

Monje v Hosein

2022 NY Slip Op 31068(U)

March 23, 2022

Supreme Court, Kings County

Docket Number: Index No. 522175/2016

Judge: Ellen M. Spodek

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 23 day of March 2022

P R E S E N T:

HON. ELLEN M. SPODEK, Justice

-----X

JOSE MONJE,

Plaintiff,

DECISION AND ORDER

-against-

Index No. 522175/2016

MS # 1

IMRAZ HOSEIN and FERAZ HOSEIN

Defendants

-----X

Order to Show Cause and Affidavits Annexed.....	<u>1</u>
Answering Affidavits	<u>2-3</u>
Replying Affidavits	_____
Exhibits	_____

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Background

Petitioner, Law Offices of Gary S. Park, P.C (hereafter "GSP") moves by Order to Show Cause, seeking the entire share of attorneys' fees for a six hundred and fifty thousand dollar (\$650,000) UIM settlement offer and an 85% share of the attorney's fees for an additional one hundred and eighty five thousand dollars in UIM settlement funds. Respondents, Glenn H. Shore, P.C., (hereafter "Shore") and Greenberg and Stein, P.C., (hereafter "Greenberg"), oppose.

On July 26, 2016, plaintiff Jose Monje was involved in an automobile accident which resulted in serious injuries, including damage to his cervical spine, which required surgery.

On October 25, 2016 Mr. Monje retained Shore, which filed a Summons and Complaint dated December 13, 2016. On January 31, 2017, Mr. Monje substituted Shore for Greenberg without cause. Greenberg filed a supplemental summons and complaint dated February 27, 2017, adding an additional defendant.

Greenberg continued to represent Mr. Monje until November 16, 2020. During this time Greenberg obtained medical records, filed a request for a Preliminary Conference, prepared a Bill of Particulars, prepared discovery demands and responses, and attended a Preliminary Conference on December 8, 2017. Greenberg obtained a consent to settle from York Risk Services, plaintiff's insurance carrier. Greenberg also obtained a consent to settle from the Worker's Compensation Board and obtained a reduction of the Worker's Compensation Board's lien from one hundred and eleven thousand four hundred and fourteen dollars and forty cents (\$111,414.40) to sixty four thousand dollars (\$64,000). Greenberg settled Mr. Monje's personal injury claim with Geico insurance company for the full liability policy of one hundred thousand dollars (\$100,000), which was tendered on December 15, 2017.

On May 10, 2018 Mr. Monje substituted Greenberg for GSP without cause. GSP prepared and submitted a UIM claim package to York Risk Services. On March 8, 2019, GSP submitted a request for Arbitration to the American Arbitration Association for the UIM claim.

On June 18, 2019 a pre-hearing conference was held via telephone and a hearing date was set for December 19, 2019. The hearing was adjourned several times due to outstanding discovery.

On November 3, 2020 Mr. Monje discharged GSP without cause and substituted Greenberg for the UIM claim. In continuing to pursue that claim, Greenberg arranged for a medical evaluation

of Mr. Monje. Greenberg also prepared an Arbitration Memorandum and arbitration package both dated April 25, 2021. The package included video footage of the accident, x-rays, and other medical documentation.

On May 25, 2021 New York Risk Services agreed to settle the UIM claim for eight hundred and thirty five thousand dollars (\$835,000).

Discussion

Judiciary Law §475 provides:

From the commencement of an action, special or other proceeding in any court or before any state, municipal or federal department, except a department of labor, or the service of an answer containing a counterclaim, or the initiation of any means of alternative dispute resolution including, but not limited to, mediation or arbitration, or the provision of services in a settlement negotiation at any stage of the dispute, the attorney who appears for a party has a lien upon his or her client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, award, settlement, judgment or final order in his or her client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien.

Under New York law, a client may discharge his or her lawyer at any time, with or without cause. *Cohen v. Grainger, Tesoriero & Bell*, 81 N.Y.2d 655, 658, 602 N.Y.S.2d 788, 789, 622 N.E.2d 288, 289 (1993). If a lawyer is discharged for cause, he or she is not entitled to legal fees. *Teichner by Teichner v. W & J Holsteins, Inc.*, 64 N.Y.2d 977, 979, 489 N.Y.S.2d 36, 37, 478 N.E.2d 177, 178 (1985).

In the case of a fee dispute between outgoing and incoming attorneys, if the outgoing attorney is discharged without cause, he or she has the right to either compensation based on quantum meruit for the reasonable value of the services rendered, or a contingent percentage fee to be determined at the conclusion of the litigation (*see Lai Ling Cheng v Modansky Leasing Co.*, 73 NY2d 454, 458, 539 NE2d 570, 541 NYS2d 742 [1989]; *Matter of Gary E. Rosenberg, P.C. v*

McCormack, 250 AD2d 679, 679-680, 672 NYS2d 892 [2nd Dept. 1998]; *Schneebalg v Lincoln Sec. Life Ins. Co.*, 225 AD2d 684, 639 NYS2d 457 [2nd Dept. 1996]). Where a firm has not elected to receive a fixed fee, there is a presumption that the firm has chosen a proportionate share of a contingency fee (see *Fernandez v New York City Health & Hosps. Corp.*, 238 AD2d 544, 545, 656 NYS2d 687 [2nd Dept. 1997]).D2d 679, 679-680, 672 NYS2d 892[1998]; *Schneebalg v Lincoln Sec. Life Ins. Co.*, 225 AD2d 684, 639 NYS2d 457 [2nd Dept. 1996]).

"An award of a reasonable attorney's fee is within the sound discretion of the Court based upon such factors as the time and labor required, the difficulty of the issues involved, the skill required to handle the matter and the effectiveness of the legal work performed." *Juste v. NYCTA*, 5 A.D.3d 736, 773 N.Y.S.2d (2nd Dept. 2004). "The issue of apportionment of an attorney's fee is controlled by the circumstances and equities of each particular case." *Mazza v. Marcello*, 20 A.D.3d 554, 799 N.Y.S.2d 151 (2nd Dept. 2005)

In this case, there is no contention that petitioner was discharged for cause. Therefore, petitioner is entitled to a proportionate share of the contingency fee based on the services it rendered while representing the plaintiff. Petitioner argues that because it was Mr. Monje's counsel at the time the initial offer of six hundred and fifty thousand dollars (\$650,000) was made to settle the UIM claim, it is entitled to 100% of the attorney's fees associated with that initial offer, and 85% of the one hundred and eighty five thousand dollar difference between that offer and the ultimate settlement amount of eight hundred and thirty five thousand dollars (\$835,000).

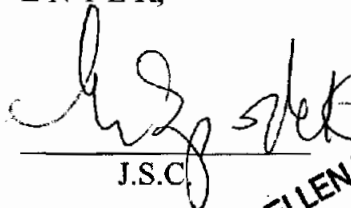
The Court disagrees with Petitioner's argument. It is clear from the papers in this matter that Greenberg conducted the bulk of the research, preparation, and discovery necessary to settle this case. In support of its argument for attorney's fees, GSP submitted substitution letters and correspondence regarding the scheduling of the arbitration hearing and the preliminary

negotiations to that effect. However, it does not submit proof of any additional research or discovery beyond what Greenberg had already prepared when GSP was substituted in as counsel. Additionally, GSP did not submit a retainer agreement signed by Mr. Monje to support the fee request.

Given that GSP obtained an initial offer from New York Risk Services, attended a pre-hearing conference, and assembled a document for arbitration containing a summary of Mr. Monje's records and injuries, it is entitled to the reasonable value of those services. However, 100% of the fee for the six hundred and fifty thousand dollar (\$650,000) offer and 85% of the difference between that and the ultimate eight hundred and thirty five thousand dollar (\$835,000) settlement is excessive and unsubstantiated. This Court finds that GSP is instead entitled to 15% of the entire fee for its work in moving the case forward while it was Mr. Monje's counsel. Given that the bulk of the work leading to the settlement was conducted by Greenberg, including obtaining video of the accident, conducting all the initial discovery, and handling the final negotiations, it is entitled to 85% of the total fee.

This constitutes the decision and order of the Court.

ENTER,



J.S.C.
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