SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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NORTHERN LEASING SYSTEMS, INC.,

Plaintiff,

Index No. 602006/04

-against-

DECISION/ORDER

ESTATE OF EDWARD M. TURNER and
SB RESTAURANTS,

Defendants.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Notice of Cross Motion and Answering Affidavits.....	2
Affirmations in Opposition to the Cross-Motion.....	
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff commenced the instant action to recover damages allegedly owed to it under three equipment leases between it and defendant SB Restaurants. The principal of SB Restaurants, the now-deceased Edward M. Turner, was also sued by plaintiff. Justice Jane Solomon granted plaintiff's motion for summary judgment in a decision dated October 12, 2010. In that decision Justice Solomon awarded plaintiff damages in the amount of $41,496, together with attorneys' fees and costs, which were to be determined by a Special Referee. Plaintiff sought fees and costs of $269,621. In his report dated November 1, 2011, issued after a hearing, the Special Referee recommended that the plaintiff be awarded $177,949.86 (a reduction of 34%)

plus statutory interest of 9% calculated from October 12, 2010. Plaintiff subsequently brought the instant motion to modify in part and otherwise confirm the report of the Special Referee. Defendants then cross-moved to renew an earlier motion for discovery sanctions and upon such renewal, to vacate the preclusion order of April 14, 2010, and to vacate all subsequent orders and the judgment in the case which were predicated upon that order of preclusion. Defendants also oppose the motion to modify the Special Referee's Report. For the reasons set forth below, plaintiff's motion is granted only to the extent that this court confirms the report of the Special Referee without modification. Defendants' cross-motion to renew is denied.

The court turns first to defendants' cross-motion. On a motion for leave to renew, the movant must allege new facts not offered on the prior motion and a reasonable justification for the failure to present those facts on the prior motion or shall demonstrate that there has been a change in the law that changes the court's prior determination. CPLR 2221(e)(2) and (3). Defendants have not alleged any new facts or demonstrated that there has been a change in the law. Even if defendants' motion were to be construed as a motion to reargue, rather than a motion to renew, this court must deny it. On a motion for leave to reargue, the movant must allege that the court overlooked or misapprehended matters of fact or law. CPLR 2221(d)(2). Defendants have not established that the court overlooked or misapprehended matters of fact or law. Therefore, defendants' cross-motion, be it for leave to renew or leave to reargue, is denied.

The court now turns to plaintiff's motion to modify the report of the Special Referee. Plaintiff seeks the full amount of attorneys' fees and disbursements it originally sought before the Special Referee. The Special Referee reduced plaintiff's attorneys' fee award by 15% for "block billing," which is billing for multiple small tasks without specifying the amount of time spent on

each task. The Special Referee then also reduced the fee award by another 18% due to "unexplained, ambiguous, duplicative and unnecessary and excessive entries by attorneys who were not presented for examination [at the hearing before the Special Referee]," for travel time, for allegedly unexplained redactions of invoices, and finally, because "the issues in [this] litigation were not so novel nor complex [and] the task of preparing papers for summary judgment and opposition to consolidation did not require the amount of hours billed" and because he stated that there was no support for awarding plaintiff the fees incurred in preparing for the fee hearing. The Special Referee then reduced the amount awarded plaintiff for costs and disbursements proportionately. Plaintiff objects to each of these reductions. The court will address each in turn.

The starting point for attorneys' fees is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate" (also know as the "lodestar" method) which can then be adjusted upward or downward. *See LV v NYC Dept of Education*, 700 F.Supp.2d 510, 513 (S.D.N.Y. 2010). The relevant factors to be considered when determining whether to adjust the lodestar fee are: "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 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 N.Y.2d 1, 9 (1974). When a court reviews the fee recommendation of a referee, the referee is owed deference, but the court "may disturb [the referee's] findings to the extent not substantiated by the record." *Matter of Cohen*, 168 Misc.2d 91 (Sup. Ct., N.Y. Cty 1995); *see Matter of Mayer v National Arts Club*, 223 A.D.2d

440 (1st Dept 1996). Moreover, the final decision lies with the court. *See Cohen*, 168 Misc.2d 91.

The court now turns to the issue of block billing. The parties fail to cite, and the court has not found, any state court decisions addressing this issue. According to New York federal cases, although plaintiff is correct that block billing is not prohibited *per se*, federal courts often (but not always) make across-the-board percentage reductions in attorney awards due to the fact that block billing makes determining the appropriateness of some of the fees charged impossible. *See LV v NYC Dept of Education*, 700 F.Supp.2d 510, 525-26 (S.D.N.Y. 2010) (12% reduction); *Green v City of New York*, 2010 WL148128 (E.D.N.Y. 15% reduction); *Skold v Am. International Group, Inc.*, 1999 WL 672546 (S.D.N.Y. 1999) (10% reduction); *Gonzalez v Bratton*, 147 F.Supp.2d 180, 213 (S.D.N.Y. 2001) (12% reduction); *but see Hnot v Willis Croup Holdings Ltd.*, 2008 U.S. Dist. LEXIS 28312 at *18 (S.D.N.Y. 2008); *Mugavero v Arms Acres, Inc.*, 2010 U.S. Dist. LEXIS 11210 at * 25-26 (S.D.N.Y. 2010). Although not all courts impose reductions for block billing, this court finds that such a reduction is reasonable in light of the fact that block billing makes it impossible to determine the appropriateness of the fees charged.

The Special Referee's recommendation to reduce the award for attorneys' fees due to the fact that the attorneys billed for travel time also has merit. While there is a scarcity of state law regarding what rate travel time should be billed at, New York federal courts routinely reduce the lawyer's professional rate by half to arrive at an appropriate rate for travel time. *See LV*, 700 F.Supp.2d at 526; *Colbert v Furumoto Realty, Inc.*, 144 F.Supp.2d 251, 261 (S.D.N.Y. 2001). It appears that the Special Referee applied the 18% discount to travel time, which is much less than the routine 50% cut.

The court will also defer to the Special Referee's determination that plaintiff billed for duplicative work and submitted ambiguous invoices and that the lack of complexity of the work merited a reduction in attorney's fees.

However, the Special Referee erred in finding that redactions in the invoices submitted by plaintiff were "unexplained." Plaintiff satisfactorily explained that all matters for a particular client were billed on one invoice but that it only sought compensation for time expended and costs incurred on this particular matter for this client. To that end, it redacted charges for all other matters plaintiff's attorneys handled for this client.

The Special Referee also erred in denying plaintiff attorneys' fees for the work incurred in preparing for the fee hearing. It is well-settled that prevailing plaintiffs are entitled to fees incurred in preparation of their fee application. *See LV*, 700 F.Supp.2d at 526-27. Plaintiff here seeks $21,520.64 in "fees on fees." That amount constitutes only 8% of the total sought. Courts have approved "fees on fees" of up to 24% of the total. *See Natural Resources Defense Council, Inc.* v Fox, 129 F.Supp.2d 666, 675 (S.D.N.Y. 2001). Therefore, the Special Referee erred in denying plaintiff these fees.

Although the court has found that the Special Referee erred in finding that "fee on fee" awards were impermissible and that plaintiff's redactions were unsubstantiated, the court nevertheless finds no reason to modify the award recommended by the Special Referee in light of the fact that the attorneys' fees sought are more than six times the amount of the substantive award in the case. The "amount involved and benefit to the client from the services" (*Matter of Freeman*, 34 N.Y.2d at 9) is one consideration in determining whether the attorneys' fees requested are reasonable. In the instant case, although plaintiff succeeded on its claims, the

amount at issue was only $41,496 (before interest). Therefore, on balance, the Special Referee's reduction of counsel's fees by 34% was reasonable and will not be disturbed. Similarly, the court finds the Special Referee's concomitant reduction in costs and disbursements by 34% to also be reasonable.

Accordingly, plaintiff's motion to modify and otherwise confirm the recommendation of the Special Referee is granted only to the extent that the court confirms the referee's recommendation to reduce attorneys' fees and costs by 34% and to award plaintiff $177,949.86 in fees and costs plus statutory interest from October 12, 2010. Defendants' cross-motion is denied. This constitutes the decision, order and judgment of the court. The clerk is directed to enter judgment accordingly.

Dated: 1/19/12

Enter: _____
J.S.C.