

Beadell v Eros Mgt. Realty, LLC

2023 NY Slip Op 32077(U)

June 21, 2023

Supreme Court, New York County

Docket Number: Index No. 159152/2017

Judge: John J. Kelley

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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. JOHN J. KELLEY PART **56M**

Justice

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VIRGINIA BEADELL and KAYLA GREENINGER,
Individually and as Co-Administratrix(es) of the Estate of
NOAH C. BEADELL, Deceased, and KAYLA
GREENINGER, Individually,

INDEX NO. 159152/2017

MOTION DATE 05/25/2023

MOTION SEQ. NO. 004, 005

Plaintiffs,

- v -

EROS MANAGEMENT REALTY, LLC, WYNDHAM HOTEL
MANAGEMENT, INC., CHRISTIAN ALDOY, TRYP
MANAGEMENT, INC., HCS HOSPITALITY, INC., RONICA
SHARMA, "JOHN DOE 1-10", and "JANE DOE 1-10,"

SUPPLEMENTAL ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 163, 164, 165, 166, 167, 168, 183, 184, 185, 186

were read on this motion to/for VACATE NOTE OF ISSUE

The following e-filed documents, listed by NYSCEF document number (Motion 005) 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 187, 188, 189, 190

were read on this motion to/for SANCTIONS

In an order dated June 1, 2023, this court granted, in part, the plaintiffs' motion for the imposition of sanctions upon the defendants Eros Management Realty, LLC, and Tryp Management, Inc. (SEQ 005). Among other things, the court awarded costs to the plaintiffs for the reasonable attorneys' fees that they incurred in litigating Motion Sequences 004 and 005, along with "costs that they incurred in retaining a private investigator to locate and speak with nonparty witnesses Ibrahima Faty and Huguette Faty." The court further directed that, within 45 days of the entry of that order, the plaintiffs' attorneys were required to submit an affirmation of legal services rendered in connection with litigating Motion Sequences 004 and 005, and an invoice for the fees of the private investigator that they retained to locate and speak with

Ibrahima Faty and Huguette Faty. On June 13, 2023, the plaintiffs' attorneys submitted a bill of costs, an affirmation of the services that they rendered in connection with litigating the two motions, and an invoice from the private investigator that they retained, Sage Intelligence.

In their affirmation, the plaintiffs' two attorneys asserted that attorney Gary A. Lichtman spent 3 hours preparing the plaintiffs' opposition to the defendants' motion to vacate the note of issue, that Lichtman and attorney Scott L. Sherman together spent a total of 16 hours preparing the papers in support of their motion for the imposition of sanctions, and that they together spent 9 hours in preparing their reply papers in connection with that motion. They further asserted that their customary billing rate was \$450.00 per hour, but in their bill of costs, they calculated the fees that they are seeking at the rate of \$400.00 per hour.

The plaintiffs' opposition to Motion Sequence 004 consisted of a 3-page attorney's affirmation and 5 exhibits. The court concludes that 1 hour constitutes a reasonable amount of time necessary to prepare and upload those documents, and that the plaintiffs are entitled to an award of fees at the rate of \$400.00 per hour, for a total of \$400.00 in opposing that motion. In moving for the imposition of sanctions under Motion Sequence 005, the plaintiffs submitted a proposed order to show cause, a 13-page attorney's affirmation, 11 exhibits, and an affirmation of service. The court concludes that 4 hours constitutes a reasonable amount of time necessary to prepare and upload those documents, and that the plaintiffs are entitled to an award of fees at the rate of \$400.00 per hour, for a total of \$1,600.00 in preparing and uploading those documents. In replying to the defendants' opposition papers under Motion Sequence 005, the plaintiffs submitted a 6-page attorney's affirmation and 3 exhibits. The court concludes that 2 hours constitutes a reasonable amount of time necessary to prepare and upload those documents, and that the plaintiffs are entitled to an award of fees at the rate of \$400.00 per hour, for a total of \$800.00 in preparing and uploading those documents. In addition, the court notes that the plaintiffs' attorneys appeared in court for approximately 90 minutes to argue both motions and that, consequently, they are entitled to an award of \$600.00 for that appearance,

as well as reimbursement of the \$45.00 motion filing fee for Motion Sequence 005. The court thus concludes that the plaintiffs are entitled to a total award of \$3,445.00 in attorneys' fees and disbursements for litigating Motion Sequences 004 and 005.

With respect to the costs that the plaintiffs incurred in retaining a private investigator "to locate and speak with nonparty witnesses Ibrahima Faty and Huguette Faty," they submitted an itemized invoice from Sage Intelligence, dated April 17, 2023. The court concludes that Item Nos. 2, 6, and 8 on the invoice were not specifically related to ascertaining the Fatys location and contact information, but were, among other things, general investigatory tasks that permitted the plaintiffs to locate and depose Police Officer Daniel Dabren. Nonetheless, the costs described in Item Nos. 1, 3, 4, 5, 7, and 9 on the invoice were legitimately incurred in locating the Fatys, for a total of \$5,224.75. The plaintiffs also are entitled to recover the \$463.70 in sales tax that they paid upon that amount. Hence, the plaintiffs are entitled to recover, from the defendants, the sum of \$5,688.45 in connection with the costs they incurred in retaining the private investigator.

Accordingly, it is

ORDERED that, on or before August 4, 2023, the defendants Eros Management Realty, LLC, and Tryp Management, Inc., shall pay to the plaintiffs attorneys the sums of \$3,445.00 as and for attorneys' fees and disbursements that the plaintiffs incurred litigating Motion Sequences 004 and 005, and \$5,688.45 in connection with the costs that they incurred in retaining a private investigator to locate and speak with nonparty witnesses Ibrahima Faty and Huguette Faty, for a total of \$9,133.45; and it is further,

ORDERED that the failure of the defendants Eros Management Realty, LLC, and Tryp Management, Inc., to pay these sums as set forth herein may subject them to punishment for civil contempt of court.

This constitutes the Supplemental Order of the court.

6/21/2023
DATE


JOHN J. KELLEY, J.S.C.

SEQ 004 CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

SEQ 005 CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE