

Matter of City of Glen Cove Indus. Dev. Agency

2016 NY Slip Op 32742(U)

September 13, 2016

Supreme Court, Nassau County

Docket Number: 17614-05

Judge: Jerome C. Murphy

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**SUPREME COURT : STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT:

**HON. JEROME C. MURPHY,
Justice.**

**In the Matter of the Application of THE CITY OF
GLEN COVE INDUSTRIAL DEVELOPMENT
AGENCY TO ACQUIRE CERTAIN PROPERTY
TO BE ACQUIRED FOR PUBLIC PURPOSES AS
SET FORTH ON MAPS SHOWING PROPERTY TO
BE ACQUIRED, IN THE VICINITY OF GARVIES
POINT, CITY OF GLEN COVE, COUNTY OF
NASSAU, STATE OF NEW YORK**

**TRIAL/IAS PART 19
Index No.: 17614-05**

**DECISION AND ORDER
AFTER A HEARING**

**REPUTED PROPERTY OWNER: JOHN DOXEY
AND 10 GARVIES POINT ROAD CORPORATION**

**REPUTED PROPERTY TENANT: DOXSIDE
INDUSTRIES, INC.**

PRELIMINARY STATEMENT

This Court in its Decision and Order of March 9, 2016 ordered that this matter be set down for a hearing concerning the disputed legal fees and expenses between Berger & Webb, LLP and its former clients, John Doxey and 10 Graves Point Rd., Corporation.

DISCUSSION

The undisputed testimony at this hearing demonstrated that counsel and their former clients had previously entered into a written retainer agreement that was negotiated between them for a 15% legal fee. Counsel has asserted and calculated that they are entitled to attorneys' fees of \$97,500 under this agreement. Mr. Doxey testified that upon the settlement of all claims in this case with Glen Cove, that counsel orally agreed to take \$50,000 in total, which was also to include all the disbursements.

After considering all of the testimony, the Court finds that counsel has proven its case,

and that they are entitled to \$97,500 under this written retainer agreement. While settlement of fee was discussed, no settlement was agreed to. The Doxey defendants have not come forward with convincing evidence to refute and overcome the written retainer agreement. Additionally, it can also be argued that they have not demonstrated that there was any consideration given for the Berger firm to compromise its fees or disbursements.

The Court further notes that Mr. Doxey went to great lengths to testify that when this alleged agreement was reached with Glen Cove, he believed he was going to net \$400,000. Mr. Doxey felt that he and his counsel should together both take a "haircut", as he put it. He neglected to consider, that he may very well walk away with and net a lot more money from his legal malpractice claim against Mr. Levinson, the lawyer who preceded Berger & Webb. In short, he may not be getting that much of a "haircut" at all. In any event, based on the law and the facts, the Court finds that Berger & Webb did not compromise their fee of \$97,500, or their right to receive payment for disbursements, as was alleged by Mr. Doxey.

As it relates to the disbursements, Berger & Webb has alleged that they are entitled to \$20,814.01 concerning the eminent domain issues and they also allege that they are entitled to \$2,696.00 in disbursements concerning the dispute with Mr. Levinson.

The Court further orders that in addition to the \$97,500 fee, the lawyers are entitled to \$8,335.01 for disbursements. The Court is directing that the other \$15,175 not be paid or collected by Berger & Webb. It will be up to the Doxey defendants and the former appraiser to find out what, if anything, is owed concerning the appraisal fee in a separate litigation, if it comes to that. At this trial, Mr. Doxey claims that the bill has been satisfied, but the appraiser denied that. Since the Court does not have both parties before it so that each can both conduct cross-examinations and be bound by the Court's Decision, this is the appropriate course of action for this Court to take after listening to the testimony of both men on this issue.

The final issue before the Court is whether Berger & Webb, LLP can obtain a separate legal fee in defending the claim brought by Mr. Levinson.

It is undisputed that there was no separate written retainer for this work. Mr. Webb testified that he told Mr. Doxey some time in 2014, after the alleged global settlement with Glen Cove, that Doxey would have to pay on an hourly basis. He stated that Mr. Doxey told him: "I

hear you.” He stated that Mr. Doxey knew the hourly fee amounts because on another occasion, he showed him their internal records that listed their hourly rates.

Mr. Doxey testified that the retainer that he had signed covered everything. He denied this conversation, or ever seeing internal records. He also stated that when Mr. Webb originally agreed to take the case, that he said that he would not have to make any further payments to Mr. Levinson and that he would get the file from him. Mr. Webb refuted the statement that there would not have to be any payments to Mr. Levinson.

As noted, and it is undisputed, there is no written retainer concerning any hourly fees for this legal work. The issue which then comes before the Court is whether or not, under the circumstances of this case, if Berger & Webb, LLP should be entitled to recover separately any attorney fees for their work under principles of *quantum meruit*.

The trial demonstrated that Berger & Webb, LLP are very experienced and excellent attorneys and appear to be usually quite communicative with their clients. Mr. Webb testified that they had never had a problem with any other client concerning fees. They explained that they had these clients in this case sign a retainer agreement after negotiating it down with their clients to a 15% lawyers’ fee. They stated that this was for their eminent domain legal work.

These experienced lawyers did not obtain any further written retainer. While they kept their hours internally, they never once billed their clients for legal fees regarding Mr. Levinson until October 2015. The Court noted that they did routinely bill Mr. Doxey for all disbursements every month. One would have expected that if they were looking to obtain additional legal fees, that they would have included these fees in those monthly bills. Instead, they elected to give Mr. Doxey and his father a large bill after the lion’s share of the work was completed. The Doxeyes claimed surprise. The Court can understand that. It is unlikely that this is the way that these attorneys managed their other cases. This Court further notes Berger & Webb were the third attorneys for the Doxeyes. One would have thought that if they were looking for more legal fees, they would have been very careful in how they approached this. Mr. Webb also testified that hourly rates were never discussed, but that Mr. Doxey had seen their internal records with hourly rates. Knowing that Mr. Doxey was no pushover, did they think that Mr. Doxey was going to accept all of this without some pushback?

The Court further notes that the proceeding involving Mr. Levinson was within the confines of the index number of the main lawsuit for which Berger & Webb had already appeared. The Court also feels that given the legal problems that the Levinson fee issues created, that the Levinson fee issues were ripe to be either joined or consolidated with the malpractice case against Mr. Levinson. This would have prevented the real possibility that an adverse result in this litigation could have detrimentally impacted that malpractice litigation. Additionally, those issues probably could have been litigated in that action at no additional cost, or at a lower cost.

On the other hand, because of some very good lawyering during the trial of the Levinson matter, Berger & Webb, LLP obtained an excellent settlement for their clients and avoided any adverse impact on the malpractice case. The testimony elicited at the trial should be of great assistance in the malpractice action. Additionally, the argument that their 15% fee was not meant to cover the dispute with Mr. Levinson has merit and is believable.

Given all of the above, with particular emphasis placed on the result and the amount of work performed, the Court awards Berger & Webb, LLP legal fees of \$20,000 as fair and reasonable legal fees under *quantum meruit* principles for their excellent work in opposing the claims of Mr. Levinson. The Berger firm had requested \$97,337.50 for this work, but for the reasons stated herein, the Court holds that they are entitled to \$20,000 for this additional legal work.

In view of the above, it is hereby:

ORDERED, that Berger & Webb, LLP is awarded a combined legal fee of \$117,500 (\$97,500 plus \$20,000) and disbursements of \$8,335.01 and the Court directs that they are not to collect or pay any of the appraiser's bill amounting to approximately \$15,175 since payment is in dispute, and since this will have to be decided in other litigation between Mr. Doxey and his appraiser, if the appraiser continues to pursue that matter, and it is further

ORDERED, that since the bulk of everyone's money had been tied up in escrow, there shall be no post-judgment interest, except that if the escrow account accumulated some interest related to these amounts, then a proportionate allocation of that interest may be made, with disclosure of same being provided in the attorney's closing statement.

Any other further relief requested is hereby denied.

Berger & Webb, LLC is to submit a proposed judgment on notice and at the same time prepare and serve their attorney closing statement.

This constitutes the decision and order of the Court.

ENTER:

9-13-16

Jerome C. Murphy
JEROME C. MURPHY
J.S.C.

ENTERED

SEP 23 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE