demonstrate that the Court overlooked or misapprehended the law or facts when it decided the original motion (*Foley v Roche*, 68 AD2d 558 [1st Dept 1979]). A motion to reargue is not designed to provide an unsuccessful party with another opportunity to re-litigate the same issues previously decided against him (*Pro Brokerage, Inc. v Home Ins. Co.*, 99 AD2d 971 [1st Dept 1984]). Nor does a motion to reargue permit a litigant to present new arguments not previously advanced on the prior motion (*Amato v Lord & Taylor, Inc.*, 10 AD3d 374 [2d Dept 2004]; *see also DeSoignies v Cornasesk House Tenants' Corp.*, 21 AD3d 715 [1st Dept 2005]). Defendants’ motion to reargue is granted.

On February 20, 2020, the trial jury awarded Plaintiffs \$116,986.96 in damages and restitution. Subsequently, Plaintiffs moved under motion sequence 008 for an order pursuant to Labor Law Sections 198(1-a), 198(1-b), 198(1-d), & 215(2) awarding Plaintiffs their reasonable attorneys’ fees and expenses in the amount of \$395,000 for 1085 hours, which began January 5, 2015, and ended March 16, 2020. In support of this motion, Plaintiffs submitted an affirmation and two exhibits of time and expense records. In opposition Defendants submitted two exhibits, the settlement agreement for Bart Butler and the October 4, 2018 Appellate Division decision remanding Defendants’ motion for summary judgment, which was subsequently denied by the trial court. Based upon this documentary evidence and oral argument, the present court awarded Plaintiffs their attorney fee request in the amount of \$395,000 plus disbursements, for a total of \$400,788.14.

### **Defendants' Motion for Reargument**

Defendants now submit further documents, including the settlement agreements and releases for all five Settling Plaintiffs, Brett Butler, Bart Butler, Helpis Valdez Garcia, Elliot Waters and Bernard White (collectively "Settling Plaintiffs"). Additionally, Defendants submit a copy of Pedowitz and Meister LLP's bills (which were submitted in the underlying motion by Plaintiffs), with the items which were performed solely for the respective cases of the Settlement Plaintiffs highlighted in yellow, amounting to 94.32 attorney hours totaling \$56,592.00 and 70.29 paralegal hours totaling \$7,181.00. Defendants also took entries that named multiple Plaintiffs and divided those amounts by the number of Plaintiffs to arrive at an amount that reflected how much each Plaintiff would be billed for that entry.

Further, Defendants contend that the bills submitted by Harrison, Harrison, and Associates Ltd., are also problematic as they are ambiguous and bill for the Settling Plaintiffs after settlement and bill for work done prior to the Notice of Appearance being filed. Defendants have identified, \$495 for work associated with the Settling Plaintiffs. Defendants also allege that work billed from June 2018 through February 2019 should be excluded as Harrison, Harrison, and Associates Ltd. had not filed a Notice of Appearance until March 2019.

Defendants also contend that aside from the reduction of \$63,773 from Pedowitz and Meister LLP's bills and the \$495 reduction from Harrison, Harrison, and Associates Ltd., the remaining bills should be reduced by five ninths. Though Defendants do not directly explain this argument, the court can only assume the 5/9 reduction is somehow related to the fact that five of the original Plaintiffs settled.

### **Plaintiffs' Opposition**

In opposition, Plaintiffs contend that they did not seek, and the Court did not award, fees for services rendered solely for the claims of the Settling Plaintiffs, but rather for time spent on legal or factual analysis necessary to prosecute the case for all plaintiffs, including those whose claims were tried. Upon review of Defendants' submissions, Plaintiffs agree that 33 entries, for a total of \$9,720 worth of time spent solely for the benefit of the settling plaintiffs and should be reduced from the fee award. Similarly, Plaintiffs agree that the bills submitted by Harrison, Harrison, and Associates Ltd. should be reduced by \$495, to reflect work done solely for the Settling Plaintiffs.

Plaintiffs vehemently disagree that their remaining bills should be reduced by 5/9ths and argue that there is no legal basis to apply such reduction.

### **Analysis**

Incomplete or imprecise billing records prevent the Court from exercising meaningful review and are grounds for reducing a fee award. In determining a fee award, "the typical starting point is the so-called lodestar amount, that is 'the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.'" (*see Healey v Leavitt*, 485 F3d 63, 71 [2d Cir. 2007] [*citing Hensley v Eckerhart*, 461 US 424, 434 [1983]]). "In determining the number of hours reasonably expended for purposes of calculating the lodestar, the (trial) court should exclude excessive, redundant or otherwise unnecessary hours, as well as hours dedicated to severable unsuccessful claims." (*see Quaratino v Tiffany & Co.*, 166 F3d 422, 425 [2d Cir 1999] [*quoting Hensley*, 461 U.S. at 433-35]). The lodestar may be adjusted based on several factors, including when the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount even where the plaintiff's claims

were interrelated, nonfrivolous, and raised in good faith (*see Hensley*, 461 U.S. at 434-436). “[T]he lodestar method produces an award that roughly approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case.” (*Perdue v Kenny A. ex rel. Winn*, 559 US 542, 551, 130 SCt 1662 [2010]). The fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. (*see Hensley*, 461 U.S. at 437).

The Court must determine the number of reasonably expended hours, mindful that a paying client would seek efficient prosecution of his case and that fees that would be rejected as exorbitant by a paying client may not be passed along to one's adversary under a fee-shifting statute. The attorneys applying for fees under the statute must document the application with contemporaneous time records detailing for each lawyer the date, the hours expended, and the nature of the legal task (*see New York State Assoc. for Retarded Children, Inc. v Carey*, 711 F2d 1136 [2d Cir 1983]; *Orser v Wholesale Fuel Distributors-CT, LLC*, 65 Misc 3d 449, 456, [NY Sup Ct 2018], *aff'd*, 173 AD3d 1519 [2019], leave to appeal denied, 34 NY3d 909 [2020]). Vague billing entries may prompt a reduced fee award and block entries are disfavored when applying for approval of legal fees because they make it difficult for the Court to ascertain whether the work is duplicative or unnecessary (*see Klimbach v Spherion Corp.*, 467 FSupp2d 323 [WDNY 2006]). A Court can exclude excessive and unreasonable fees from its award by making an across-the-board reduction in the number of compensable hours rather than conducting a line by line, detailed review (*see Luciano v Olsten Corp.*, 109 F3d 111 [2d Cir 1997]).

The present case is not a class action where Plaintiffs' attorneys may be compensated for cumulative work done on behalf of the class action parties. These are individual parties whom

would each be responsible for their own bills, yet the attorneys have failed to itemize the charges for each plaintiff causing the ambiguity at issue here. Mindful that counsel for the prevailing party must exercise billing judgment by acting as he would under market restraints that limit a private sector attorney's behavior in charging his own client, the Court reduces the total number of awarded fees by \$63,773 from Pedowitz and Meister LLP's bills and the \$495 reduction from Harrison, Harrison, and Associates Ltd. The court finds no basis to reduce Harrison, Harrison, and Associates Ltd.'s bills by \$7,101 for billable time prior to filing a notice of appearance nor any rationale to reduce the remaining portions of bills by 5/9.

Accordingly, Defendants' motion to reargue is granted and upon reargument, the attorneys' fees awarded in the court's motion sequence 008 decision is reduced by \$64,268.00.

Based on the foregoing, it is hereby,

ORDERED that Defendants' motion for leave to reargue is granted; and it is further

ORDERED that, upon reargument, the Court vacates its prior order, dated June 16, 2020, and grants Plaintiffs' motion for attorneys' fees to the extent that Plaintiffs are entitled to \$330,732 in attorneys' fees and disbursements.

11/13/2020  
DATE

  
SHAWN TIMOTHY KELLY, J.S.C.

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