

Quadrant Mgt., Inc. v Sanchez
2021 NY Slip Op 30881(U)
March 18, 2021
Supreme Court, New York County
Docket Number: 650430/2019
Judge: Carol R. Edmead
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL R. EDMEAD **PART** **IAS MOTION 35EFM**

Justice

-----X

QUADRANT MANAGEMENT, INC.,

Plaintiff,

- v -

JESUS ENRIQUE DELGADO SANCHEZ, SETIEN
CORPORATION, SETIEN, S.A. DE C.V.

Defendant.

-----X

INDEX NO. 650430/2019

MOTION DATE 09/22/2020

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 51, 52, 53, 54

were read on this motion to/for ATTORNEY - FEES.

Upon the foregoing documents, it is

ORDERED that the application of Plaintiff Quardrant Management, Inc. pursuant to New York Judiciary Law § 773 and this Court's Decision and Order dated August 24, 2020 for an award of attorney's fees and costs incurred in connection with Plaintiff's prior motion for contempt against Defendant Judgment Debtor Jesus Enrique Sanchez Delgado (Motion Seq. 003) is granted; and it is further

ORDERED that Defendant Judgment Debtor shall pay \$37,798.00 to Plaintiff, or else face imprisonment pursuant to Judiciary Law § 774, within 45 days of entry of the decision and order on this motion; and it is further

ORDERED that counsel for Plaintiff shall serve a copy of this order along with notice of entry on all parties within ten (10) days.

MEMORANDUM DECISION

In this breach of contract action, Plaintiff Quadrant Management Inc. seeks an order pursuant to New York Judiciary Law § 773 and this Court's Decision and Order dated August 24, 2020 directing an award of attorney's fees and costs incurred in connection with Plaintiff's prior motion for contempt (Motion Seq. 002) against defendant-contemnor Jesus Enrique Sanchez Delgado ("the Judgment Debtor") (Motion Seq. 003).

The Judgment Debtor opposes the motion in its entirety.

BACKGROUND FACTS

This motion stems from an underlying breach of contract and fraud action ("the Underlying Action") originally commenced by Plaintiff against the Judgment Debtor in 2016 (*Quadrant Management, Inc. v Jesus Enrique Sanchez Delgado, Setien Corporation, and Setien S.A. de C.V.*, Index No. 651248/2016). The parties settled the Underlying Action on the eve of trial, with the Judgment Debtor agreeing to pay Plaintiff \$2,350,000 in monthly installments (NYSCEF doc No. 47, ¶ 5). The Judgment Debtor subsequently paid \$350,000 toward the settlement but defaulted on the balance (*id.*).

On January 23, 2019, judgment was entered in the office of the New York County Clerk against Defendants, jointly in severally, and in favor of Plaintiff in the principal amount of \$2,000,225.00, the entire unpaid amount due ("the Judgment"). On February 25, 2019, Plaintiff served a restraining notice on the Judgment Debtor pursuant to CPLR 5222 ("the Restraining Notice"), which the Judgment Debtor received on February 27 (*id.*, ¶ 7). Pursuant to CLPR 5222(b), upon service of the Restraining Notice, the Judgment Debtor was "forbidden to make or suffer any sale, assignment, transfer, or interference with any property in which he [] has an interest . . . until the judgment or order is satisfied."

Plaintiff subsequently discovered that the Judgment Debtor violated the Restraining Notice by making three transfers on March 5, 2019, March 8, 2019, and April 12, 2019, in the aggregate amount of \$79,000 from his TD Ameritrade brokerage account to a checking account held by his wife at Citibank (*id.*, ¶ 9). Plaintiff's counsel avers it took "significant effort" to discover said violation as the Judgment Debtor perjured herself by failing to disclose the existence of the TD Ameritrade account in prior sworn answers to an information subpoena (*id.*, ¶ 10). Through information subpoenas served on other banks known to have a banking relationship with the Judgment Debtor, Plaintiff's counsel eventually discovered the TD Ameritrade account, but not until after the post-Restraining Notice transfers had been made (*id.*, ¶¶ 11-12).

The Contempt Order

On July 9, 2020, Plaintiff moved by Order to Show Cause for an order finding the Judgment Debtor in civil contempt pursuant to CPLR 5251 and Judiciary Law § 753, criminal contempt pursuant to CPLR 5251 and Judiciary Law § 750, reimbursement of attorney's fees pursuant to Judiciary Law § 773, and for other related relief (Motion Seq. 002).

This Court held oral argument on August 24, 2020, and that same day issued a Decision and Order in which it found that the Judgment Debtor violated the Restraining Notice, held him in contempt, directed him to produce certain bank account information and to pay \$79,000 to Plaintiff by October 8, 2020, or otherwise be subject to arrest, and directed Plaintiff to file a motion for attorney's fees incurred as a result of the Judgment Debtor's contempt (NYSCEF doc No. 48).

The Present Motion for Attorney's Fees

On September 22, 2020, Plaintiff commenced the motion now before this Court, seeking an award of attorney's fees and costs incurred as a result of the Judgment Debtor's contempt pursuant to Judiciary Law § 773. Plaintiff contends this Court should impose a fine and direct that amount to be collected from the Judgment Debtor and paid over to Plaintiff within 30 days as a further conditional requirement to purge his contempt, or otherwise face arrest.

Plaintiff claims it has incurred a total of \$37,798.00 in attorney's fees and costs as a result of the Judgment Debtor's contempt (NYSCEF doc No. 52 at 9). Plaintiff's counsel has broken down the types of work it incurred as a result of the Judgment Debtor's contempt into three separate categories.

The first category, "Investigation," encompasses the approximately ten hours of attorney and paralegal time spent discovering and investigating the Judgment Debtor's contemptuous conduct, which included tasks such as reviewing the Judgment Debtor's false information subpoena responses and issuing subpoenas to various banking institutions and reviewing their responses (NYSCEF doc No. 47, ¶ 21).

The second category, "Motion for Contempt," encompasses the approximately 39 hours of attorney and paralegal time spent on the prior motion in this proceeding and includes tasks such as researching caselaw and drafting the motion papers, reviewing the Judgment Debtor's opposition, and preparing for and attending the oral argument held by this Court (*id.*, ¶ 22).¹

The third category, "Fee Application," encompasses the approximately twelve hours of attorney and paralegal time spent on this present motion, up to and including the time spent on the reply papers (NYSCEF doc No. 52, ¶ 26).

¹ The total sum of \$37,798.00 also separately includes the \$45.00 filing fee paid to the Clerk of the Court for Plaintiff's motion for contempt.

The Judgment Debtor opposes the present motion in its entirety, on the grounds that the Judgment Debtor “has purged his contempt, and courts in this district do not customarily award attorney’s fees and costs under such circumstances,” and contends this Court should “exercise its discretion and not shift attorney’s fees” (NYSCEF doc No. 51, ¶ 3). In the event this Court grants the relief sought by Plaintiff, the Judgment Debtor alternatively asks that the award of attorney’s fees be made in the form of a judgment, rather than an additional order to pay under penalty of contempt; that the costs and fees incurred in making the present motion be excluded from the calculation of the total award; and that the Court reduce Plaintiff’s total award by at least 50% (*id.*, ¶ 4).

DISCUSSION

Pursuant to Judiciary Law § 773,

“If an actual loss or injury has been caused to a party to an action or special proceeding, by reason of the misconduct proved against the offender, and the case is not one where it is specially prescribed by law, that an action may be maintained to recover damages for the loss or injury, a fine, sufficient to indemnify the aggrieved party, must be imposed upon the offender, and collected, and paid over to the aggrieved party, under the direction of the court. The payment and acceptance of such a fine constitute a bar to an action by the aggrieved party, to recover damages for the loss or injury.”

Where a party is found to be in contempt, the First Department has held that the “fine” imposed by Judiciary Law 773 encompasses the aggrieved party’s reasonable attorney’s fees incurred as a result of contemnor’s contempt, including those incurred in connection with the aggrieved party’s motion to hold the contemnor in contempt. See *Jamie v Jamie*, 19 AD3d 330, 330 (1st Dept 2005) (“We construe Judiciary Law § 773 to mean that where an actual loss has been caused by a contempt, the aggrieved party is entitled to recover not only the amount of such loss, but also the reasonable costs and expenses in proving such amount and the attendant contempt.”).

Here, as discussed, there has been a finding of contempt on the part of the Judgment Debtor, and the fees sought here were all clearly incurred as a result of the contempt. The Court also finds that the number of hours spent on each category are “reasonable” as required by the First Department. Plaintiff’s counsel, a partner at the midsize firm Olshan Frome Wolosky LLP, was the sole attorney associated with work on this matter and used paralegals when appropriate to keep down costs (NYSCEF doc No. 47, ¶ 26). Plaintiff’s counsel charged an hourly billing rate of \$660 in 2019 and \$670 in 2020, which is within the range of hourly billing rates charged by partners at comparable firms (*See Metropolitan Lofts of NY, LLC v Metroeb Realty 1, LLC*, 2015 WL 894869 [Sup. Ct. Kings County, Feb. 27, 2015] [hourly rates for partners in New York City commercial litigation firm ranging from \$675-725 are within the normal range charged by litigators]).

Notwithstanding the Court’s finding that Plaintiff has demonstrated entitlement to an award under Judiciary Law § 773 and has substantiated the reasonableness of the award’s amount, the Court writes separately to address the arguments raised by the Judgment Debtor in opposition.

The Judgment Debtor first argues that Plaintiff should not be awarded attorney’s fees and costs incurred in connection with its contempt motion because Judgment Debtor “has purged his contempt” by paying Plaintiff the approximately \$77,000 transferred in violation of the Restraining Notice (NYSCEF doc No. 51 at 2). However, the proposition that a fine is not required under Judiciary Law § 773 when a Judgment Debtor purges his contempt *after* being found in contempt by a court has no legal basis. The Judgment Debtor cites to a multitude of cases wherein the courts held that the plaintiffs were not entitled to an award of fees under

Judiciary Law § 773. However, as Plaintiff points out, none of those cases involved a judicial finding of contempt on the part of the debtor, a necessary precondition to recovery under Judiciary Law § 773 (*See, e.g. Taylor v Gumora*, 179 AD3d 487, 488 [1st Dept 2020] [“Since plaintiff failed to show that defendants violated the IAS Court’s order, she is not entitled to attorneys’ fees”]; *Kiperman v. Steinberg*, 234 AD2d 518, 519 [2d Dept 1996] [“finding of civil contempt is prerequisite for imposing attorney fees”]). This argument is thus of no moment, as this Court’s August 24, 2020 order held it was “clear and unambiguous” that the Judgment Debtor violated the Restraining Notice and ordered him to purge the contempt or be subject to arrest (NYSCEF doc No. 42).

The Judgment Debtor’s second argument is that this Court should “exercise its discretion” to not award Plaintiff attorney’s fees under the circumstances. This argument also has no basis as the Court’s authority to issue an award of fees under Judiciary Law § 773 is not discretionary. The text of the statute requires courts to direct a contemnor to indemnify the aggrieved party for losses resulting from the contemptuous conduct, stating that the fine “*must* be imposed upon the offender, and collected, and paid over to the aggrieved party, under the direction of the court” (emphasis added).

The Judgment Debtor’s third argument is that in the event the Court awards Plaintiff its attorney’s fees related to the contempt motion, the award should be in the form of a judgment, rather than a direction to pay under penalty of contempt. However, Judiciary Law § 773 does not mandate that the award should be issued in the form of a judgment, and furthermore, Judiciary Law § 774 holds that the penalty for a failure to pay the fine pursuant to § 773 is imprisonment “for a reasonable time, not exceeding six months . . . until the fine, if any is paid.” The Court

additionally notes that a judgment would be particularly inappropriate here given that the Judgment Debtor's willful failure to comply with the \$2,350,000 judgment issued in the Underlying Action and the subsequent Restraining Notice is what led to Plaintiff's contempt motion in the first place. The Court thus finds that a fine with a direction to pay under penalty of contempt is the proper form for Plaintiff's award.

The Judgment Debtor's fourth argument is that Plaintiff's attorney's fees incurred in connection with the instant motion should not be included in the fine imposed by the Court. In support, the Judgment Debtor cites to *Jamie v Jamie*, 19 AD 3d at 331, where the First Department held that Plaintiffs were not entitled to fees for work performed after the issue of attorney's fees was referred to a Special Referee. However, the First Department's basis for this holding was that the Special Referee referral order stated that "plaintiffs shall be entitled to the attorney's fees, along with the costs and disbursements, which they have *incurred* in prosecuting this contempt motion" (emphasis original) and recovery was thus limited to work performed before the date of the order.

Here, this Court's August 24, 2020 order did not limit the scope of work under which Plaintiff could seek reimbursement but merely directed submissions on the issue of "attorney's fees in connection with this motion" (NYSCEF doc No. 42). While Plaintiff's application for fees is technically a separate motion, the First Department has held that an attorney's fee award pursuant to Judiciary Law § 773 typically includes the plaintiff's attorney fees for the fee motion itself; in other words, "[a] prevailing party may recover 'fees on fees'" (*Kumble v Windsor Plaza Comp.*, 161 A.D.2d 259, 260–261 [1st Dept 1991].) The basis for this reasoning is that the prevailing party should be compensated for time spent proving the value of the attorney's

services in connection with the contempt motion. (*id.*) The Court is thus unpersuaded that Plaintiff's fees incurred in connection with the instant motion should be excluded from the total amount of the award.

The Judgment Debtor's final argument is that this Court should reduce the total amount of Plaintiff's award by 50%. In support, the Judgment Debtor cites to *Bd. Of Directors of Windsor Owners Corp. v Platt*, 2018 WL 878619 (Sup. Ct., NY County 2018), wherein the court reduced an award under Judiciary Law § 773 by 50%. However, the court in *Platt* made that reduction after determining that the time submitted by the attorneys "was not wholly attributable to contempt" (*id.*). There has been no such finding here, and the Court notes that the Judgment Debtor does not specifically challenge the reasonableness of the estimated fees or the number of hours worked. The Court thus finds no basis for the Judgment Debtor's argument that the award should be reduced by 50%.

Accordingly, the Court concludes that Plaintiff has demonstrated entitlement to its award of reasonable attorney's fees under Judiciary Law § 773 and directs that the Judgment Debtor pay the award in its entirety within 45 days.

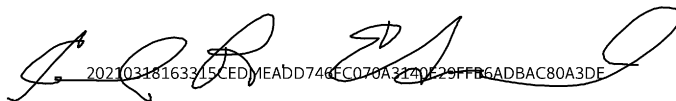
CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the application of Plaintiff Quadrant Management, Inc. pursuant to New York Judiciary Law § 773 and this Court's Decision and Order dated August 24, 2020 for an award of attorney's fees and costs incurred in connection with Plaintiff's prior motion for contempt against Defendant Judgment Debtor Jesus Enrique Sanchez Delgado (Motion Seq. 003) is granted; and it is further

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3/18/2021

DATE

CAROL R. EDMED, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE