

Lis v Lancaster

2023 NY Slip Op 30676(U)

March 6, 2023

Supreme Court, New York County

Docket Number: Index No. 650855/2019

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M

Justice

-----X

ANDREW J. LIS,

Plaintiff,

- v -

JASON M LANCASTER, DEBBIE LANCASTER, CECIL
SIMMONS, DEE CHASE-UNNO, GULF PREMIER
LOGISTICS LLC, OVERLAND DISTRIBUTION CO.,
INC., OVERLAND EXPRESS CO., INC., JAL
ENVIRONMENTAL SERVICES PROGRAMS, BANK OF
AMERICA NA, JP MORGAN CHASE BANK NA,

Defendant.

-----X

JASON LANCASTER, JAL ENVIRONMENTAL SERVICES
PROGRAMS

Plaintiff,

-against-

JAL ENVIRONMENTAL SERVICES PROGRAMS LLC

Defendant.

-----X

INDEX NO. 650855/2019
MOTION DATE 02/17/2023
MOTION SEQ. NO. 012

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595376/2019

The following e-filed documents, listed by NYSCEF document number (Motion 012) 543, 544, 545, 546, 547, 548, 549, 550, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565

were read on this motion to/for

ATTORNEY – FEES

In Motion Sequence 11, plaintiff Andrew J. Lis and third-party defendant Environmental Supply Chain Alternative Planning Experts LLC (“Plaintiffs”) moved to strike the answer of defendants Jason Lancaster, JAL Environmental Services Programs, Inc., and Gulf Premier Logistics LLC (“Defendants”). Also in Motion 11, defendants cross-moved for sanctions against plaintiff and his counsel for frivolously filing the motion to strike. The court denied the cross-motion, declined to strike defendants’ pleadings, but found it appropriate to impose sanctions on defendants in the form of costs and fees for defendants’ failure to turn over certain document discovery, among other things. However, as plaintiffs did not seek attorneys’ fees, specifically, in

Motion 11, the court permitted plaintiffs to file a new motion for plaintiffs' reasonable attorneys' fees and costs associated with Motion Sequences 9 and 10 (NYSCEF Doc. No. 537).

In this motion [MS 12], Plaintiffs move for attorneys' fees and costs in amount of \$36,178.85, representing actual expenses and reasonable attorneys' fees incurred in connection with Motion Sequences 9 and 10. They seek reimbursement from either the Defendants or Defendants' counsel (Plaintiff's Memorandum of Law [NYSCEF Doc. No. 544, pg. 8]). Defendants, in Motion 12, then cross-moved for leave to reargue the court's decision and order resolving Motion Sequence 11 (Notice of Cross-Motion [NYSCEF Doc. No. 561]). The court has already denied defendants' cross-motion (NYSCEF Doc. No. 564)), leaving only plaintiffs' motion for attorneys' fees and costs. For the reasons discussed below, the motion is granted in part.

Discussion

Plaintiffs' counsel submits an affirmation listing the tasks performed and hours expended on Motion Sequences 9 and 10, counsel's experience, professional background, and his hourly billing rate (Affirmation of Ihsan Dogramaci in Support [NYSCEF Doc. No. 545]). Plaintiffs also submit invoices and timesheets for the services rendered and expenses incurred in those motions, (Redacted Invoices & Timesheets [NYSCEF Doc. No. 547]), as well as the invoices and timesheets for the expert witness' fees incurred in connection with Motion Sequence No. 9 (Expert Witness's Invoice & Timesheet for April 2022 and May 2022 [NYSCEF Doc. Nos. 548-549]).

In opposition, defendants argue, among other things, that the requested fees and costs are unreasonable, untenable, and are "unrelated and/or cannot be justified" (Defendants' Memorandum of Law [NYSCEF Doc. No. 560, pg. 25]). They also argue that the fees and costs incurred due to plaintiffs' expert are also unreasonable, and do not result from any alleged frivolous conduct (Defendants' Memorandum of Law [NYSCEF Doc. No. 560, pg. 26]). Defendants argue that "it is nonsensical to argue the expert's time somehow related to or was necessary for a motion that sought to obtain L&L discovery and not any cryptocurrency documents" and that "Plaintiffs only proffered the expert in reply on Motion Sequence 9 to argue Lancaster could have accessed the cryptocurrency documents he represented he could not" (Defendants' Memorandum of Law [NYSCEF Doc. No. 560, pg. 27]).

Defendants' arguments are, for the most part, without merit.

Under Section 130-1.1 of the Rules of the Chief Administrator, the "court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where

prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct." Frivolous conduct includes conduct that is "(1) . . . completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) . . . undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) asserts material factual statements that are false" (NY Ct R 130-1.1 [c]).

The court found, in resolving Motion 11, that defendants had acted frivolously in failing to produce certain responsive documents in their possession (see NYSCEF Doc No 537 at 3-4). Defendants further claimed, at the last minute, that many of these documents were privileged, but had failed to include them on their privilege logs and had waived certain privilege protections in the past. Accordingly, the court, in its discretion and under the circumstances presented, found in the prior motion that defendants' conduct, which flouted court orders in violation of CPLR 3126, required numerous court appearances and motions, and caused excessive delay, was frivolous (22 NYCRR § 130-1.1 [c]).

Nevertheless, the court also finds it appropriate to reduce the amount of plaintiffs' requested fees. The court has analyzed and assessed all of plaintiffs' affidavits and exhibits in support of its request for attorneys' fees, costs, expert fees, and disbursements, which seeks an award of \$36,178.85 in total. Having carefully scrutinized plaintiffs' counsels' invoices and other submissions, the court finds that an award of costs in the sum of \$25,325.19 is reasonable for the attorneys' fees, costs, and disbursements incurred by plaintiffs in connection with these matters.

Briefly, the invoices plaintiffs submitted in support of this motion indicate that an excessive amount of time was spent performing tasks related to the underlying motions given the case's age, posture, and the intractable discovery disputes that have repeatedly occurred (*see* Affirmation of Ihsan Dogramaci in Support [NYSCEF Doc. No. 545, ¶ 8]). Plaintiffs' invoices also contain items with redactions and several instances of block-billing, warranting reduction. Thus, a **30%** reduction to the requested attorneys' fees, and costs incurred is appropriate (*see e.g. Matter of Silverstein v Goodman*, 113 AD3d 539, 540 [1st Dept 2014]; *RMP Capital Corp. v Victory Jet, LLC*, 139 AD3d 836, 840 [2d Dept 2016] [reducing fee award across the board by 25% "due to the use of block billing, including vague and nonspecific billing entries, and the nature of th[e] lawsuit"]). A 30% reduction of the requested \$36,178.85 [\$10,853.66] results in a total award of \$25,325.19.

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

Accordingly, it is

ORDERED that Motion Seq. No. 12, is granted in part and defendants shall reimburse plaintiffs for actual expenses reasonably incurred and reasonable counsel fees in the total amount of \$25,325.19; and it is further

ORDERED that payment of these costs shall be delivered to counsel for plaintiffs and written proof of such payment shall be provided to the Clerk of Part 60 and filed to NYSCEF within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that, if timely payment is not made, the Clerk of the Court, upon service of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment upon him, shall enter a judgment in favor of the plaintiff Andrew J. Lis and third-party defendant Environmental Supply Chain Alternative Planning Experts LLC and against defendants Jason Lancaster, JAL Environmental Services Programs, Inc., and Gulf Premier Logistics LLC, jointly and severally, in the aforesaid sum.

3/6/2023
DATE


MELISSA A. CRANE, J.S.C.

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