

**Frowley v Centeno**

2014 NY Slip Op 33319(U)

February 11, 2014

Supreme Court, Bronx County

Docket Number: 309189/09

Judge: Wilma Guzman

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

Index No. **309189/09**  
Motion Calendar No. 9  
Motion Date: ~~12/16/13~~

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SANDRA FROWLEY and BRADFORD  
CONSTRUCTION COMPANY,

Plaintiffs,

-against-

**DECISION/ ORDER**  
**Present:**  
**Hon. Wilma Guzman**  
Justice Supreme Court

JIM CENTENO.,

Defendant.

\_\_\_\_\_  
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Petition:

<u>Papers</u>	<u>Numbered</u>
<b>Petition, Affirmation in Support,</b>	
<b>Exhibits Thereto.....</b>	<b>1</b>
<b>Affirmation in Opposition .....</b>	<b>2</b>

*Upon the foregoing papers and after due deliberation, and following oral argument, the Decision/Order on this motion is as follows:*

Plaintiffs/counterclaim defendants move this Court via Order to Show Cause pursuant to New York Administrative Code, Title 8 §§ 502 and 107 for and Order: (1) (a) confirming plaintiffs/counterclaim defendants to be the prevailing party on defendant/counterclaim plaintiff Centeno's counterclaim of sexual harassment; (b) determining that plaintiffs/counterclaim defendants are entitled to their reasonable costs and attorney's fees in connection with the defense of the counterclaims; (c) setting an evidentiary hearing on the amount to be awarded to plaintiffs/counterclaim defendants as their reasonable costs and attorneys fees. Plaintiffs/counterclaim defendants further move pursuant to C.P.L.R. §§ 5001 and 5004 (2)(a) pre-judgment interest made applicable to the jury verdict of \$23, 012. (b) pre-judgment interest to be recovered as of January 1, 2007.

Plaintiffs/counterclaim defendants commenced the action seeking a money judgment in the amount of \$25,000 for the defendant's breach of fiduciary duty. Defendant/counterclaim plaintiff

Centeno joined issue by filing an Answer and raising counterclaims therein. Centeno alleged in his counterclaims the unlawful discriminatory practice of sexual harassment to wit, violations of Section 296(1) of the Executive Law of the State of New York, Title 8 of the Administrative Code of the City of New York and violations of the New York State Human Rights Law. After a jury trial, a unanimous verdict in favor of the plaintiffs/counterclaim defendants was awarded in the amount of \$23, 012.00. The Jury did not find in favor of the defendant/counterclaim plaintiff on the counterclaims.

New York City Administrative Code Section 8-205(f) states that

f. In any civil action commenced pursuant to this section, the court, in its discretion, may award **the prevailing party** costs and reasonable attorney's fees. For the purposes of this subdivision, the term "prevailing" includes a plaintiff whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been implemented voluntarily, as a result of a settlement or as a result of a judgment in such plaintiff's favor. (Emphasis added).

On a counterclaim, a plaintiff becomes a defendant. As such, plaintiffs herein were the defendants to Centeno's counterclaim. To be awarded attorney fee's as the "prevailing party", a defendant must show that the plaintiff's claim was frivolous, unreasonable or groundless. Christainberg Garment Co. V. EEOC, 434 U.S. 412 (1978) The defendant, as the "prevailing party" is entitled to attorney fees where it can be shown that the plaintiff's claim was clearly without merit. "A case may be deemed frivolous only when the result is obvious or the arguments of error are wholly without merit." Brand v. Creative Health Care Services, Inc., 2013 WL 3034568(D. Ariz.) *citing* Gibson v. Office of Atty Gen., State of California, 561 F.3d 920 (9<sup>th</sup> Cir. 2009). Bad faith is not sufficient to show lack of merit. Nor is lack of merit shown merely because the plaintiff does not prevail on his claim. Allen v. Dollar Tree Stores, Inc., 2011 WL 767411 (N.D.Cal.).

In Minton v. Wings Club, 42 A.D. 3d 345(1st Dept. 20007), the Appellate Division, First Department upheld a motion court decision to deny defendants attorney fee's. Minton v. Wings Club, 42 A.D.3d 345. Although, by definition, the defendants therein were the "prevailing party" in that the motion court dismissed the plaintiff's claims of sexual harassment based upon "quid pro

quo or hostile work, environment, the plaintiff's claims was not the type of frivolous or vexatious litigation that warranted attorney's fees against her." Minton v Wings Club, 42 A.D.3d 345. Attorneys fees were awarded to a prevailing defendant where plaintiff's claims were not frivolous but found to be unreasonable or without foundation because of plaintiff's "inconsistent and grossly exaggerated trial testimony and plaintiff's outrageous and overreaching demand for \$34 million in damages." Sayers v Stewart Sleep Center, 932 F. Supp 1415 (1996).

The Minton decision offers little guidance as to the factual scenario under which the motion court dismissed the plaintiff's claims which warranted the denial of defendants application for attorney's fees. However, the facts of the instant case elicited during trial, support a finding that defendant Centeno's counterclaim of sexual harassment was groundless and without merit. At trial, the evidence set forth showed that the defendants employment contract was not renewed upon its expiration. However, there was no automatic renewal clause within the contract. Furthermore, the plaintiffs/counterclaim defendants lost two lucrative construction contracts based upon the defendants incompetence, yet allowed the defendant to complete the remainder of his employment contract. This Court further notes that defendant Centeno did not pursue the claims of sexual harassment upon the 2008 completion of his contract, when it was not renewed. Rather, the evidence showed that Centeno brought allegations of sexual harassment upon being confronted with the plaintiff's 2009 complaint seeking damages for breach of contract and fiduciary duty. Despite the overwhelming evidence of a sexual relationship, including but not limited to the uncontroverted DNA evidence of the defendants sperm mixed with the plaintiff's bodily fluids on a bed comforter, defendant denied ever having a sexual relationship or anything other than a working relationship with the plaintiff. Centeno's testimony revealed several inconsistencies and other gross exaggerations as compared to the concrete evidence of such a relationship. Furthermore, as noted above, upon hearing all of the evidence and after due deliberation, the jury unanimously returned a verdict in favor of plaintiffs/counterclaim defendants on the issue of sexual harassment.

This Court is aware of the reluctance to award attorneys fees to a defendant who successfully defends against allegations of sexual harassment. See, Christianburg Garment Co. V. EEOC, 434

U.S. 412; Franchitti v. Bloomberg, 411 F. Supp 2d 466 (S.D.N.Y. 2006); In no circumstance should the possibility of a plaintiff paying a defendants attorneys fees serve as a deterrent in pursuing a claim for any wrong doing. However, based upon the facts herein, and the evidence elicited at trial which was duly weighed by the jury and dismissed, this Court finds that the defendants claim of sexual harassment to be groundless and without merit. As such reasonable attorney fee's to be determined after a hearing, are awarded to the plaintiffs/counterclaim defendants as defendant on the counterclaim. Furthermore, upon the entering judgment interest will be calculated in accordance with the C.P.L.R.

Accordingly, it is

ORDERED that the portion of plaintiffs/counterclaim defendants motion which seeks a confirmation of plaintiff as the prevailing party on the counterclaim under NYC Administrative Code Section 8-205(f) is hereby granted. It is further

ORDERED that an hearing to determine reasonable attorneys fees is set down for Monday, March 24, 2014, Bronx Supreme Court, Room 624, at 11:00 AM. It is further

ORDERED that the portion of plaintiffs/counterclaim defendants motion which seeks interest pursuant to C.P.L.R. 5001 and 5004 is hereby granted in accordance with the C.P.L.R. upon entering judgment. It is further

ORDERED that plaintiffs/counterclaim defendants serve a copy of this Order this Order, within 30 days following the date of entry of this Order, by regular mail upon the defendant/counterclaim plaintiff.

This constitutes the decision and order of this Court.

DATE

2/11/14

  
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HON. WILMA GUZMAN, JSC.