

Han Soo Lee v Riverhead Bay Motors

2011 NY Slip Op 32849(U)

October 14, 2011

Supreme Court, New York County

Docket Number: 113585/03

Judge: Saliann Scarpulla

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

PRESENT: _____
Justice

PART 19

LEE, HAN SOO

INDEX NO.

113585/2003

MOTION DATE

MOTION SEQ. NO.

010

MOTION CAL. NO.

Riverhead Bay Motors

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 accompanying memorandum decision.

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

FILED

OCT 18 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated:

10/14/11

SALVATORE SCARFONE
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 19

-----X
HAN SOO LEE and SOON OK JANG,

Plaintiffs,

Index No. 113583/03

-against-

RIVERHEAD BAY MOTORS, RIVERHEAD POOH,
LLC, YODA, LLC, MANHATTAN SKYLINE
MANAGEMENT CORP., & QUEENS IRON WORKS
& STOREFRONT, INC.,

Decision and Order

Defendants.

FILED

OCT 18 2011

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiffs Present Attorneys:
Law Office of Kenneth A. Wilhelm
445 Park Avenue - 9th Floor
New York, NY 10022
(212) 545-7373
By: Barry Liebman, Esq.

Plaintiffs' Former Attorneys
Edward H. Suh and Associates, P.C.
200 Ridge Road
Hankins, NY 12741
By: Edward H. Suh, Esq.

-----X
HON. SALIANN SCARPULLA, J.S.C.:

In this personal injury action, the Law Offices of Kenneth Wilhelm ("the Wilhelm Firm") moves for an order determining the division of legal fees between the Wilhelm Firm and Edward H. Suh and Associates, P.C. ("Suh"), the law firm which originally commenced this action on behalf of plaintiffs Han Soo Lee and Soon Ok Jang (together, "plaintiffs"). I held several days of hearings in connection with the motion. Below I set forth my findings of fact and conclusions of law.

Background

Plaintiff Han Soo Lee ("Lee") was seriously injured on December 2, 2002 when he fell from an elevated height while working at a construction site in Riverhead, New York.

Shortly after his accident Lee retained Suh to represent him in asserting personal injury claims. Suh is an accomplished trial attorney, having obtained several million dollar verdicts over a twenty five year period. Further, Suh has had extensive experience in Labor Law litigation, and is fluent in Korean. Plaintiffs' first spoken language is Korean.

Approximately four months after Lee's accident, by summons and complaint dated March 31, 2003, Suh commenced an action on plaintiffs' behalf against defendants Riverhead Bay Motors, Riverhead Pooh, LLC, Yoda, LLC, Manhattan Skyline Management Corp., & Queens Iron Works & Storefront, Inc (the "Lee v. Riverhead Pooh lawsuit").

In May, 2003, plaintiffs determined to replace Suh with the Wilhelm Firm.¹ By letter dated May 21, 2003, the Wilhelm Firm informed Suh that the Wilhelm Firm would be replacing Suh. Attached to the May 21, 2003 letter was a separate letter, typed in English, and purportedly signed by Lee. In that separate letter, dated May 20, 2003, Lee instructed Suh: 1) to cease work on the Lee v. Riverhead Pooh lawsuit; 2) not to contact Lee or his family; and 3) to forward plaintiffs' file to the Wilhelm Firm. Lee did not testify during the attorneys fee hearing, thus I did not have an opportunity to hear and evaluate any evidence concerning plaintiffs' reasons for replacing Suh with the Wilhelm Firm.

¹ Like Suh, the attorneys at the Wilhelm Firm are accomplished trial attorneys.

Prior to the substitution, Suh represented plaintiffs for approximately six months. During that time, he and others at his law firm took photos of the accident scene, obtained medical and worker compensation records, arranged for medical treatment for Lee, conducted an investigation of the accident and potential defendants, commenced the Lee v. Riverhead Pooh lawsuit, served a bill of particulars on plaintiffs' behalf, and responded to some of defendants' discovery demands. Suh estimated that he, personally, spent approximately twenty hours on the Lee v. Riverhead Pooh lawsuit.

Suh moved into evidence a transmittal letter from his firm to the Wilhelm Firm showing the documents contained in his file which were transmitted to the Wilhelm Firm in June, 2003. This transmittal letter confirmed that Suh performed the work about which he testified.

The Wilhelm Firm represented plaintiffs for the next seven years, until the Lee v. Riverhead Pooh lawsuit was finally and fully settled before me on November 23, 2010. During this seven year period the Wilhelm Firm concluded most of the pretrial discovery, won a motion for summary judgment on the issue of liability, and conducted a trial on damages. The Wilhelm Firm then prosecuted an appeal of the verdict at that trial, which resulted in a reversal of the jury's verdict. The Wilhelm Firm also participated in a related declaratory judgment action, conducted supplemental discovery proceedings in preparation for the second Lee v. Riverhead Pooh lawsuit trial, and was in the midst of the retrial when the Lee v. Riverhead Pooh lawsuit settled.

Rory Shectman and Barry Liebman, the two attorneys at the Wilhelm Firm primarily responsible for the Lee v. Riverhead Pooh lawsuit, both testified at the hearing. Through their testimony and the documents they submitted at the hearing, the Wilhelm Firm established that it spent hundreds of hours, over the course of seven years, representing plaintiffs at both the trial and appellate levels.

At the first trial of the Lee v. Riverhead Pooh lawsuit plaintiff Soon Ok Jang, Lee's wife, obtained a \$100,000 verdict in her favor on her loss of consortium claim. Plaintiffs did not appeal this part of the jury's verdict and, after interest was added in, Soon Ok Jang was paid \$125,576.23 for her loss of consortium claim. The payment to Soon Ok Jang resulted in \$39,275.11 net legal fees to the Wilhelm Firm.

On November 23, 2010, plaintiffs settled/withdrew their remaining claims for a \$3,250,000 gross settlement amount. From this settlement, the Wilhelm Firm received \$1,047,423.30 in net legal fees. In total, the Wilhelm Firm received \$1,086,698.41 in legal fees in connection with the Lee v. Riverhead Pooh lawsuit.

At the hearing on the division of legal fees and in their post-hearing submissions, each party attempted to play up that party's contribution to the resolution of the Lee v. Riverhead Pooh lawsuit and denigrate the other party's contribution. Thus, for example, the Wilhelm Firm's attorneys testified at the hearing and argue post-hearing that the bill of particulars prepared by Suh was actually detrimental to Lee.

The Wilhelm Firm attorneys pointed out that, in an approximate one page long recitation of the particulars of defendants' negligence, buried in some boilerplate language, Suh stated that the defendants were negligent in failing to provide safe and adequate ladders, and failing to prevent Lee from falling from a ladder. The Wilhelm attorneys argued that this incorrect statement—Lee actually fell from a joist -- in the first bill of particular's boilerplate amounts to a judicial admission, and caused the Lee v. Riverhead Pooh lawsuit to be subject to dismissal. The Wilhelm Firm attorneys also noted that Suh's bill of particulars was not verified.

Similarly, the Wilhelm Firm's attorneys testified that Suh listed in the first bill of particulars, as one of the injuries sustained by Lee, traumatic brain injury. The Wilhelm Firm attorneys testified that there was no evidence that Lee suffered traumatic brain injury, thus Suh's inclusion of this injury unnecessarily raised issues of plaintiffs' credibility. The Wilhelm Firm attorneys testified that, in light of Suh's alleged deficient pleadings, they determined to discontinue the Lee v. Riverhead Pooh lawsuit commenced by Suh and commence the action anew.

In contrast, Suh sought to portray his contribution to the Lee v. Riverhead Pooh lawsuit as invaluable, and further sought to show that at least some of the Wilhelm Firm's work was unnecessary. Thus, for example, Suh testified that the trial court, in granting plaintiffs' summary judgment, relied in part on the deposition testimony of Ronald Behrmann. As Suh correctly pointed out, Mr. Behrmann was identified as a key witness by

* 7] .

performed on the whole case. The percentage may be fixed at the time of substitution but, as several courts have recognized, is better determined at the conclusion of the case when such factors as the amount of time spent by each lawyer on the case, the work performed and the amount of recovery can be ascertained.

Lai Ling Cheng v Modansky Leasing Co, 73 N.Y.2d 454, 458 (1989); see also *Cohen v Grainger, Tesoriero & Bell*, 81 N.Y.2d 655, 658 (1993) (where the fee dispute is between attorneys, “the discharged attorney may elect to receive compensation immediately based on quantum meruit or on a contingent percentage fee based on his or her proportionate share of the work performed on the whole case”).

Moreover, where, as here, the outgoing attorney has elected to take a contingent percentage fee at the conclusion of the lawsuit, “the contingent percentage fee is measured by quantum meruit, based on the discharged attorney's proportionate share of the work performed on the whole case, in addition to the amount of recovery. *Nabi v. Sells*, 70 A.D.3d 252, 254 (1st Dep’t 2009).

I have reviewed the work performed by both Suh and the Wilhelm Firm. While Suh appropriately protected plaintiffs’ interests and adequately performed the tasks required at the beginning of legal representation, the Wilhelm Firm did most of the legal work resulting in the Lee v. Riverhead Pooh lawsuit settlement. In terms of time spent representing plaintiffs, Suh was their attorney for six months, while the Wilhelm Firm represented plaintiffs for more than seven years. In addition, while Suh performed approximately twenty

hours of straightforward pretrial work, the two Wilhelm Firm attorneys each spent hundreds of hours representing plaintiffs at the pretrial, trial and appellate levels.

Upon review of each firm's "proportionate share of the work performed on the whole case, in addition to the amount of recovery," I find that Suh is entitled to a \$50,000 share of the \$1,047,423.30 legal fee earned in connection with the Lee v. Riverhead Pooh lawsuit.

In accordance with the foregoing, it is

ORDERED that the motion by the Law Offices of Kenneth A. Wilhelm for an order determining the division of fees between the Law Offices of Kenneth A. Wilhelm and Edward H. Suh and Associates, PC is granted; and it is further

ORDERED that, within thirty days of Edward H. Suh and Associates, PC's service upon the Law Offices of Kenneth A. Wilhelm with a copy of this order with notice of entry, the Law Offices of Kenneth A. Wilhelm is directed to pay Edward H. Suh and Associates PC \$50,000 from the \$1,047,423.30 legal fee earned in connection with the Lee v. Riverhead Pooh lawsuit.

This constitutes the decision and order of the Court.

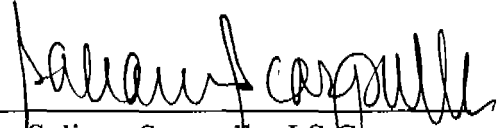
Dated: New York, New York
October 14, 2011

FILED

OCT 18 2011

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ENTER:


Saliann Scarpulla, J.S.C.

N.B. - The parties should go to 80 Centre Street, Room 279, to pick up their hearing exhibits.