

Parkmerced Invs., LLC v WeWork Cos. LLC
2023 NY Slip Op 30147(U)
January 13, 2023
Supreme Court, New York County
Docket Number: Index No. 652094/2020
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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PARKMERCED INVESTORS, LLC,	INDEX NO. <u>652094/2020</u>
Plaintiff,	MOTION DATE _____
- v -	MOTION SEQ. NO. <u>003</u>
WEWORK COMPANIES LLC, AS SUCCESSOR IN INTEREST TO WEWORK COMPANIES INC.,	DECISION + ORDER ON MOTION
Defendant.	
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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 56, 58, 59, 60 were read on this motion to/for APPOINT - REFEREE.

In motion seq. no. 003, defendant WeWork Companies LLC (WeWork) moves for the appointment of a Referee to hear and report on or, in the alternative, to hear and determine the amount of attorneys' fees and costs due to WeWork as a prevailing party pursuant to the this court's decision granting WeWork's motion to dismiss. Plaintiff Parkmerced Investors, LLC (Parkmerced) opposes on the ground that it is premature to determine attorneys' fees because there is a pending motion to renew and reargue this court's dismissal, or in the alternative, there may be an amended complaint or successful appeal of this court's decision. However, the case relied on by Parkmerced, *J.P. & Assocs. Properties Corp. v Krautter*, 38 Misc 3d 60, 62 (2d Dept App. Term 2013), *affd*, 128 AD3d 963 (2d Dept 2015), deals with recovery of attorneys' fees pursuant to Real Property Law §234. This "statute provides that such an award may be made in appropriate circumstances if there is a successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the

lease, and the Second Department determined that “the Legislature intended such an award to be based on the ultimate outcome of the controversy, whether or not such outcome is on the merits.” (*Elkins v Cinera Realty, Inc.*, 61 AD2d 828 [2d Dept 1978]) .

Parkmerced also asserts that it cannot yet be determined whether WeWork is the substantially prevailing party because there has been no determine in the related action where Parkmerced is suing WeWork.

“To determine whether a party has ‘prevailed’ for the purpose of awarding attorneys’ fees, the court must consider the ‘true scope’ of the dispute litigated and what was achieved within that scope. To be considered a ‘prevailing party,’ one must simply prevail on the central claims advanced, and receive substantial relief in consequence thereof.” (*Sykes v RFD Third Ave. I Assoc., LLC*, 39 AD3d 279, 279 [1st Dept 2007] [citation omitted].) WeWork was successful on its motion to dismiss the entire complaint. The fact that there is another action pending does not change the fact that WeWork prevailed and received substantial relief in this action, i.e., the dismissal of this action against it.

Finally, Parkmerced argues that WeWork failed to properly raise the issue of attorneys’ fees. However, in its moving brief in support of its motion to dismiss, Wework states “WeWork will be entitled to its reasonable attorneys’ fees and expenses.” (NYSCEF 4, WeWork Memo of Law at 7.) This was sufficient notice for its application. (*See Morrell & Co. v Richalan Realty Corp.*, 106 AD2d 270, 270-71 [1st Dept 1984] [finding that successful party’s application for attorney’s fees, when made for the first time in an order and not “in its pleading or in its ultimately successful motion for summary judgment”, was improper].)

Accordingly, it is

ORDERED that WeWork's motion is granted; and it is further

ORDERED that a Special Referee shall be designated to hear and report to this court on reasonable amount of attorneys' fees owed to WeWork as the prevailing party in this action; and it is further

ORDERED that the powers of the Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/suptctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that Movant shall immediately consult with plaintiffs and Movant shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the

hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

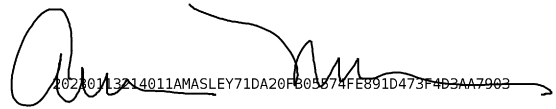
ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending

submission of the Report of the JHO/Special Referee and the determination of this court thereon.

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly.



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1/13/2023

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE