

**Greenman v Miller**

2024 NY Slip Op 30709(U)

March 6, 2024

Supreme Court, New York County

Docket Number: Index No. 650304/2017

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

|                                                                                  |                                            |
|----------------------------------------------------------------------------------|--------------------------------------------|
| -----X                                                                           |                                            |
| JANE GREENMAN,                                                                   | INDEX NO. <u>650304/2017</u>               |
| Plaintiff,                                                                       | MOTION DATE <u>12/19/2023</u>              |
| - v -                                                                            | MOTION SEQ. NO. <u>011</u>                 |
| LARRY MILLER, MILLMAN LLC, 392 COLUMBUS<br>AVENUE LLC, SDMJD NEXT GENERATION LLC | <b>DECISION + ORDER ON<br/>     MOTION</b> |
| Defendants.                                                                      |                                            |
| -----X                                                                           |                                            |

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597

were read on this motion for ATTORNEY FEES.

Plaintiff Jane Greenman (“Plaintiff” or “Mrs. Greenman”) moves for an Order awarding attorney’s fees and costs pursuant to the Court’s Decision and Order, dated December 5, 2023 (NYSCEF 579 at 4-5). Plaintiff requests that the Court award her \$2,027,801 in professional fees incurred in this action prior to the Court’s post-trial decision, \$65,748 in professional fees incurred thereafter, and \$115,039 in other litigation expenses. Defendants Larry Miller (“Miller”), Millman LLC (“Millman”), 392 Columbus Avenue LLC (“392 Columbus”), and SDMJD Next Generation LLC (“SDMJD”) oppose this motion. For the following reasons, Plaintiff’s motion is granted in part.

“The determination of what constitutes a reasonable attorney’s fee is a matter within the sound discretion of the Supreme Court” (*Lancer Indem. Co. v JKH Realty Group, LLC*, 127 AD3d 1035, 1035-36 [2d Dept 2015]). “The attorney bears the burden of establishing the

reasonable value of the services rendered, based upon a showing of the hours reasonably expended and the prevailing hourly rate for similar legal work in the community” (*id.* at 1036). Appropriate factors include “the time and labor required, the difficulty of the issues involved, and the skill and effectiveness of counsel” (*JK Two LLC v Garber*, 171 AD3d 496, 496 [1st Dept 2019], citing *In re Estate of Freeman*, 34 NY2d 1, 9 [1974]). When reviewing the overall reasonableness of a fee application, the “court is not required to 'set forth item-by item findings concerning what may be countless objections to individual billing items[.]’” (*Reveyoso v Town Sports Int'l. LLC*, 2018 NY Slip Op 32939[U], \*7 [Sup Ct, NY County 2018]).

As an initial matter, Miller argues that Mrs. Greenman is not entitled to indemnification for the same reasons Miller was not entitled to indemnification. While Miller is correct that the Court’s post-trial decision held “it was incumbent on Miller to distinguish and demonstrate the portion of his self-approved indemnification of litigation expenses that relate to Millman” and determined that he was not entitled to any indemnification under Millman’s operating agreement based on the Court’s finding that he failed to do so” (NYSCEF 564 at 40), Miller never sought indemnification in this action. As noted, Miller’s indemnification was “self-approved” and the Court found that “as a fiduciary, Miller cannot so easily pass the evidentiary buck with respect to sorting out his admitted commingling of funds among distinct entities under his control” (NYSCEF 564 at 39).

In contrast, Mrs. Greenman’s fee application is brought to the Court after a full trial on the merits of this action, and there was no finding of commingling of funds by Mrs. Greenman. To the extent Mrs. Greenman was not successful on all of her claims, she has set forth a good faith effort to apportion her fees according to those claims eligible for indemnification based on the provisions in the Millman and 392 Columbus operating agreements and, in turn, between

those entities. Based on Mrs. Greenman’s proposed method of apportionment (*see* NYSCEF 593 at 4-14), she allocates 60 percent of her fees incurred to the claims eligible for fee recovery.<sup>1</sup>

Miller argues that Mrs. Greenman’s proposed approach of allocating her fees on a percentage basis according to her eligible claims is not acceptable. However, when allocating attorneys’ fees between compensable and non-compensable claims, courts regularly “make across-the-board percentage cuts in hours, as opposed to an item-by-item approach, to arrive at the reasonable hours expended” (*United States ex rel. Nichols v Computer Scis. Corp.*, 499 F Supp 3d 32, 41 [SDNY 2020]) “This is especially so where, as here, the length of the litigation makes it impracticable to perfectly separate out the hours dedicated to unsuccessful claims.” (*id.*, citing *Fox v Vice*, 563 US 826, 838 [2011] [“The essential goal . . . is to do rough justice, not to achieve auditing perfection”]). Miller does not explain why it would be inappropriate for the Court to apply this approach here to allocate Mrs. Greenman’s fees between those claims that are compensable, as well as between those claims that relate exclusively to 392 Columbus versus Millman. Based on the record and the Court’s familiarity with the issues litigated throughout this case, the Court finds Mrs. Greenman’s proposed apportionment appropriate.

---

<sup>1</sup> Mrs. Greenman apportioned her fees by “contentions” finding that there were 13 distinct, substantial contentions in this action, and found that 7 out of the 13 contentions are eligible contentions. They are: (1) Miller’s appropriation of Millman’s loan business, (2) the 392 Columbus distributions, (3) the parties’ “consulting fee” payments, (4) Miller’s “backup indemnity,” (5) Miller funding his litigation expenses with Millman funds, (6) Charles’ legal invoices as manager of Millman, and (7) Charles’ legal invoices as manager of 392 Columbus. The ineligible contentions are: (1) Miller distributing \$3.4 million to himself in 2015, (2) Miller changing Millman’s capital accounts in his favor, (3) Miller lending Millman money to his sons, (4) Miller’s administrative payments (to Mr. Block and Aiping Chen) with Millman funds, (5) Miller’s “loan receivables” from 392 Columbus to W2 labs, and (6) Miller withholding SDMJD distributions. Mrs. Greenman also weighted twice the two central contentions (Millman’s loan business and the parties’ “consulting fee” payments) which represented an outsized share of the work performed.

Next, while the Court considered Mr. Miller's contention that an across-the-board cut to Mrs. Greenman's application should be applied due to block billing, duplication, and vague time entities, the Court finds that Mr. Miller's critiques are overstated. Mr. Miller does not dispute the Firm's hourly rates and offers only a handful of generalized examples to support his critiques. The law firm's use of block billing does not render the invoiced amounts per se unreasonable and any duplication of effort was adequately explained by the firm (*see 546-552 W. 146th St. LLC v Arfa*, 99 AD3d 117, 123 [1st Dept 2012]). Furthermore, as submitted by Plaintiff, the Firm's invoices already reflect an 11 percent discount of the hours expended by her attorneys and paralegals.

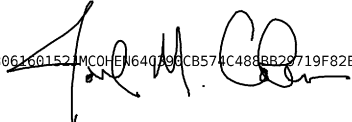
Turning to Mrs. Greenman's request for costs in the amount of \$115,039, those costs are reduced to \$112,573, as agreed by Mrs. Greenman (NYSCEF 597 at 12). Finally, Mrs. Greenman is entitled to pre-judgment interest on her attorney's fee award, running from the date of the Court's December 5, 2023, Decision and Order granting Jane's motion in part for entry of judgment (*see Hous. Corp. v Jimco Restoration Corp.*, 77 AD3d 502, 503 [1st Dept 2010]).

The Court has considered Defendant's remaining contentions and finds them unavailing. The remainder of the application is approved.

Accordingly, it is

**ORDERED** that Plaintiff's motion is **GRANTED IN PART**. Plaintiff is granted \$2,027,801 in professional fees incurred in this action prior to the Court's post-trial decision, \$65,748 in professional fees incurred thereafter, and \$112,573 in other litigation expenses, plus pre-judgment interest from December 5, 2023. Plaintiff shall submit a proposed judgment within seven (7) days of this Order consistent with the foregoing (with a Word version emailed to sfc-part3@nycourts.gov).

This constitutes the Decision and Order of the Court.

20240306160152 JMC0HEN1640780 CB574C488BB20719F82E03B745  
  
\_\_\_\_\_  
JOEL M. COHEN, J.S.C.

3/6/2024  
DATE

CHECK ONE:

|                                     |                            |                          |        |
|-------------------------------------|----------------------------|--------------------------|--------|
| <input checked="" type="checkbox"/> | CASE DISPOSED              |                          |        |
| <input type="checkbox"/>            | GRANTED                    | <input type="checkbox"/> | DENIED |
| <input type="checkbox"/>            | SETTLE ORDER               |                          |        |
| <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN |                          |        |

|                                     |                       |                          |           |
|-------------------------------------|-----------------------|--------------------------|-----------|
| <input type="checkbox"/>            | NON-FINAL DISPOSITION |                          |           |
| <input checked="" type="checkbox"/> | GRANTED IN PART       | <input type="checkbox"/> | OTHER     |
| <input type="checkbox"/>            | SUBMIT ORDER          |                          |           |
| <input type="checkbox"/>            | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |

APPLICATION:

CHECK IF APPROPRIATE: