

Entech Eng'g, P.C. v Dewberry Engrs. Inc.
2023 NY Slip Op 30221(U)
January 22, 2023
Supreme Court, New York County
Docket Number: Index No. 653172/2015
Judge: Melissa Crane
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New York law on attorneys' fees has apparently become inconvenient for Entech. Therefore, despite having previously argued and prevailed on the issue that New York law applies to the contract here, Entech now argues that Virginia law applies to the attorney fee provision. Entech also deliberately mischaracterizes this court's 10/16/2019 decision to argue (incorrectly) that this court previously held Virginia law applies. Entech has quoted an out of context snippet from the 31-page decision. Having dug in its heels that New York law applied in this case, and having prevailed on this very issue, plaintiff is estopped to argue that Virginia law now suddenly applies to the contract between the parties.

The contract clearly contemplates the losing party must pay the prevailing party's attorneys' fees. Plaintiff has lost this case on summary judgment, on reargument and at the Appellate Division. It therefore must pay Dewberry's attorney's fees.

Moreover, Entech has exacerbated its own damages here. Throughout this litigation, Entech created unnecessary work for its adversary and the court. For example, Entech persisted in filing a motion to reargue the summary judgment motions despite this court's telling it in the pre motion conference to put its efforts into an appeal instead. It has done its best to be confusing by improperly raising new arguments, and combining facts introduced in the separate motions into one, creating the need for Dewberry to unravel and then refute Entech's arguments. Its opposition to this motion is no exception. As discussed, Entech bizarrely asserts that this Court applied Virginia law on summary judgment, when the decision states otherwise, and after Entech had taken the position that New York law applied.

Despite the complexity and length of this case and the fact that Entech made this case much harder than it needed to be, Dewberry's counsel billed only \$398,409 in attorneys' fees due to the low rate Tesser & Cohen charged: \$237 and hour for partners and \$199 an hour for associates. Then, Tesser & Cohen granted a further reduction on overall fees to its client. Entech

should consider itself lucky. Usually, on a case this bitterly litigated, the attorney's fees are much higher. In addition, having reviewed the bills and time records, the court finds unpersuasive Entech's arguments that the bills are anything other than fair and reasonable. Entech has charted its course in this litigation. Having relentlessly driven the litigation, it cannot now complain that the other sides' legal bills are too high, especially as the hourly rate is far below market.

However, the court agrees with Entech that attorney's fees from before the inception of this lawsuit on 9/22/2015, are not chargeable to Entech. The contractual language clearly contemplated an award of attorney's fees "for any claim or other proceeding." Had the parties meant for an award of fees from before a proceeding started, they should have used the word "and," not "or." Therefore, the court subtracts \$9,531.00 from the total fee award, representing all charges in the invoices (see NYSEF doc 258) from before 9/22/2015.

The court also denies Dewberry's request for prejudgment interest upon those fees. "[I]nterest may only be added to a contractual award of attorneys' fees if explicitly provided for in the agreement" (*Ursa Minor Ltd. v. Aon Fin. Prod., Inc.*, No. 00 CIV 2474(AGS), 2001 WL 1842042, at *9 [SDNY May 30, 2001]; *see also Vista Outdoor Inc. v. Reeves Fam. Tr.*, No. 16 CIV. 5766, 2018 WL 3104631, at *12 [SDNY May 24, 2018]). Here, there is no provision in the contract providing that prejudgment interest can be awarded on top of an award for attorney's fees. The language of CPLR 5001 supports this conclusion. That language provides "Interest shall be recovered upon a sum awarded because of a breach of performance of a contract. . . ." Here, there has been no chance for a breach of contract, as the court has only awarded fees today.

Accordingly, it is

ORDERED THAT the court grants defendant's motion for attorney's fees to the extent provided for in this decision; and it is further

ORDERED THAT there shall be no further motion practice without prior conference with the court, especially motions for reargument.

The clerk is directed to enter judgment against ENTECH ENGINEERING, P.C. in the amount of \$428,223.68 in favor of Dewberry Engineers Inc.

1/22/2023
DATE


MELISSA CRANE, J.S.C.

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