

W 108 Dev. LLC v Nour Found.

2024 NY Slip Op 30087(U)

January 9, 2024

Supreme Court, New York County

Docket Number: Index No. 155443/2019

Judge: W. Franc Perry

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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**

<p>PRESENT: <u>HON. W. FRANC PERRY</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>W 108 DEVELOPMENT LLC</p> <p align="center">Petitioner,</p> <p align="center">-against-</p> <p>NOUR FOUNDATION,</p> <p align="center">Respondent.</p> <p>-----X</p>	<p>PART</p> <p>INDEX NO. <u>155443/2019</u></p> <p>MOTION DATE <u>10/28/2022</u></p> <p>MOTION SEQ. NO. <u>005</u></p> <p align="center">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 005) 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 187, 188, 189, 190, 191, 192, 193, 194, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 207

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Petitioner, W 108 Development LLC (“W 108”), moves pursuant to CPLR § 2221(d) to reargue this Court’s September 28, 2022 decision and order awarding respondent professional fees in connection with this RPAPL § 881 action.

Pursuant to CPLR §2221(d), a motion for leave to reargue must be based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion that would change the prior determination. *See Sheridan v. Very, Ltd.*, 56 A.D.3d 305 (1st Dept. 2008).

New York courts frequently order petitioners to pay respondent’s engineering and attorneys’ fees in RPAPL § 881 matters. The reason for awarding such fees, is that the respondent in a RPAPL § 881 case has “not sought out the intrusion and does not derive any benefit from it . . . Equity requires that the owner compelled to grant access should not have to bear any costs resulting from the access.” *See DDG Warren LLC v. Assouline Ritz 1, LLC*, 138

A.D. 3d 539, 540 (1st Dep't 2016) (quoting *Matter of North 7-8 Invs. LLC v. Newgarden*, 43 Misc. 3d 623 (Sup. Ct., Kings County 2014). "The risks and costs involved in the use that a petitioner makes of its neighbor's property should be wholly borne by the petitioner. Equity requires that the owner compelled to grant access should not have to bear any costs resulting from the access, including steps necessary to safeguard his or her property. *Matter of North 7-8 Invs. LLC* at 628. "A property owner compelled to grant a license should not be put in a position of either having to incur the costs of a design professional to ensure work will not endanger his property, or having to grant access without being able to conduct a meaningful review of plans." *In re Van Dorn Holdings, LLC v. 58th Owner's Corp.*, 149 A.D. 3d 518, 519 (1st Dep't 2017).

The Court has reviewed the arguments put forward in this motion to reargue, the arguments in opposition to such and held oral argument on this motion on December 11, 2023. The Court reaffirms its earlier finding that the respondent was entitled to recover professional fees that were the result of the three years of the instant litigation and negotiation of a licensing agreement. However, upon request for leave to reargue does grant such leave regarding whether the requested fees are reasonable. The Court previously deducted \$48,917.50 from the total \$325,902 of professional fees requested, finding that these funds were not recoverable as the \$33,530 of attorney's fees stemmed from an appeal of an interim court order and \$15,387.50 of engineering fees as they were not performed in connection with this proceeding or in connection with negotiating a license in this matter. These reductions resulted in the awarding of \$276,984.50 of total professional fees in this matter.

Upon further review of the nature of the fees incurred and counsels' arguments, the Court finds that there are additional fees that must be deducted as they do not stem from this RPAPL § 881 action. Such reductions are necessary for the fees awarded to most appropriately reflect the

complexity of this matter, the length of the proceeding, the lengthy procedural posture and to separate fees that are not strictly related to the instant RPAPL § 881 matter.


In determining the amount to be awarded, the Court reviewed and considered this matter's lengthy negotiations and numerous court appearances, professional tasks performed for respondent, the justification for those tasks and the amount billed for such tasks. In connection with such thorough review, the Court is deducting an additional \$94,854.50 from the fees previously awarded as these fees relate directly to the respondent's alleged damages. While past and prospective damages can be included in a licensing agreement, the parties did not include damages in their agreement made pursuant to this action. It is alleged that these costs were incurred because the petitioner was less than willing to engage in negotiations for a licensing agreement prior to the commencement of this RPAPL § 881 and while conducting unauthorized work. However, the parties did not include an agreement pertaining to damages in the agreed upon licensing terms reached after this Court ordered respondent to provide access; thus, counsel cannot be reimbursed for such damages under a RPAPL § 881 and cannot seek such damages in the instant action.

Thus, the amended professional fees awarded are \$182,130 and this Court finds such fees to be reasonable in this matter.

It is therefore;

ORDERED that the clerk enter judgment in favor of the respondent in the amount of \$182,130.

This constitutes the decision and order of this Court.

<u>01/09/2024</u> DATE		 WILLIAM FRANC PERRY, J.S.C.
CHECK ONE:	<input 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 <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE