Seibel v Ramsay
2022 NY Slip Op 32904(U)
August 26, 2022
Supreme Court, New York County
Docket Number: Index No. 651046/2014
Judge: Melissa Crane

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA CRANE** **PART** **60M**

Justice

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ROWEN SEIBEL, FCLA, LP, THE FAT COW, LLC,

Plaintiff,

- v -

GORDON RAMSAY, G.R. US LICENSING, LP, FCLA, LP, THE FAT COW, LLC

Defendant.

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INDEX NO. 651046/2014

MOTION DATE 08/08/2022

MOTION SEQ. NO. 013

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 013) 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731

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

Following a bench trial, the court ruled in favor of defendants Gordon Ramsay and GRUS Licensing, LP on their counterclaim for breach of contract and dismissed plaintiff Rowen Seibel's derivative claims. The court awarded defendants $777,349.54 with statutory interest from March 28, 2014, and also awarded defendants, derivatively on behalf of FCLA, LP, $80,000 with statutory interest from March 10, 2014 (Doc 668 [decision after trial]).

The court determined that defendants are the prevailing parties and they are entitled to recover their reasonable attorneys' fees under the terms of the FCLA LP Agreement (the agreement). Defendants move, in Motion Seq. No. 13, for an award of attorneys' fees in the amount of $5,953,232.50 (*see* Doc 730 [defendants' 8/12/22 letter correcting amount of fees sought due to accidental, duplicate invoice entries]). Plaintiff opposes the motion.

Paragraph 24 of the agreement states: "Each of the parties hereto acknowledges and agrees that in the event it becomes necessary for any party hereto to seek judicial remedies for

the breach or threatened breach of this Agreement, the prevailing party shall be entitled, in addition to all other remedies, to recover all costs of such judicial action, including reasonable attorneys' fees and the costs related to any appeal thereof, from the opposing party." The laws of Delaware govern the agreement. The parties agree that the applicable standards and considerations for awarding attorneys' fees are substantially the same in New York and Delaware.

Discussion

In both New York and Delaware, a prevailing party may recover its reasonable attorneys' fees pursuant to its contractual right. In New York, to determine reasonable attorneys' fees, the court weighs the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate (the "lodestar" method) (*see Hensley v Eckerhart*, 461 US 424, 430 [1982]). The court also considers:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

(*Id.* at 430 n3; *see also Matter of Freeman*, 34 NY2d 1 [1974]; *Sachs v. Adeli*, 121 AD3d 490 [1st Dept 2014]).

The court also considers the type of work necessary for the tasks performed and applies its own "knowledge, experience and expertise as to the time required to perform similar legal services" (*Schoenau v. Lek*, 283 AD2d 200 [1st Dept 2001]). The court is "not required to reduce fees further to reflect a relative 'lack of success' " – that is, the court can award attorneys' fees incurred litigating all of the claims, even if some may not have been successful, if "the unsuccessful claims 'involve[d] a common core of facts or were based on related legal theories,

so that [m]uch of counsel's time w[as] devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis" (*see Hernandez v Kaisman*, 139 AD3d 406, 407 [1st Dept 2016], quoting *LeBlanc-Sternberg v Fletcher*, 143 F3d 748, 762 [2d Cir 1998]).

In Delaware, "[a]bsent any qualifying language that fees are to be awarded claim-by-claim or on some other partial basis, a contractual provision entitling the prevailing party to fees will usually be applied in an all-or-nothing manner. . . . Additionally, considerations of justice and equity may inform the analysis" (*W. Willow-Bay Ct., LLC v Robino-Bay Ct. Plaza, LLC*, CIV.A. 2742-VCN, 2009 WL 458779, at *8 [Del Ch Feb. 23, 2009]).

Delaware courts have endorsed an "all-or-nothing" approach to awarding attorneys' fees where the contract states that the prevailing party is entitled to recover all reasonable fees (*see Brandin v Gottlieb*, CIV. A. 14819, 2000 WL 1005954, at *27-28 [Del Ch July 13, 2000]). However, that all-or-nothing approach is addressed to awarding fees for litigating the entire suit, not separating out claims and awarding fees for some but not all causes of action/theories (*see Comrie v Enterasys Networks, Inc.*, CIV.A.19254, 2004 WL 936505, at *2 [Del Ch Apr. 27, 2004]). Accordingly, the court rejects plaintiff's argument that the court should award defendants fees on a claim-by-claim basis.

In any event, the court must analyze the amount of the attorneys' fees for reasonableness. The factors are largely the same under New York and Delaware law. Under Delaware law, the court is required to

> "consider the factors identified in Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct and [relevant] case law. DLRPC Rule 1.5(a)(1) states that a court shall consider 'the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly.' DLRPC Rule 1.5(a)(4) states that a court shall consider 'the amount involved and the results obtained.' Finally, a court also should consider whether the number of

> hours devoted to litigation was "excessive, redundant, duplicative or otherwise unnecessary' "

(*Mahani v Edix Media Group, Inc.*, 935 A2d 242, 247-248 [Del 2007]).

At oral argument, the court directed defendants to submit new fee calculations deducting the amounts for the parties' mediation and settlement attempts, defendants' motion to amend, defendants' summary judgment motion (but not defendants' opposition to plaintiff's summary judgment motion), and Sheridans' fees (except for UK-specific fees). The time billed for those categories is "excessive, redundant, duplicative or otherwise unnecessary' " (*Mahani*, 935 A2d at 247-248). Accordingly, the court reduces the award of attorneys' fees $817,830.75 for defendants' motion for summary judgment, $80,482.50 for the mediation/settlement invoices, and $270,572.50 for the motion to amend. The court further reduces the requested award for Sheridans' fees from $387,212.77 to $52,173.67, a reduction of $335,039.10 (*see* Doc 730 at 3). That makes the requested award of attorneys' fees $4,449,307.65.

Finally, the court agrees with plaintiff that a further reduction to the award is warranted as a result of defendants' "block billing" entries. Block billing is the practice of lumping multiple charges into a single billing entry. Courts generally disfavor block billing entries because it is difficult to determine whether those entries are reasonable. While block billing does not render the requested attorneys' fees unreasonable *per se* (*see J. Remora Maintenance v. Efromovich*, 103 AD3d 501, 503 [1st Dept 2013]), the court imposes a further across-the-board reduction of 10% to the requested fees as an appropriate remedy (*e.g. Silverstein v. Goodman*, 113 AD3d 539 [1st Dept 2014]; *see also RMP Capital Corp. v. Victory Jet LLC*, 139 AD3d 836 [2d Dept 2016]). Thus, the award is reduced by $444,930.77.

In total, the court awards defendants $4,004,376.88, as permitted under the FCLA LP Agreement, as a reasonable amount of attorneys' fees under all of the relevant factors.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that Motion Seq. No. 13 is granted in part; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendants Gordon Ramsay and GRUS Licensing, LP and against plaintiff Rowen Seibel for their reasonable attorneys' fees in the amount of $4,004,376.88.

8/26/2022
DATE

MELISSA CRANE, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE