

Hidalgo v Hawkins

2019 NY Slip Op 33748(U)

December 20, 2019

Supreme Court, New York County

Docket Number: 657090/2017

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

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DAVID HIDALGO,

Plaintiff,

- v -

WALTER HAWKINS,

Defendant.

-----X

INDEX NO. 657090/2017
MOTION DATE 11/21/2019
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

In this action to recover on a promissory note, commenced by notice of motion for summary judgment in lieu of complaint, the court, by order dated January 15, 2019, awarded the plaintiff summary judgment and directed entry of judgment in his favor in the sum of \$56,365. A judgment in that sum was entered on February 8, 2019.

The subject note provided that, if it was necessary for the plaintiff to seek judicial intervention to collect on the note, he was entitled to recover attorneys' fees and costs. By supplemental order dated May 9, 2019, the court referred the issue of attorneys' fees and costs to a referee to hear and report. Referee Helen Z. Galette conducted the hearing and issued a report dated October 29, 2019. The plaintiff now moves pursuant to CPLR 4403 and 22 NYCRR 202.44(a) to confirm the report, which recommended that the plaintiff recover \$107,187 in attorneys' fees and \$4,036.27 in attorneys' disbursements, for a total \$111,223.27. The defendant opposes the motion. The motion is granted.

"The law is established that 'where questions of fact are submitted to a referee, it is the function of the referee to determine the issues presented, as well as to resolve conflicting

testimony and matters of credibility, and generally courts will not disturb the findings of a referee' so long as his or her determination is substantiated by the record" (*Freedman v Freedman*, 211 AD2d 580, 580 [1st Dept 1995], quoting *Kardanis v Velis*, 90 AD2d 727, 727 [1st Dept 1982]; see *Board of Mgrs. of Boro Park Vil.-Phase I Condominium v Boro Park Townhouse Assoc.*, 284 AD2d 237, 238 [1st Dept 2001]). While, at first blush, an award of fees and expenses for approximately twice the sum recovered might appear excessive, the court concludes that the referee's findings as to the number of hours properly expended by the two law firms retained by the plaintiff in prosecuting the action are supported by the record, that the referee clearly defined the issues referred to her, and that she appropriately resolved all matters involving the credibility of the claim in connection with the number of hours reasonably and necessarily expended.

The court concludes that the referee applied the appropriate legal standards to the fee dispute. As she correctly explained, in determining what constituted reasonable attorneys' fees, she was required to multiply the number of hours reasonably expended on the litigation by a reasonable hourly rate, a method known as the "lodestar" method (*Hensley v Eckerhart*, 461 US 424, 430 [1982]), and was also required to consider:

"(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases"

(*id.*; see *Matter of Freeman*, 34 NY2d 1, 10 [1974]; *Sachs v Adeli*, 121 AD3d 490, 490 [1st Dept 2014] [confirming referee's recommendation with respect to attorneys' fees where referee considered the attorneys' experience, expertise, and educational background, the applicable billing rates in the New York legal community, and the defendant's vigorous litigation of the claim]; *David Realty & Funding, LLC v Second Ave. Realty Co.*, 26 AD3d 257, 258 [court and

referee properly employed their own knowledge, expertise, and experience in determining reasonableness of attorneys' fee)). In addition, the referee appropriately applied the law permitting, under appropriate circumstances, an attorneys' fee award that appears disproportional to the amount recovered (*see Podhorecki v Lauer's Furniture Stores*, 201 AD2d 947, 948 [4th Dept 1994]) where, as here, the defendant raised several dubious legal issues that delayed the disposition of an otherwise straightforward action to recover on a promissory note, and apparently placed several roadblocks to collection of the judgment after he unsuccessfully defended the action (*see NYCTL 1999-1 Trust v 573 Jackson Ave. Realty Corp.*, Index No. 27686/02 [Sup Ct, Bronx County, May 24, 2007], *affd* 55 AD3d 454 [1st Dept 2008], *affd* 13 NY3d 573, 577 [2009] [fee award was reasonable given that the fees "became so grossly disproportionate to the amount of potential recovery[] only after [defendant] chose to advance and repeat its unavailing arguments"]). Moreover, she properly concluded that, even though an attorney engages in block billing, which might otherwise warrant a reduction of the amount of fees requested, where, as here, the attorney appears at the reference hearing and fully explains the details of his or her work, no reduction is mandated (*see 546-552 W. 146th St., LLC v Arfa*, 99 AD3d 117, 123 [1st Dept 2012]).

The court concludes that there is no basis for questioning the referee's credibility determinations. In detailed findings, she appropriately concluded that the two law firms retained by the plaintiff actually and necessarily performed the number of hours for which she awarded fees in prosecuting the action by responding to all defenses and attempting to collect the judgment, and that they regularly billed at hourly rates that were comparable with rates of commercial attorneys in New York. She appropriately reduced the amount requested by the plaintiff by rejecting his request for fees expended in making the fee application itself, also known as an application for "fees on fees" (*see Batsidis v Wallack Mgt. Co., Inc.*, 126 AD3d 551, 552 [1st Dept 2015]; *Jones v Voskresenskaya*, 125 AD3d 532, 534 [1st Dept 2015]; *Sage Realty Corp. v Proskauer Rose*, 288 AD2d 14, 15 [1st Dept 2001]; *546-552 W. 146th St., LLC v*

Arfa, 99 AD3d at 122), and appropriately imposed reductions for duplicative or unnecessary work.

Interest on an award of attorneys' fees and costs runs from the date on which the court determined that the plaintiff was the prevailing party (see *Solow Mgt. Corp. v Tanger*, 19 AD3d 225 [1st Dept 2005]). Here, that date is January 15, 2019, when the court awarded summary judgment to the plaintiff.

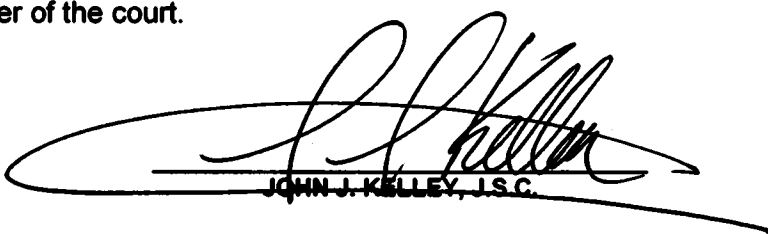
Accordingly, it is

ORDERED that the plaintiff's motion to confirm the report of Referee Helen Z. Galette, dated October 29, 2019, is granted, and the report is confirmed; and it is further,

ORDERED that the Clerk of the court is directed to enter a money judgment for fees and costs in favor of the plaintiff, David Hidalgo, and against the defendant, Walter Hawkins, in the principal sum of \$111,223.27, plus statutory interest from January 15, 2019.

This constitutes the Decision and Order of the court.

12/20/2019
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	