

Xueying Chen v B&H Healthcare Servs., Inc.

2022 NY Slip Op 33778(U)

November 1, 2022

Supreme Court, New York County

Docket Number: Index No. 651320/2018

Judge: Dakota D. Ramseur

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAKOTA D. RAMSEUR PART 34M

Justice

-----X

INDEX NO. 651320/2018

XUEYING CHEN,

MOTION DATE 12/23/2021

Plaintiff,

MOTION SEQ. NO. 002

- v -

B & H HEALTHCARE SERVICES, INC., WALTER GREENFIELD

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 61, 62, 63, 64, 66, 67, 68, 69, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion to/for ATTORNEY - FEES

BACKGROUND

In March 2018, Plaintiff Xueying Chen commenced the instant action against her employer B&H Healthcare Services, Inc. over its alleged failure to pay plaintiff overtime in violation of New York Labor Laws. The parties resolved the underlying dispute in a settlement agreement dated August 18, 2021. The agreement required defendant to pay a total of \$15,000 (\$2,500 directly to plaintiff and another \$12,500 to plaintiff's counsel, who would then distribute to plaintiff). Both parties recognize that the settlement agreement does not preclude plaintiff's counsel from moving for an award of attorneys' fees. (NYSCEF doc. no. 55, stipulation of discontinuance.) Thus, in Motion Sequence 002, plaintiff's counsel moves for an award of attorneys' fees in the amount of \$34,391.00.¹ (NYSCEF doc. no. 63, plaintiff's counsel's invoice.)

On June 21, 2022, the Court heard oral arguments on whether the amount that plaintiff's counsel invoiced is a reasonable award for attorneys' fees considering an award of that amount would represent more than two times the amount plaintiff received from the settlement. Thereafter, on June 23, 2022, defendant sought leave from the Court to submit further arguments on the matter to address alleged misrepresentations made by plaintiff's counsel. The Court granted defendant such leave and permitted plaintiff to reply. Those documents are found in NYSCEF doc. nos. 71 through 78. Defendant concluded its submissions by requesting the Court for orders (i) directing plaintiff's counsel to pay \$5,000 (which represents a portion of the settlement that counsel retained based on its retainer agreement) to plaintiff herself; (ii) denying the Fee Application in its entirety; (iii) requiring plaintiff's counsel show cause as to why they

¹ Plaintiff's counsel originally sought \$35,301.00 but conceded in reply that an invoice for \$910.00 was duplicative.

should not be sanctioned; and (iv) awarding defendant attorneys' fees for the costs in preparing the additional submissions. Plaintiff's counsel opposes each of these orders. On plaintiff's counsel original motion, counsel is entitled to attorneys' fees but not in the amount invoiced. With respect to the orders defendant requests in the supplemental submissions, she has not demonstrated entitlement to them.

DISCUSSION

Both plaintiff and defendants recognize that plaintiff is to be considered a "prevailing party" under New York Labor Law, and therefore her attorneys are entitled to *some* amount in attorneys' fees; both recognize that the determination of reasonable fees is committed to the Court's sound discretion; and, to that end, both urge the Court to use the lodestar method in its calculation of reasonableness. Under such an approach, the Court takes as its starting point the number of hours the prevailing party reasonably expended on litigation multiplied by a reasonable hourly rate. (*See McDaniel v County of Schenectady*, 595 F3d 411 [2d Cir 2010].) The Court then adjusts the lodestar figure based on case-specific considerations. (*Goldberger v Integrated Res.*, 209 F3d 43, 50, [2d Cir. 2000].) The case-by-case considerations include "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." (*Id.*, citing *In re Union Carbide Corp.*, 724 F Supp 160 [SDNY 1989].) An alternate, though closely related approach, described in *Arbor Hill Concerned Citizens Neighborhood Ass'n v County of Albany*, 493 F3d 110, 114 [2d Cir. 2007] and which the Court more closely adheres to here, requires an assessment of the case-specific considerations at the outset and factoring them into the Court's determination of a reasonable hourly rate for the attorneys' work to generate a "presumptively reasonable fee." (*See also McDaniel*, 595 F3d at 420.)

After reviewing the parties' respective papers with these factors in mind, the Court concludes that the \$34,391.00 is not a reasonable award of attorneys' fees. In support of this figure, plaintiff's counsel—John Troy, as managing partner of Troy Law—submits an affidavit in which he requests the Court approve an hourly rate of \$650 for his work, a \$400 hourly rate for managing associate Aaron Schweitzer's work, a \$350 hourly rate for associate George Byun's work, a \$250 hourly rate for associate Leanghour Lim, and lastly a \$150 hourly rate for Tiffany Troy. (NYSCEF doc. no. 62.) Counsel's invoice billed for 81.64 hours of work for the \$34,391.00 total.²

Though respectful of the quality and skill of plaintiff's counsel, the Court cannot grant an award at the hourly rates that is reflected on the invoice. Troy's affidavit does not cite to any case in which a Court has granted an award reflecting \$650 for his services nor \$400 for Schweitzer's. As counsel concedes, Troy has not received an award for his legal services above \$550 per hour (that was in the recent federal case *Yong Xu v Kealoha Sushi Inc. et al*, 1:19-cv-1185 PAE-SDA [SDNY August 24, 2021]) and Schweitzer has not received an award above \$350 per hour of work.

² A substantial portion of the award can be attributed to Troy and Schweitzer's work. At 28.15 hours and \$650 per hour, the total fee attributable to John Troy is 18,297.50. Schweitzer a total fee is \$13,004.00 representing 32.51 hours of work at a \$400 hourly rate.

From the Court's perspective, even when reduced to \$550 and \$350 respectively, these hourly rates appear unreasonably high. The first and fourth case-by-case considerations (the time or labor expended by the attorneys and the complexity/magnitude of the case) particularly weigh against such an award. The dispute between plaintiff and her employer is not particularly complex as plaintiff principally asserts an unpaid-overtime claim. As one federal district court noted, this type of claim does not raise issues regarding exemptions, coverage, collective action notification, or statutory interpretation under the New York Wage Theft Prevision Act of 2009 or any other Labor Law. (*See Enclada v Baybridge Enters.*, 2014 US Dist. LEXIS 122783 [EDNY 2014].) The relative simplicity of the instant action is reflected elsewhere in the record: no depositions were taken, documents were exchanged in discovery but were limited to less than 400 pages, no motions to quash, to dismiss or for summary judgment were made, no experts were consulted, a trial did not take place, and there were no appeals.

Though conceived of as a class action suit, which might otherwise indicate a certain complexity to the action, counsel quickly abandoned the premise and failed to move for class certification within the required time frame. In fact, the only motion plaintiff's counsel made was under CPLR 2004 for an extension of time to file for class certification. Yet it was brought nearly a year after the deadline, the failure to originally move was entirely within plaintiff's counsel's control, and the Court denied the motion in Mot. Seq. 001. (NYSCEF doc. no. 39.) The 81.64 hours billed also appears to be a deviation from what should reasonably be expended in the type of case presented here, particularly in the absence of any dispositive motion practice. Lastly, the amount plaintiff's counsel requests in attorney's fees is unreasonable considering the amount defendant agreed to pay according to the settlement agreement.

Based on the forgoing, the Court applies a \$350 per hour fee for work performed by Troy, a \$200 per hour fee for work performed by Schweitzer, Byum, and Lim, a \$100 hourly fee for work by Kilaru, and a \$75 per hour fee for Tiffany Tory (who, from the invoice, appears to have performed more administrative tasks than legal services). The Court reduces the reasonable hours billed to 20 each for Troy and Schweitzer, while the hours for the four other members of plaintiff's counsel remains unchanged. Accordingly, the Court awards plaintiff's counsel \$13,609.75 in attorneys' fees.

To the extent that defendant believes even this figure to be unreasonable and advocates for an award between 20-25% of the amount paid in pursuant to the settlement agreement, defendant has not demonstrated this amount to be any more reasonable than \$34,391.00. In *Monserate v Tequipment, Inc.*, the court concluded that a fee award of 15% of the settlement fund was fair and reasonable, but in actual dollar amounts, an award of 15% of the settlement (or \$465,000) represents 4.34 times the lodestar figure (which defendants calculated to be approximately \$125,000). (2012 US Dist LEXIS 164265 [EDNY 2012].) Put slightly differently, the court in *Monserate* determined the lodestar (again, a figure based on the reasonable fee multiplied by the reasonable amount of hours spent) and approved an award significantly above the reasonable value of the work. Here, plaintiff's counsel provided the Court an invoice and an affidavit describing the work and experience of the attorneys handling the matter to use as the lodestar. In contrast to *Monserate*, the Court has already reduced the award based on the *Goldberger* factors—it did not approve of an award with a lodestar multiplier.

In *McDaniel v County of Schenectady*, 595 F3d 411 (2d Cir. 2010), the Second Circuit concluded that the district court did not abuse its discretion in applying *Arbor Hill* and the *Goldberger* factors discussed above to arrive at an award that was thirteen percent of the settlement. (*McDaniel*, 595 F3d at 420.) Critically, the thirteen percent was tied to what the court considered a reasonable attorneys' fee based on the amount and nature of the work performed. (*Id.*) For present purposes, though *Monserate* and *McDaniel* can be viewed as awarding fees based on a percentage of the settlement agreement, the courts did not arrive at the respective 15% and 13% figures independent of the hours worked and the fees charged by the attorneys. But, here, that is exactly defendant's position. While it initially concedes the lodestar method is the appropriate method, defendant abandons that position by arguing the Court should essentially disregard the invoice and the hours worked in favor of an arbitrary 20-25% cap. Outside of refuting the reasonableness of plaintiff's lodestar, defendant's memorandum of law in opposition is silent as to what it considers to be a reasonable fee or a reasonable amount time to expend on the case. Notwithstanding the above, the Court *agreed* with defendant's arguments on several of the *Goldberger* factors and reduced the award as it sees fair and reasonable. Plaintiff cannot claim the Court misapplied the law or of the *Goldberger* factors in reducing the lodestar figure.

Plaintiff's request for orders (i) directing counsel to pay plaintiff the \$5,000 it retained from the settlement agreement, (ii) denying the fee application altogether, (iii) directing plaintiff's counsel to show why it should not be sanctioned, and (iv) permitting plaintiff's fees associated with the supplemental submissions, is denied. Defendant alleges that plaintiff's counsel misrepresented to the Court how much of the settlement money plaintiff received from the settlement. At the hearing, counsel stated that plaintiff received the entire \$12,500 that defendants paid, when in fact plaintiff's counsel retained \$5,000 pursuant to a retainer agreement. In reply to defendant's allegations, counsel submitted (1) an affidavit, in which he admitted the honest error in the representations he made to the Court (NYSCEF doc. no. 76); (2) an affidavit from plaintiff that explained her retainer agreement provided for a 1/3 contingency fee (hence the \$5,000) (NYSCEF doc. no. 77); and (3) a re-signed retainer agreement between counsel's law firm and plaintiff (NYSCEF doc. no. 80). Given the evidence before it, defendant has not demonstrated that "the Fee Application was brought on the false representation that Plaintiff's counsel was not receiving any of the Settlement Payment." Accordingly, sanctions against counsel are not warranted.

Accordingly, it is hereby

ORDERED that plaintiff Xueying Chen's motion for an award of attorneys is granted in the amount of \$13,609.75; and it is further

ORDERED that defendant B&H Healthcare's request for the above-mentioned orders is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; 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 of entry.

11/1/2022
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: