

**GLCA Sec., LLC v AGC Networks, Inc.**

2023 NY Slip Op 32289(U)

July 5, 2023

Supreme Court, New York County

Docket Number: Index No. 650759/2019

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: IAS PART IV

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GLCA SECURITIES, LLC,

Plaintiff,

-against-

AGC NETWORKS, INC.

Defendant.

-----X

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

**DECISION FOLLOWING  
INQUEST**

Index No. 650759/2019

Following affirmance of that portion of the decision of the Hon. Debra A. James, J.S.C. which granted plaintiff summary judgment and referred, inter alia, the calculation of attorney’s fees to a referee, the inquest in this matter seeking attorney’s fees was assigned to Part IV. This Court directed that the inquest would proceed on paper submissions, with defendant reserving the right to cross-examine plaintiff’s witnesses in-person on January 5, 2023, only if necessary. As defendant sought to cross-examine plaintiff’s witnesses, the Court heard testimony, as adjourned at the parties’ request, on May 2, 2023. The Court permitted the parties to submit limited post-hearing briefing regarding any additional fees sought as a result of these, and same was received by the Court.

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 "difficult 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]). Where an attorney's records reflect block-billing, the grouping of several tasks in single billing entry, a reduction of the amount of billed is generally appropriate; however, there is no set "maximum or minimum that block-billed fees should be reduced to account for unnecessary work" (*Community Counseling & Mediation Services v. Chera*, 115 AD3d 589 [1st Dept 2014]).

It is undisputed that plaintiff's counsel utilized block-billing. Ordinarily a reduction to account for unnecessary work, would be appropriate (*id.*).

However, here, plaintiff's counsel testified, and defendants did not refute, that the partner assigned to this matter limited her billing for work performed on this matter as it progressed in order to reduce costs to the client (NYSCEF Doc. No. 144 at p. 17 ln. 13 – 18). Given that plaintiff's counsel credibly testified that she limited billing for otherwise recoverable services in order to reduce the legal costs to her client, the concern predicated a reduction for block billing, that an attorney recovers for unnecessary work, is not an issue here. Accordingly, and upon consideration of the billing records and testimony in this matter, the Court finds no reduction is warranted for block-billing. Despite the use of block-billing, the billing records at issue indicate a reasonable expenditure of time in this matter involving complex financial issues and appellate practice.

Turning to the hourly rate charged by counsel, the billing records indicate various hourly rates charged by individual attorneys performing work on this matter, with such hourly rates starting at \$300 for associates and reaching \$800 for the executive partner (NYSCEF Doc. Nos. 133 and 132 at ¶ 7). Given the complexity of this matter, plaintiff's success on appeal, and considering the billing records and testimony regarding counsels' professional experience, the Court finds the hourly rate charged reasonable. The Court further notes that

plaintiff's counsel succeeded in securing a judgment of approximately one-million dollars.

To the extent that defendant challenged individual time entries of plaintiff's counsel as vague at the May 2, 2023 hearing, plaintiff's counsel adequately explained that those time entries must be read in conjunction with the time entries immediately surrounding the challenged entry (*see e.g.* NYSCEF Doc. No. 144 at p. 10 ln. 13-25; p. 12 ln. 9-18; p. 16 ln. 12-15). Stated differently, plaintiff's counsel credibly testified that billing entries of one employee must be read in conjunction with contemporaneous entries of other employees working on the same matter in order to provide a complete understanding of the work performed. The Court finds this to be reasonable. Thus, defendants have likewise failed to meet their burden establishing redactions warrant a reduction or that plaintiff's counsel has submitted duplicative billing entries.

As to defendant's contention that the fees requested seek impermissible fees on fees, in that additional fees are sought related to the instant proceedings seeking to recover counsel's underlying fees in the matter, it is beyond dispute that the billing records at issue through November 29, 2021, do not comprise fees

on fees (NYSCEF Doc. No. 133). Plaintiff seeks recompense of attorney's fees totaling \$97,582 for work performed pre-appeal and \$106,869 for work performed after defendants' failed appeal (NYSCEF Doc. No. 144 at p. 3). Accordingly, these fees, totaling \$204,451, are properly sought on this application.

To the extent that plaintiff's counsel seeks "future fees" or similar related to the instant application, same ordinarily constitutes a fee on fee, and absent express language allowing for recovery of same in the parties' agreement, plaintiff's counsel generally may not seek to recover these fees (*see e.g. Sage Realty Corp. v. Proskauer Rose LLP*, 288 AD2d 14 [1st Dept 2001]; *IG Second Generation Partners, L.P. v. Kaygreen Realty Co.*, 114 AD641 [2d Dept 2014]). However, equitable principles and the interest of justice require the award of such fees in this matter. As discussed supra, a hearing was held in this matter on the request of defendant in order to cross-examine plaintiff's counsel, ostensibly to reveal infirmities in the billing records submitted. At the hearing, defendant failed to demonstrate a single billing record was inflated, duplicative, or otherwise improper. Furthermore, the corpus of defendant's challenge, block billing, was predicated upon an erroneous assertion that the mere use of block billing requires a reduction as a matter of law. Indeed, the Appellate Division, First Department has held the opposite, that there is no maximum or minimum

reduction necessary for block billing (see *Community Counseling & Mediation Services, supra*). Defendants' challenge of the instant fee award is consistent with their legal strategy to date –baseless challenges in the face of contrary appellate legal authority which result in substantial increases in plaintiff's legal fees required to prosecute this matter. As discussed *supra*, defendants failed appeal claiming ambiguity was flatly rejected by the Appellate Division, First Department, "the agreement plainly states," "[t]he agreement is not ambiguous simply because defendant argues for an alternative interpretation" (*GLCA Securities LLC v. AGC Networks, Inc.*, 194 AD3d 610 [1st Dept 2021]). This failed appeal more than doubled plaintiff's attorney's fees in this matter (see *e.g.* NYSCEF Doc. No. 144 at p. 3.; *supra*). Having failed to present any legal basis for reduction of the fee award sought herein, defendant's demand for a hearing on same amounts to frivolity and a bad-faith attempt to increase litigation costs. Accordingly, defendants should not be rewarded for their bad-faith conduct, and the interest of justice necessitates plaintiff's counsel's recovery of these additional fees, which were necessitated only by defendant's own bad-faith conduct (*Posner v. S. Paul Posner 1976 Irrevocable Family Trust*, 12 AD3d 177 [1st Dept 2004]). Thus, the Court awards plaintiff's counsel \$18,694.22 for fees and disbursements necessary for the instant hearing.

As to the proper date by which to calculate interest, same is properly calculated from the date counsel's client was determined to be the prevailing party (*see Solow Mgmt. Corp. v. Tanger*, 19 AD3d 225 [2d Dept 2005]). Here, the July 20, 2020 decision of the Hon. Debra A. James, J.S.C. is the date plaintiff was determined to be the prevailing party on the issue of liability and entitled to counsel fees. Accordingly, interest from the date that decision was entered, July 20, 2020, is appropriate.

The Court has considered defendant's remaining contentions and finds same unavailing.

Accordingly, it is

**ORDERED, DECLARED, and ADJUDGED** that GLCA SECURITIES, LLC, shall have judgment as against defendant AGC NETWORKS, INC., 222 W Las Colinas Blvd Suite 200, North Tower Irving, Texas 75039, in the amount of \$204,451.00 with interest at the statutory rate from July 20, 2020, as calculated by the Clerk of the Court in addition to any fees and disbursements as taxed by the Clerk of the Court; and it is further

**ORDERED, DECLARED, and ADJUDGED** that AMINI LLC, 131 West 35th Street 12th Floor New York, NY 10001, shall have judgment as against defendant AGC NETWORKS, INC., 222 W Las Colinas Blvd Suite 200, North Tower Irving, Texas 75039, in the amount of \$18,694.22 with interest at the statutory rate from July 20, 2020, as calculated by the Clerk of the Court in addition to any fees and disbursements as taxed by the Clerk of the Court

**ORDERED** that judgment shall be submitted to the Clerk of the Court, and not to chambers, unless directed otherwise by that office.

THIS CONSTITUTES THE DECISION, ORDER, AND JUDGMENT OF THE COURT.

Dated: July 5, 2023

E N T E R:



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