

Picano v Rockefeller Ctr. N., Inc.

2012 NY Slip Op 31474(U)

May 31, 2012

Sup Ct, New York County

Docket Number: 115832/04

Judge: Cynthia S. Kern

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

PRESENT: John
Justice

PART 55

Corrado Picano & K. Picano

INDEX NO. 115832/04

MOTION DATE 05

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

- v -
Rockefeller Center No., Inc.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

is decided in accordance with the annexed decision.

FILED

JUN 05 2012

NEW YORK
COUNTY CLERK'S OFFICE

RECEIVED

JUN 4 2012

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

Dated: 5/31/12

PK

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

-----X
CORRADO PICANO and KATHLEEN PICANO,

Plaintiffs,

Index No. 115832/04

-against-

DECISION/ORDER

ROCKEFELLER CENTER NORTH, INC. and
TIME, INC.,

Defendants.

-----X
ROCKEFELLER CENTER NORTH, INC. and
TIME, INC.,

Third-party Plaintiffs,

Third-party
Index No. 590876/06

-against-

DECISION/ORDER

MCCANN, INC.,

Third-party Defendant.

-----X
ROCKEFELLER CENTER NORTH, INC. and
TIME, INC.,

Second Third-party Plaintiffs,

Second Third-party
Index No. 590089/09

-against-

DECISION/ORDER

PACE PLUMBING CORP.,

Second Third-party Defendant.

-----X

FILED
JUN 05 2012
NEW YORK
COUNTY CLERK'S OFFICE

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.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>4</u>

Third party plaintiffs Rockefeller Center North, Inc. ("Rockefeller") and Time, Inc.

("Time") (together, "Rockefeller/Time") have brought the present motion to enter judgment in conformity with the special verdict of the jury in favor of Rockefeller/Time in the amount of \$3,000,000, plus an amount to be set by the court representing the reimbursement of costs and fees incurred by Rockefeller/Time as well as statutory prejudgment interest thereon. As will be explained more fully below, the motion is granted to the extent that the court will schedule a hearing to resolve the issue of attorneys' fees if the parties are unable to stipulate to a figure and then enter judgment after the hearing.

This court previously held a jury trial between Rockefeller/Time and third party defendant Pace Plumbing Corp. ("Pace") to determine the issue of whether Rockefeller/Time was entitled to indemnification from Pace for the amount that it and Pace settled the underlying personal injury action for and the attorneys' fees it incurred in connection with defending the underlying personal injury action. Although Rockefeller/Time had originally taken the position that it was also entitled to recover the attorneys' fees it incurred in prosecuting its claim for indemnification against Pace, it has since conceded that it is not entitled to recover these fees.

Based on the jury's determination that Rockefeller/Time was not at all responsible for the injuries to the plaintiff in the underlying personal injury action and based on the jury's determination that both Pace and the plaintiff were partially responsible for causing plaintiff's injuries, the court made a determination based on the language of the indemnification agreement between Rockefeller/Time and Pace that Rockefeller/Time is entitled to indemnification from Pace for the amount Rockefeller/Time agreed to pay the plaintiff to settle the underlying personal injury action as well as the attorneys' fees Rockefeller/Time incurred in defending the underlying personal injury action.

Pace does not dispute that it is required to pay the \$3,000,000 and the attorneys' fees incurred by Rockefeller/Time in the underlying personal injury action if the jury verdict is upheld but argues that it is entitled to a hearing on the reasonableness of the attorneys' fees incurred by Rockefeller/Time in the underlying personal injury action and that it is also entitled to review the invoices of the lawyers for Rockefeller/Time to make a determination whether such fees were reasonably incurred. Rockefeller/Time argues that it is not required to turn over its invoices as they contain privileged information and attorney work-product and it is concerned that, as Pace has reserved its right to appeal from the jury's verdict, certain privileged and confidential items in the invoices could be used by Pace in its appeal. It argues that the court should perform an in camera review of the invoices and then make a determination as to attorneys' fees without holding any hearing and without permitting Pace to review the invoices.

This court finds that a hearing must be held to determine the amount of attorneys fees' Rockefeller/Time is entitled to recover and that Pace is entitled to review the invoices for the work performed before the hearing is held. Where there is a dispute between the parties as to the


amount of attorneys' fees being sought, a hearing should be conducted by the court. *See Bankers Trust Co. Of Cal. v West Shore Apt. Corp.*, 281 A.D.2d 351 (1st Dept 2001) (hearing to be held to determine the reasonable of the attorneys' fees claimed); *Solow Mgmt. Corp. v Tanger*, 19 A.D.3d 2225 (1st Dept 2005) (at a hearing on attorneys' fees, the court is to determine the reasonableness of the fees charged). The case cited by Rockefeller/Time for the proposition that a hearing is not required to determine the issue of attorneys fees' does not support this proposition and is not dispositive in any case as it is a lower court decision. *See Colon v Automatic Retailers Assn.*, 74 Misc. 2d 478 (Civ. Ct. 1972).

The court declines to conduct an *in camera* review of the attorneys' fee invoices. Rockefeller/Time submits no case law for the proposition that an in camera review is required. Instead, Rockefeller/Time is directed to redact those items on the invoices it believes to be privileged and/or attorney work-product and to serve Pace with the redacted bills within 30 days of the date of this order. Rockefeller/Time is also directed to serve Pace with copies of the checks from Travelers (Rockefeller/Time's insurer) showing what they actually paid, all documents and correspondence related to any objections Travelers asserted in response to the attorneys' fees and Traveler's attorneys' billing/fee guidelines or manual, to the extent they exist, within 30 days. If, after reviewing the redacted bills, the parties are unable to agree to the amount of attorneys' fees that Pace is to reimburse Rockefeller/Time for, they should contact this part to schedule a hearing.

Accordingly, Rockefeller/Time's motion for indemnification in the amount of \$3,000,000 as against Pace is granted. Once a determination is made as to attorneys' fees, the court will enter judgment for both the indemnification award and the attorneys' fees plus prejudgment

interest. Rockefeller/Time is directed to serve Pace with redacted invoices as described above within 30 days. The parties shall contact this part to schedule a hearing if necessary. This constitutes the decision and order of the court.

Dated: 5/31/12

Enter:  _____
J.S.C.

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JUN 05 2012
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