

**Papageorgiou v Consolidated Edison Co. of N.Y.,
Inc.**

2022 NY Slip Op 31560(U)

May 12, 2022

Supreme Court, New York County

Docket Number: Index No. 115106/2004

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 41

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 CONSTANTINA PAPAGEORGIOU, as Special
 Limited Guardian of LUIS CASAS,

Plaintiff

Index No. 115106/2004

- against -

DECISION AND ORDER

CONSOLIDATED EDISON COMPANY OF NEW
 YORK, INC.,

Defendant

-----x
 LUCY BILLINGS, J.S.C.:

I. INTRODUCTION

Schwartz, Goldstone, Campisi & Kates, LLP (SGCK), a law firm that previously represented the former plaintiff guardian in this action, moves to intervene in the action for purposes of determining the attorneys' fees and expenses to be awarded upon settlement of the action to the successive attorneys who have represented plaintiff. C.P.L.R. §§ 1012(a)(2) and (3), 1013. Since no party opposes SGCK's motion to the extent that it seeks to intervene for purposes of determining SGCK's attorneys' fees, and the intervention is warranted to permit SGCK to protect its entitlement to a share of the contingent attorneys' fees, the court grants intervention to that extent. C.P.L.R. § 1013.

SGCK presents no authority, however, that permits the firm to intervene for purpose of determining the expenses for which

the current plaintiff guardian is obligated to reimburse her current attorney from the settlement proceeds. That determination rests between plaintiff and her attorney, pursuant to their retainer agreement, subject to the court's scrutiny and approval, since plaintiff is a guardian of the injured party Luis Casas who will recover the settlement. C.P.L.R. § 1206.

II. PRACTICAL CONSIDERATIONS

SGCK points out that the reimbursable expenses will reduce the total recovery from the settlement amount and hence reduce the attorneys' one third contingent share from which SGCK in turn will be awarded a percentage. This reduction is minimal, however, both in comparison to the total settlement amount and in terms of the ultimate effect the reduction will have on each of the multiple successive attorneys' fees, as recognized by the other previous attorneys, none of whom has sought to intervene in the determination of reimbursable expenses. To the extent of the expenses' effect, however, plaintiff has every incentive that the previous attorneys have to minimize the reimbursable expenses so as to minimize their reduction of the settlement. Although the injured party's interest in maximizing his recovery is not an interest that SGCK expresses, the court's scrutiny will assure that the guardian's approval of the expenses is in the injured party's best interests.

Perhaps the more significant effect, also recognized by the

other previous attorneys who have not sought to intervene in the determination of expenses, is that further litigation over the expenses, beyond the court's review of the expenses plaintiff has approved, would only delay Luis Casas' receipt of the settlement to which Casas is entitled and the resolution of this 2004 action. Moreover, as long as the delay continues, the lien on the settlement proceeds for the Workers' Compensation being paid to Casas continues to grow, reducing his ultimate recovery.

III. RELEVANT PRIOR ORDERS

SGCK relies first on a court ordered stipulation dated May 14, 2009 (Stallman, J.), when SGCK substituted as the former plaintiff's attorney for Flomenhaft & Cannata and H.Q. Nguyen, two of the former plaintiff's previous attorneys. The stipulation provided for a "fee/expense hearing conducted by the court" "at the conclusion of the case." Aff. of Herbert Rodriguez Jr. Ex. 4 ¶ 4. Although the stipulation refers to this hearing to determine the "charging lien & expenses" of the "Outgoing Attys," Flomenhaft & Cannata and Nguyen, id., the stipulation further provides that: "Incoming attys [SGCK] do not waive any claim or defense regarding fees or expenses of outgoing attys." Id. ¶ 6. Still, these claims or defenses relate only to the expenses of Flomenhaft & Cannata and Nguyen before the substitution in May 2009, not to ongoing expenses. Second, SGCK relies on an order dated May 23, 2019 (Cannataro, J.), which

provides that: "Any issues concerning attorneys' fees, costs and disbursements are preserved for a future fee dispute, if necessary." Rodriguez Aff. Ex. 3.

The upshot of these two orders is that the court will hold a hearing to resolve any issues concerning attorneys' fees and expenses and that SGCK has preserved any claims it had relating to the expenses of Flomenhaft & Cannata and Nguyen before the substitution in May 2009. At any such hearing, SGCK may protect its entitlement to a share of the contingent attorneys' fees, and the court will protect Louis Casas' interest in minimizing the reimbursable expenses of plaintiff's current attorneys, who are not SGCK. Again, it presents no authority supporting a claim by a party's attorney challenging the expenses that the party's previous attorneys incurred, particularly when the party herself, who is reimbursing those expenses, has approved them, and the court in turn will review her approval. Nothing in the May 2009 stipulation or the May 2019 order raises an issue regarding the propriety of the expenses incurred by Flomenhaft & Cannata, Nguyen, or any attorney, the misappropriation or conversion of funds, fraud, or other malfeasance. The May 2009 stipulation did not create any new claims that SGCK did not already have. Notably, SGCK does not dispute that the subsequent attorney who substituted for SGCK in 2014, Perecman PLLC, fully reimbursed the \$30,608.97 in expenses that SGCK had incurred, which no attorney

challenged.

IV. OTHER APPLICABLE LAW

The only circumstances under which a party's attorney may challenge the expenses that the party's previous attorneys incurred is where there is an issue whether the previous attorneys were discharged for cause. Even then, a determination of cause may require forfeiture of the attorneys' fees, but not their expenses. See People v. Keefe, 50 N.Y.2d 148, 156-57 (1980); In re Verdugo, 184 A.D.3d 441, 442 (1st Dep't 2020); Doviak v. Finkelstein & Partners, LLP, 90 A.D.3d 696, 699 (2d Dep't 2011); Coccia v. Liotti, 70 A.D.3d 747, 757 (2d Dep't 2010). Here, no party or attorney raises any issue that any attorney was discharged for cause.

V. DISPOSITION

For all the reasons explained above, the court denies the motion by Schwartz, Goldstone, Campisi & Kates, LLP, to intervene in this action for purposes of determining the expenses to be deducted from the settlement proceeds in the action. C.P.L.R. §§ 1012(a), 1013. As set forth above, however, the court grants the motion to the extent that it seeks to intervene for purposes of determining the attorneys' fees to which Schwartz, Goldstone, Campisi & Kates, LLP, is entitled. C.P.L.R. § 1013.

DATED: May 12, 2022



 LUCY BILLINGS, J.S.C.