

**Nasta v Rajapaska**

2024 NY Slip Op 34665(U)

July 17, 2024

Supreme Court, New York County

Docket Number: Index No. 652131/2023

Judge: Andrea Masley

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 48

-----X

VIVEK NASTA,

Plaintiff,

- v -

ROSHINI RAJAPASKA and MANISH CHOPRA,

Defendants.

INDEX NO. 652131/2023

MOTION DATE --

MOTION SEQ. NO. 003

**ORDER - SUPPLEMENTAL**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 31, 32, 33, 34, 35, 36, 37, 44, 45, 46, 47, 48, 49, 50, 51, 54, 56, 57, 58, 59, 60, 61, 68, 70, 72, 75, 76, 77

were read<sup>1</sup> on this motion to/for DISMISSAL.

This court granted, in part, defendant Roshini Rajapaska’s motion to dismiss (seq. no. 003) and ordered that

“Rajapaska shall reimburse [plaintiff Vivek] Nasta the cost of filing Nasta’s opposition to this motion because Nasta agreed to abandon this motion in favor of arbitration, but Rajapaska insisted on a decision. Nasta shall submit Rajapaska with an affirmation of services within 30 days of the date of this decision and Rajapaska shall pay Nasta within 10 days of receipt. If the parties cannot agree to an amount, Nasta shall file in NYSCEF and email the court his affirmation of services with a request for a court order.” (NYSCEF Doc. No. [NYSCEF] 73, Mar. 14, 2024 Decision and Order at 1-2.)

The parties agreed to the discounted amount of \$29,500, but Rajapaska’s condition was that she would have an option to post a bond instead of paying the award, to which condition Nasta did not agree. (See NYSCEF 80, Reisen aff ¶¶ 8-12

<sup>1</sup> The court has considered the documents submitted in connection with this application but omitted in the autogenerated caption.

[NYSCEF page 2]; NYSCEF 81, Zucker aff ¶ 6.)<sup>2</sup> Nasta submitted an affirmation of services to this court seeking an award of \$34,108.12.<sup>3</sup> Rajapaska submitted her attorney's affirmation in opposition seeking that the award be reduced to \$29,500 and that Rajapaska be afforded "10 days from the entry of this Court's order setting the amount of attorneys' fees to either pay that amount or bond that amount." (NYSCEF 81, Zucker aff at 3-4.)<sup>4</sup>

To determine the reasonableness of the requested fee, the court is guided by the following factors: (1) "the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented"; (2) "the lawyer's experience, ability, and reputation"; (3) "the amount involved and benefit resulting to the client from the services"; (4) "the customary fee charged by the Bar for similar services"; (5) "the contingency or certainty of compensation"; (6) "the results obtained"; and (7) "the responsibility involved." (*Matter of Freeman*, 34 NY2d 1, 9 [1974].) These factors apply in commercial cases. (Commercial Litigation in New York § 61:7, Criteria for Determining Reasonableness [5th ed, Oct. 2023 update].) The court also relies on its own knowledge of hourly rates charged by private firms that practice in the Commercial

---

<sup>2</sup> Reisen is Nasta's counsel. (NYSCEF 80, Reisen aff ¶ 1.) Zucker is Rajapaska's counsel. (NYSCEF 81, Zucker aff ¶ 6.)

<sup>3</sup> Although in his April 23, 2024 affirmation, Reisen states that the amount sought is **\$34,310.72** (NYSCEF 80, Reisen aff ¶ 14), the materials submitted (NYSCEF 80) reveal that Nasta seeks to recover **\$34,108.12** (\$33,905.51 for attorneys' fees and \$202.61 for costs). (See NYSCEF 80, Chart of Attorneys' Fees [NYSCEF page 14]; NYSCEF 80, Chart of Expenses [NYSCEF page 16].)

<sup>4</sup> In his supplemental affirmation, Zucker improperly requests that "this Court reconsider its *sua sponte* decision to award Nasta the attorneys' fees and costs." (NYSCEF 88, Zucker aff ¶ 9; see CPLR 2221 [a].)

Division, New York County. (*See Miele v New York State Teamster Conference Pension & Retirement Fund*, 831 F2d 407, 409 [2d Cir 1987].)

In support of his fee application for **\$34,108.12** (\$33,905.51 for attorneys' fees and \$202.61 for costs), Nasta submits two affirmations by Reisen and two spreadsheets itemizing the attorneys' fees and costs sought in this application, respectively (NYSCEF 80).<sup>5</sup> Nasta also submits an additional affirmation by Reisen (NYSCEF 84) and (i) the underlying invoices reflecting all time entries for legal services made to Nasta's account from July 20, 2023, until March 18, 2024 (NYSCEF 86), (ii) underlying invoices for costs (NYSCEF 87) and (iii) attorney biographies (NYSCEF 85). Nasta seeks reimbursement for 73.2 hours of attorney work. (*See* NYSCEF 80, Chart of Attorneys' Fees [NYSCEF page 14].) This represents "the time expended in analyzing and responding to ... Rajapaksa's motion [seq. no. 003] as well as the time to prepare for and appear at the oral argument of the motion." (NYSCEF 80, Reisen aff ¶ 5.)<sup>6</sup> The blended hourly rate applied to the 73.2 hours of attorney work is \$463.19.<sup>7</sup> (NYSCEF 80, Apr. 10, 2024 Reisen aff ¶ 9 [NYSCEF page 7].)

---

<sup>5</sup> Reisen explains that Nasta "has a contingency fee arrangement with the Firm and pays expenses out of pocket." (NYSCEF 84, Reisen aff ¶ 5.) The underlying invoices reflecting the time entries made to Nasta's account (NYSCEF 86) and expenses paid by plaintiff (NYSCEF 87) have been subsequently submitted by Nasta following the court's request.

<sup>6</sup> Reisen avers that "[no time related to the motion filed by defendant Manish Chopra has been included.... Specifically, with respect to any time entry that reflected work on both motions, the actual time expended was reduced by 50% in this application.... Moreover, to ensure that any redundancy and/or overlap with Defendant Chopra's motion was removed, we reduced the number of hours for Yuriko Tada from 55.85 to 35.85 and we reduced my hours from 37.8 to 27.8." (NYSCEF 80, Reisen aff ¶¶ 6-8.) Thus, 30 hours have been subtracted.

<sup>7</sup> Reisen explains that "in instances where the Firm has contingency cases, it tracks the attorneys' time spent on the matter and, from that number of hours, it is able to calculate what the hourly charges would be." (NYSCEF 84, Reisen aff ¶ 8.) The hourly rates

The court finds that the blended hourly rate of \$463.19 is usual and customary for commercial law firms in New York City. The court also finds that the other remaining factors are satisfied. The court similarly finds that the litigation costs of \$202.61 for which Nasta seeks reimbursement are reasonable.

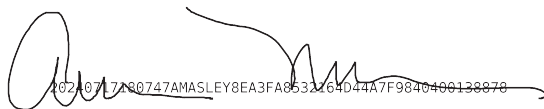
Nasta seeks reimbursements for the work completed between July 21, 2023 and March 12, 2024. (See NYSCEF 80, Chart of Attorneys' Fees [NYSCEF page 11-14].) The motion to dismiss (seq. no. 003), however, was filed on September 28, 2023. (See NYSCEF 31, Proposed OSC.) Nasta provides no explanation as to why the entries purportedly pertaining to opposing the motion to dismiss have been made before the motion was filed. Accordingly, the court will not award reimbursement of attorneys' fees for the entries made prior to September 28, 2023, which total 56.8 hours. See NYSCEF 80, Chart of Attorneys' Fees [NYSCEF page 11-12].) Given that the discount of 30 hours has already been applied (*see supra* at 4, n 6), the court subtracts \$12,413.49 (26.8 hours @ \$463.19) from the amount sought, \$34,108.12. Accordingly, the court awards plaintiff \$21,694.63.

---

reflected on the invoices (NYSCEF 86) are \$1,200 per co-founder (Lisa Solbakken), \$850 per partner (Robert Angelillo), and \$750 (Yuriko Tada) and \$700 (Reisen) per counsel.

Accordingly, it is

ORDERED that Vivek Nasta is awarded \$21,694.63 for attorneys' fees and costs which shall be paid within 5 business days of service of the this order with notice of entry.



7/17/2024

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE