

Golden Nugget Atl. City LLC v Chan

2023 NY Slip Op 34430(U)

December 13, 2023

Supreme Court, New York County

Docket Number: Index No. 656657/2020

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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GOLDEN NUGGET ATLANTIC CITY LLC

Plaintiff,

- v -

WAYNE C CHAN,

Defendant.

-----X

INDEX NO. 656657/2020

MOTION DATE 12/11/2023

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 114, 115, 116, 117, 119, 120, 121, 122, 123, 124, 125

were read on this motion to/for FEES/COMMISSIONS/DISBURSEMENTS.

Plaintiff's motion for legal fees is granted to the extent that the amount of reasonable legal fees will be awarded after a hearing.

Background

In this dispute, the Court previously awarded plaintiff summary judgment and directed that it move to recover reasonable legal fees (NYSCEF Doc. No. 110). This Court found that plaintiff was entitled to reasonable legal fees but observed that plaintiff had not included a demand for a specific amount of fees or any invoices in its prior motion (*id.* at 5).

Plaintiff now moves for reasonable legal fees in the amount of \$99,311.25.

In opposition, defendant contends that plaintiff failed to meet its burden to show that the fees were reasonable. He insists that no analysis was offered regarding the prevailing rates for similar legal work in this area. Defendant argues that plaintiff's fees should be reduced because it

was not the wholly prevailing party—he points out that he successfully appealed a decision of this Court that initially granted plaintiff summary judgment (plaintiff then made another motion after a governmental body in New Jersey issued a decision rejecting defendant’s complaints).

Defendant argues that plaintiff should not be able to recover for any time it spent on the appeal of the Court’s first decision or in connection with plaintiff’s first summary judgment motion. He also argues that certain charges are duplicative, excessive, and unrelated. In sum, defendant argues that there should be a total reduction of \$93,105.00.

In reply, plaintiff admits that it inadvertently included some irrelevant charges in its bills but that it is entitled to recover fees it expended throughout this case, even the fees incurred for bringing the first summary judgment motion and the subsequent appeal. Plaintiff argues that the standard for recovering fees as a prevailing party relates to the central claims of the case, not individual motions.

Discussion

The Court observes that, as it previously found, plaintiff is entitled to recover reasonable legal fees pursuant to the terms of the parties’ agreement (*see* NYSCEF Doc. No. 98) in connection with this dispute. And the Court rejects defendant’s claim that plaintiff is, essentially, only permitted to recover fees for individual or specific applications for which it was successful. The standard, when evaluating whether attorneys’ fees are awarded to a prevailing party, focuses on “success on the central claims in the action” (*Zamir v Ben-Harosk*, 188 AD3d 513, 132 NYS3d 284(Mem) [1st Dept 2020]). In other words, a prevailing party determination is based on

a broad view of an action, not a tally of success on individual motions.

Here, there is no question that plaintiff prevailed on the central claims of this case—it was awarded summary judgment on its claims against defendant. That defendant may have successfully appealed a decision is of no moment because plaintiff was awarded the central relief it sought in the complaint. Moreover, defendant cited no binding caselaw for the proposition that prevailing parties are only entitled to recover fees for motions in which it is ultimately successful. The point of a fee-recovery provision is to ensure that the party that wins the case recovers reasonable legal fees on a macro level, not to second guess every tactical decision made during a litigation.

However, the total amount of reasonable legal fees to be awarded to plaintiff must be decided at a hearing. “In determining reasonable compensation for an attorney, the court must consider such factors as the time, effort, and skill required; the difficulty of the questions presented; counsel's experience, ability, and reputation; the fee customarily charged in the locality; and the contingency or certainty of compensation. While a hearing is not required in all circumstances, the court must possess sufficient information upon which to make an informed assessment of the reasonable value of the legal services rendered” (*People's United Bank v Patio Gardens III, LLC*, 143 AD3d 689, 691, 38 NYS3d 262 [2d Dept 2016] [internal quotations and citations omitted]).

Defendant raised legitimate issues that must be evaluated a hearing. For instance, defendant pointed out that three billing entries appear to reference unrelated matters and argued that certain entries appear excessive concerning the drafting of papers between October 25-30, 2022. To be clear the Court takes no position on the reasonableness of plaintiff's demand—that

is the point of the hearing. The Court merely points out that there are substantive issues that prevent the Court from simply granting the amount that plaintiff seeks without a hearing.

The Court also observes that plaintiff may request legal fees incurred in connection with its preparation for the hearing and for the hearing itself (although, again, the Court may or may not award plaintiff such fees depending on the outcome of the hearing). The Court emphasizes that the focus of the hearing will be on the invoices for which plaintiff seeks to recover; it will not concern dispositive issues related to the merits of the case.


The hearing shall take place virtually, via Microsoft Teams, on January 9, 2024 at 11:00 a.m. By January 3, 2024 both parties shall upload any exhibits they plan to use at the hearing to NYSCEF. Even if a document was uploaded previously, it must be uploaded again as an exhibit for this hearing. Documents that are not uploaded by January 3, 2024 will, as a general matter, not be considered unless a party cites good cause for why the documents were not uploaded. The Court certainly understands that sometimes unanticipated issues arise, but, because of this case's history and motion practice, the parties are well aware of each other's claims and the documents they will likely rely upon.

And, to facilitate an efficient hearing, the parties are welcome to stipulate to the admissibility of certain exhibits. It would also be helpful if the witness is prepared to testify as to the fees incurred for different aspects of the case. For example, as a general matter, it is often beneficial if a witness (not tailored to this case) is able to speak about the fees incurred until filing the complaint, the fees incurred from the filing of the complaint until reviewing the answer and demands, then responding to document demands, then the cost of preparing for and holding each deposition, the making of motion sequence one, the reply of motion sequence one, opposing

motion sequence two, appearing for each conference, etc. In other words, grouping key action items or events is usually better than going through every single time entry.

Accordingly, it is hereby

ORDERED that plaintiff's motion for legal fees is granted to the extent that the reasonable amount of fees will be assessed at a hearing to be held virtually on January 9, 2024 at 11 a.m.

<u>12/13/2023</u> DATE					 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	