

**Golan v Daily News, L.P.**

2023 NY Slip Op 33135(U)

September 11, 2023

Supreme Court, New York County

Docket Number: Index No. 151135/2022

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02TR**

*Justice*

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YUVAL GOLAN,

Plaintiff,

- v -

DAILY NEWS, L.P., NOAH GOLDBERG

Defendant.

-----X

INDEX NO. 151135/2022

MOTION DATE 05/04/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for ATTORNEY - FEES.

In this dismissed defamation action, Defendants Daily News, L.P. and Noah Goldberg (“Defendants”) move for counsel fees incurred defending against the unsuccessful appeal of Plaintiff Yuval Golan (“Plaintiff”) pursuant to Civil Rights Law (“CRL”) § 70-a(1)(a). Plaintiff opposes the motion.

Plaintiff, a real estate developer, commenced this action alleging he was defamed by Defendants when they published an article reporting that Plaintiff took advantage of vulnerable New Yorkers by convincing them to sell their homes for below fair market value. In a Decision and Order dated October 3, 2022 (NYSCEF Doc. No. 42), the Court found that the action involved public petition and participation and therefore New York’s anti-SLAPP law applied. The Court further found that Plaintiff failed to meet the heightened pleading standard applicable to anti-SLAPP cases (*see* CPLR 3211[g]) and dismissed the action. The Court found that Defendants were entitled to counsel fees and costs pursuant to CRL § 70-a(1)(a), which mandates the award of counsel fees where a matter subject to anti-SLAPP laws “was commenced

or continued without a substantial basis in fact and law.” The Court set a deadline by which Defendants were to file a fee application.

Plaintiff appealed. While the appeal was pending, the parties entered into a stipulation (NYSCEF Doc No. 43) in which they agreed to a fee amount for “any claim for attorneys’ fees and costs that Defendants have asserted or could have asserted in this action, inclusive of all proceedings before this Court through and including the date of this Stipulation” (*id.* at 1). They further agreed that the sum would be held in abeyance pending Plaintiff’s appeal and any additional appeals (*id.* at 2). The Stipulation provides: “the agreed amount does not include any additional fees or costs that Defendants might seek in connection with any appellate proceedings, or in connection with any further proceedings before this Court subsequent to the date of this Stipulation. Defendants remain free to seek such additional fees or costs, and Plaintiff remains free to oppose any such request” (*id.* at 2-3).

The October 3, 2022 Decision and Order was affirmed by the Appellate Division, First Department on March 23, 2023 (*Golan v Daily News, L.P.*, 214 AD3d 558 [1st Dept 2023]). In addition to holding that the action was correctly dismissed, the Court held that it was proper to grant counsel fees under CRL § 70-a(1)(a) (*id.* at 559).

Defendants now seek counsel fees and costs incurred defending against Plaintiff’s appeal. Defendants submit billing statements and an affirmation of counsel as to the reasonableness of the fees sought. Counsel notes that Plaintiff raised new arguments on appeal, specifically challenging the constitutionality of the anti-SLAPP law as amended in 2020 and contending that it was procedurally improper to award CRL § 70-a(1)(a) fees on a motion to dismiss. Counsel further argues that the statute entitles Defendants to fees incurred to make the fee application. In

total, Defendants seek \$46,432.50 in fees for the appeal, \$1,165.61 in appellate costs, \$6,325 for the instant motion, and \$1,527 for the reply papers.

In opposition, Plaintiff contends that the Appellate Division, not the trial court, must decide whether Defendants are entitled to fees for the appeal. The opposition papers do not cite any case law to support this position, nor do they challenge or otherwise address the reasonableness of the fees sought or Defendants' ability to seek fees for the instant motion.

CRL § 70-a(1)(a) provides that "costs and attorney's fees shall be recovered" when, *inter alia*, an anti-SLAPP matter is dismissed upon a demonstration that the case "was commenced or continued without a substantial basis in law or fact" (emphasis added). This specifically includes adjudication pursuant to CPLR 3211(g) (*id.*). It therefore cannot be disputed that Defendants are entitled to fees and costs for the appellate proceedings here.

The Court further finds that the statute entitles Defendants to fees for filing and briefing the instant motion, so-called "fees on fees." An award of fees on fees must be based on a statute or agreement (*Sage Realty Corp. v Proskauer Rose LLP*, 288 AD2d 14, 15 [1st Dept 2001]). Section 70-a(1)(a) was amended in 2020 to make the award of counsel fees mandatory rather than at a court's discretion (*Gottwald v Sebert*, --- NY3d ---, 2023 NY Slip Op 03183 \*4 [2023]). The purpose of the amendment was "to extend the protection" of New York's anti-SLAPP law (Sponsor's Mem, Bill Jacket, L 2020, ch 250). "The amendment will protect citizens' [sic] from frivolous litigation that is intended to silence their exercise of the rights of free speech and petition about matters of public interest" (*id.*). Given the fee-shifting nature of the statute, the practicality of seeking fees at the pre-answer motion to dismiss stage, and the intent of the legislature to protect defendants like those here, the Court finds that fees on fees are permitted.

Plaintiff's argument in opposition that Defendants should have sought this relief directly from the Appellate Division is not supported by any case law or the statute. To the contrary, § 70-a(1) allows defendants to "maintain an action, claim, cross claim or counterclaim" for compensatory damages and fees. It is a trial court's role to adjudicate actions and claims in the first instance (NY Const, Art IV, § 7; *see also Pollincina v Misericordia Hosp. Med. Ctr.*, 82 NY2d 332, 338 [1993]).

As to the reasonableness of the fees sought, the Court is to consider "time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability, and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved" (*Matter of Freeman*, 34 NY2d 1, 9 [1974]). When considering, *inter alia*, the issues presented by the recent amendments to the statute, the fact that new arguments were raised on appeal, the area of expertise of counsel and the firm's billing statements, as well as the fact Defendants prevailed on appeal, and in the absence of any opposition on the issue of reasonableness or a request for a hearing, the Court finds that the fees sought are reasonable. Accordingly, the motion is granted, and it is hereby:

ORDERED that Plaintiff shall pay the sum of \$55,450.11 as and for counsel fees and costs for the services set forth herein within sixty (60) days; and it is further

ORDERED that, in the event of non-payment, the Clerk of the Court, upon service of a copy of this Decision and Order with Notice of Entry and an Affidavit of Nonpayment, shall enter a money judgment against Plaintiff Yuval Golan and in favor of Miller Korzenik Sommers

Rayman LLP in the amount of \$55,450.11 as set forth herein and Miller Korzenik Sommers Rayman LLP shall have execution thereon without further order of this Court.

This constitutes the Decision and Order of the Court.



9/11/2023  
DATE

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LORI S. SATTLER, J.S.C.

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