

Navatar Group, Inc. v Seale & Assoc., Inc
2022 NY Slip Op 33223(U)
September 20, 2022
Supreme Court, New York County
Docket Number: Index No. 653643/2018
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART 42

Justice

-----X

NAVATAR GROUP, INC.

Plaintiff,

- v -

SEALE & ASSOCIATES, INC,

Defendant.

-----X

INDEX NO. 653643/2018

MOTION DATE 05/18/2022

MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 165, 166, 167, 170, 171

were read on this motion to/for SEAL.

In this action arising from alleged breaches of a professional services contract, the court, by a decision and order dated January 6, 2022, and entered on January 13, 2022, granted the defendant’s motion pursuant to CPLR 3215 to enter a default judgment against the plaintiff on its first counterclaim, sounding in breach of contract, in the sum of \$6,281.25, plus costs and statutory interest from June 1, 2018. The court further granted the defendant leave to submit supplemental proof of the contractual attorney’s fees to which the defendant claimed entitlement within 30 days. The court otherwise denied the defendant’s motion.

On February 14, 2022, the defendant filed supplemental proof of contractual attorney’s fees. Subsequently, the defendant moved to seal certain documents submitted as proof of attorney’s fees, including (1) screen shots of PeerMonitor reports reflecting average hourly billing rates in the New York City market and (2) a chart prepared from the PeerMonitor reports comparing the billing rates charged by the defendant’s counsel with the rates charged by other lawyers in the New York City market (SEQ 008). No opposition to the sealing application has been submitted. On April 8, 2022, without authorization, the plaintiff filed an attorney’s affirmation opposing, or, in the alternative, seeking a reduction of, any award of attorney’s fees to the defendant.

The court turns first to the defendant’s fee application. The court notes that while the defendant’s submissions in support of attorney’s fees were not made within 30 days of the court’s order, they were made within 30 days of entry of the order. Moreover, the plaintiff does not object to the submissions or claim prejudice on the basis of the delay. Thus, the defendant’s fee application is deemed timely.

The factors used to determine the reasonableness of legal fees “include the time and labor expended, the difficulty of the questions involved and the required skill to handle the problems presented, the attorney’s experience, ability, and reputation, the amount involved, the customary fee charged for such services, and the results obtained (citations omitted).” Matter of Barich, 91 AD3d 769 (2nd Dept. 2012); see Matter of Freeman, 34 NY2d 1 (1974). An award of reasonable attorney’s fees is within the sound discretion of the court. See Diakrousis v Maganga, 61 AD3d 469 (1st Dept. 2009). A court may reduce requested fees to eliminate unnecessary work (see Matter of SR, 169 AD3d 574 [1st Dept. 2019]), work that was duplicative or was unnecessarily performed by an attorney rather than a paralegal or secretary (JK Two LLC v Garber, 171 AD3d 496 [1st Dept. 2019]) or where the amount sought was unsubstantiated by the proof submitted. See Silverstein v Goodman, 113 AD3d 539 (1st Dept. 2014); Josefsson v Keller, 141 AD2d 700 (1st Dept. 1988).

The proof submitted consists of an attorney’s affidavit, itemized invoices detailing the time spent on this matter and the rates at which the defendant was billed, and screen shots and a chart prepared from PeerMonitor reports comparing the billing rates charged by defense counsel to the rates charged by lawyers in the New York market with comparable experience. In his affidavit, counsel indicates that he has more than 34 years of experience in representing clients across the country in his nationwide litigation practice. Counsel billed the defendant at a rate of \$730 per hour through October 2019, \$760 per hour through October 2020, and \$800 per hour through the present. In addition, three associates admitted to practice in New York performed work for the defendant. In response to the plaintiff’s unauthorized opposition, the defendant submitted attorney biographies with respect to the associates further describing their qualifications. Associate Krista Bolles billed at a rate of \$520 per hour through October 2019, \$575 per hour through October 2020, and \$630 per hour through the present. Associate Joshua Kornfield billed at a rate of \$505 per hour through October 2019 and \$550 per hour through the present. Associate Lucy Onyeforo billed at a rate of \$565 per hour. The affidavit and invoices indicate that through January 31, 2022, counsel and his firm billed for 212 hours of work on this matter at a total of \$133,335.00, plus \$1,560.71 in disbursements. Counsel states that he and his colleagues performed an additional 115.3 hours of work with a value of \$66,225.50, but that he wrote off such charges as a courtesy to the defendant.

To the extent the defendant seeks to recover fees incurred in connection with the fee application itself, such “fees on fees” are not properly recoverable absent a statute or agreement expressly authorizing them. See 546-552 West 146th Street LLC v Arfa, 99 AD3d 117, 120 (1st Dept. 2012); Sage Realty Corp. v Proskauer Rose LLP, 288 AD2d 14, 15 (1st Dept. 2001). Thus, the defendant’s fees are reduced by \$3,102.00, reflecting the amount defense counsel billed after the issuance of the court’s January 13, 2022, decision and order.

As to the remainder of the fees sought, the court notes that a reduction is warranted given counsel’s practice of block-billing, which renders it difficult to ascertain the reasonableness of some of the charges listed in the invoices. See Silverstein v Goodman, supra; Josefsson v Keller, supra. The court also weighs the defendant’s limited success on its counterclaims. While the court found the defendant demonstrated entitlement to the sum of

\$6,281.25, it failed to establish its claim for an additional sum of \$52,281.25 in connection with its first counterclaim. Notwithstanding, the court must also consider the protracted nature of this litigation and the fact that most of the delay and complication therein was due to the plaintiff's own conduct. This includes the plaintiff's persistent refusal to engage in discovery and comply with court orders, which ultimately led to the striking of the plaintiff's complaint and response to the defendant's counterclaims and the entry of judgment on default. In light of the foregoing, the court finds that a 5% reduction in the remaining fees, for a total of \$123,721.35, plus \$1,560.71 in disbursements, is appropriate.

As to the defendant's sealing application, 22 NYCRR 216.1(a) provides that "a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties." "[C]onfidentiality is, in certain circumstances, necessary in order to protect the litigants or encourage a fair resolution of the matter in controversy," (Matter of Twentieth Century Fox Film Corp., 190 AD2d 483, 486 [1st Dept. 1993]), including to protect the confidentiality of trade secrets or to prevent harm to a business' competitive advantage (see Mosalem v Berenson, 76 AD3d 345 [1st Dept. 2010]; Matter of Bernstein v On-Line Software Intl. Inc., 232 AD2d 336 [1st Dept. 1996] lv denied 89 NY2d 810 [1997]). Nonetheless, it is the moving party's burden to overcome the broad presumption of openness by demonstrating "good cause" required for sealing. See Danco Labs v Chemical Works of Gedeon Richter, 274 AD2d 1 (1st Dept. 2000). "Thus, the court is required to make its own inquiry to determine whether sealing is warranted, and the court will not approve wholesale sealing of [court] papers, even when both sides to the litigation request sealing." Applehead Pictures, LLC v Perelman, 80 AD3d 181, 192 (1st Dept. 2010) (citations omitted); see Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.U., 28 AD3d 322 (1st Dept. 2006); Liapakis v Sullivan, 290 AD2d 393 (1st Dept. 2002); Matter of Hofmann, 284 AD2d 92 (1st Dept. 2001).

Here, the defendant avers that its submissions contain information taken from PeerMonitor, a proprietary product owned by West Publishing Corporation (West). PeerMonitor compiles information collected by West from a large number of law firms in New York and across the nation. West makes the information in its PeerMonitor database available only by paid subscription and provides subscribers with a limited license to use the PeerMonitor data only for internal purposes. Defense counsel pays for the PeerMonitor service and is granted a limited license to use the service. However, defense counsel avers, it has entered into a waiver agreement whereby West consented to the release of certain PeerMonitor data to this court in support of the instant application, conditioned on defense counsel seeking an order to seal such information.

The court has reviewed the Peer Monitor-related submissions and is satisfied that they do, in fact, consist almost exclusively of proprietary models and statistical information related to the business and billing practices of U.S. law firms, as compiled by West. This proprietary information is not publicly available but is instead licensed for private use only to PeerMonitor subscribers. In this instance, sealing is warranted to protect the confidentiality of West's

proprietary models and its ability to profit from the ability to license them. These interests outweigh the limited interest the public may have in free access to PeerMonitor data.

Accordingly, it is

ORDERED that the defendant’s application for attorney’s fees is granted to the extent indicated herein; and it is further

ORDERED that the Clerk shall enter an additional judgment in favor of the defendant and against the plaintiff in the sum of \$123,721.35 as and for an award of attorney’s fees, plus \$1,560.71 as and for an award of disbursements; and it is further

ORDERED that the defendant’s application to seal Exhibits B and C to the Affidavit of Creighton R. Magid in support of the defendant’s application for attorneys’ fees (Doc. Nos. 163 and 164) is granted; and it is further

ORDERED that the Clerk of the Court, upon service upon him of a copy of this order with notice of entry, is directed to seal Exhibits B and C to the Affidavit of Creighton R. Magid, sworn to on February 13, 2022, submitted in support of the defendant’s application for attorneys’ fees and filed at Doc. Nos. 163 and 164 in the docket of the New York State Courts Electronic Filing System, and to separate these documents and keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

9/20/2022
DATE

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