

**Park Towers S. Co., LLC v Columbus Circle Parking,
LLC**

2023 NY Slip Op 31052(U)

April 3, 2023

Supreme Court, New York County

Docket Number: Index No. 653757/2020

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM PART IV

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PARK TOWERS SOUTH COMPANY, LLC,

Plaintiff,

-against-

COLUMBUS CIRCLE PARKING, LLC, and

TMO PARENT, LLC,

Defendants.

-----X

FRANK P. NERVO, J:

**DECISION
FOLLOWING
INQUEST**

Index No.

653757/2020

Following summary judgment in favor of plaintiff, judgment was entered against defendants in the amount of \$321,116.74 on December 7, 2022; however, the amount of attorneys' fees due plaintiff was referred to the Special Referee Part to conduct an inquest on same (NYSCEF Doc. Nos. 122 & 128). The inquest in this matter was, thereafter, administratively assigned to this Court. Upon assignment, this Court directed that the inquest proceed on paper submissions, absent a request for cross-examination by defendants (NYSCEF Doc. No. 129). Defendants did not request cross-examination.¹ This Decision and Order following inquest results.

¹ Defendants' opposition is untimely; however, defense counsel's excuse for same is reasonable, namely illness, and the less than one-week delay does not prejudice any party. Accordingly, the Court has considered defendants' opposition.

Where attorney fees are authorized, either by statute or agreement, the fee sought must be reasonable; where the fee is unreasonable, inflated, or needlessly incurred, the Court may dismiss the claim for attorney's fees (*American Motorists Ins. Co. v. Napco Sec. Systems Inc.*, 244 AD2d 197 [1st Dept 1997]). In determining the reasonableness of attorney's fees, the Court considers the attorney's affidavit and submissions to elicit the "difficulty of the issues and the skill required to resolve them; the lawyers' experience, ability and reputation; the time and labor required; the amount involved and benefit resulting to the client from the services; the customary fee charged for similar services; the contingency or certainty of compensation; the results obtained and the responsibility involved" (*Bankers Federal Sav. Bank FSB v. Off West Broadway Developers*, 224 AD2d 376 [1st Dept 1996]).

Plaintiff was represented in this matter by in-house counsel. Notwithstanding plaintiff's counsel's in-house status, counsel avers records were kept outlining the time and work performed by counsel in this matter and counsel has annexed timesheets of same (NYSCEF Doc. No. 130 at p. 4 & 5).

In opposition, defendants contend plaintiff should not be award attorneys' fees on plaintiff's motions sequences 001, 002, 003, and 004, as those

motions were denied. Defendants also allege plaintiff seeks to recover for work performed in a related but separate action in Landlord-Tenant court. Finally, defendants contend that the hourly rate sought by plaintiff's counsel, \$650/hr is exorbitant.

The mere denial of a motion does not amount to a finding that a motion was meritless or unreasonably brought sufficient to deny attorneys' fees for same (*see generally Hernandez v. Kaisman*, 139 AD3d 406 [1st Dept 2016]). However, where a motion is meritless, needlessly filed, or otherwise unreasonable or unproductive, the Court may deny attorney's fees for work performed in connection with such motion (*see generally JK Two LLC v. Garber*, 171 AD3d 496 [1st Dept 2019]). The Court, for the sake of clarity, addresses each motion which defendants contend attorneys' fees should not be awarded separately.

MOTION SEQUENCE 001

In denying plaintiff's motion sequence 001, the learned Hon. Louis L. Nock, J.S.C. determined plaintiff's order to show cause for provisional relief was, in actuality, an improper attempt to secure ultimate relief pled in its complaint. Accordingly, that motion was denied as improper. Plaintiff should

not recover for counsel's 13.8 hours of work on a motion which was, at the outset, improper.²

MOTION SEQUENCES 002 & 003

Plaintiff's next motion, sequence 002, sought leave to file an amended complaint adding a defendant under the theory of piercing a corporate veil. The denial of this motion was required as plaintiff failed to show any fraud or wrongdoing necessary to support piercing a corporate veil, rendering the motion meritless at the outset (NYSCEF Doc. No. 72). Nevertheless, plaintiff sought to reargue this meritless motion under sequence 003 (NYSCEF Doc. No. 120). A reargument motion of an underlying meritless motion is, by definition, likewise meritless. Accordingly, plaintiff should not recover for the 13.3 hours³

² The Court further found the remaining relief could not be granted as there was no basis for same, either in the parties' lease or as a practical matter.

³ Plaintiff does not recover for entries dated: "10-05-20 Prepare 3215 Notice for CC Parking and TMO"; "10-13-20 Research for potential OSC for interim relief, U&O, accounting"; "10-14-20 Draft OSC , supporting Affs for accounting, interim relief etc."; "10-15-20 Review comments to proposed OSC"; "10-19-20 Draft OSC, supporting Aff, memo of law"; "10-20-20 Finalize and file OSC"; "11-25-20 Review Defendants Opp to OSC"; "11-30-20 Research for reply"; "12-01-20 Draft reply on OSC", "12-02-20 Prepare Oral Argument"; "12-03-20 Oral Argument"; "12-03-20 Review order denying OSC".

spent on the meritless corporate veil motion, nor for the 10.6 hours⁴ spent on reargument of same.

MOTION SEQUENCE 004

The Court denied the relief sought by plaintiff under motion sequence 004, striking defendants' affirmative defenses, as moot, given that plaintiff was successful in securing summary judgment under motion sequence 005 (NYSCEF Doc. No. 120). Accordingly, plaintiff's motion sequence 004 was not found to be meritless or unreasonable, and award of attorneys' fees for the work performed in connection with this motion, 2.6 hours, is proper.

LANDLORD TENANT MATTER

Plaintiff improperly seeks to recover 7 hours of work performed in connection with a related Landlord Tenant matter in Civil Court, denoted as "LT action" and "non-payment petition". There is no basis to provide for

⁴ Plaintiff does not recover for entries dated: "03-22-21 Research motion to reargue"; "03-24-21 Research Aff for motion to reargue"; "03-29-21 Revise affs, draft memo of law"; "04-02-21 Corresp. Counsel in Supreme Court action regarding discovery deficiencies Finalize motion for filing"; "04-22-21 Review Def opp to motion to reargue"; "04-23-21 Research and draft reply on reargument"; "04-27-21 Continue drafting reply to reargument motion"; "04-28-21 Finalize and file reargument reply".

counsel fees which were incurred in separate action. Accordingly, plaintiff cannot recover for the 7 hours of work performed on a separate matter.⁵

HOURLY RATE

Plaintiff's counsel seeks hourly compensation of \$650.00 based upon counsel's 31 years of experience and the novel issues raised by the COVID pandemic. Defendant opposes that rate of compensation, arguing that the matter was straightforward and that as in-house counsel, plaintiff's counsel should receive "at the bottom of the reasonable rate scale". Conspicuously absent from defendant's submission is any authority for the proposition that in-house counsel should be compensated at a lower hourly rate than outside counsel. The Court declines the invitation to discount an attorney's services based upon their in-house employment status.

The Court has considered plaintiff's counsel's 31 years of experience and the novel issues that arose in cases of this nature during the COVID pandemic. Furthermore, and notwithstanding the meritless motion practice outlined *supra*,

⁵ Plaintiff does not recover for entries dated: "10-07-21 Prepare Non Payment Petition"; "01-25-22 Prepare default motion in non payment LT Action"; "01-26-22 Prepare and file default motion in LT non payment"; "02-04-22 Virtual Housing Court appearance- Default Motion, prepare letter to Columbus Parking as directed by the Court"; "02-23-22 Appear for adjourned virtual hearing on default"; "03-07-22 Appear on LT action (virtual) on default motion and prepare and file settlement of LT non Payment".

it is beyond cavil that plaintiff's counsel services benefit plaintiff, as counsel secured judgment in excess of \$300,000.00. Finally, the Court has considered the customary rate charged for services of this type, and the rates previously sanctioned by the Appellate Division for attorneys with more than 30 years of experience (*see e.g. RMP Capital Corp. v. Victory Jet, LLC*, 139 AD3d 836 [2d Dept 2016]), finding \$415/hr reasonable compensation for a partner with more than 30 years of experience). Adjusting for inflation, in accordance with data from the United States Bureau of Labor Statistics, \$415/hr in 2016 is equivalent to approximately \$520/hr in 2023. Accordingly, the Court reduces the rate of compensation sought by plaintiff's counsel to \$520/hr.

Plaintiff's counsel has sought compensation for 82.1 hours of work in this matter. However, as discussed above, the Court has found that counsel should not be compensated for 30.9 hours of work which was unnecessary, unproductive, or otherwise meritless. Accordingly, the Court finds plaintiff's counsel shall recover for 51.2 hours of work at \$520/hr for total recovery of \$26,624.00.

Finally, turning to interest on the above award, interest on the award of legal fees is properly calculated from the date plaintiff was determined to be the

prevailing party (see *Solow Mgmt. Corp. v. Tanger*, 19 AD3d 225 [2d Dept 2005])). Here, the Court's decision and order on motion sequence 005, granting plaintiff summary judgment, is the date plaintiff was determined to be the prevailing party on the issue of liability. Accordingly, interest from the date that decision and order was deemed filed, July 1, 2022, is appropriate.

Therefore, it is

ORDERED ADJUDGED and DECLARED that plaintiff, PARK TOWERS SOUTH COMPANY, LLC, 524 North Ave, New Rochelle, NY 10801, shall have judgment and does recover for attorneys' fees as against defendants Columbus Circle Parking, LLC, 28 Liberty St. New York, NY 10005, and TMO Parent, LLC, 28 Liberty St. New York, NY 10005, jointly and severally, in the amount of \$26,624.00 with interest at the statutory rate from July 1, 2022, as calculated by the Clerk of the Court, and together with costs and disbursements as taxed by the Clerk of the Court; and it is further

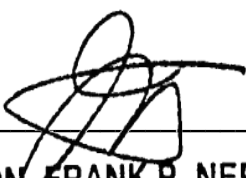
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ORDERED that judgment shall be submitted to the Clerk's Office, and not chambers, unless directed otherwise by that office.

THIS CONSTITUTES THE DECISION AND ORDER FOLLOWING INQUEST

Dated: April 3, 2023

ENTER:



HON. FRANK P. NERVO
J.S.C.