

Quadracci v Klein

2019 NY Slip Op 33837(U)

December 24, 2019

Supreme Court, New York County

Docket Number: 650913/2016

Judge: Nancy M. Bannon

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 42EFM

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JOEL QUADRACCI and CARAN QUADRACCI,

Plaintiff,

- v -

ALEX KLEIN and DRMAK REALTY LLC,

Defendant.

INDEX NO. 650913/2016

MOTION DATE 03/27/2019,
03/27/2019

MOTION SEQ. NO. 008 009

**DECISION + ORDER ON
MOTION**

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HON. NANCY M. BANNON:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT

The following e-filed documents, listed by NYSCEF document number (Motion 009) 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215

were read on this motion to/for INTERVENE/CONFIRM/DISAPPROVE AWARD/REPORT

In this action to recover a security deposit paid pursuant to a lease agreement, the court, by order dated December 11, 2017, struck the defendants' answer and counterclaims due to their repeated failure to comply with court-ordered discovery, found the defendants in default, awarded the plaintiffs judgment in the sum of \$82,500.00, plus statutory interest, and referred the issue of the amount due to the plaintiffs for attorneys' fees and costs to a referee to hear and report. The referee conducted a hearing on April 11, 2018, and thereafter issued a report on December 24, 2018. Based on the documents and presentations at the hearing, the referee recommended that the plaintiff be awarded \$143,836.65 in attorneys' fees, and \$9,266.29 in disbursements. The plaintiffs now move to confirm the referee's report, and the defendants cross-move to reject the referee's report (MOT SEQ 008). Non-parties Green & Cohen, P.C. and Michael Cohen move pursuant to CPLR 1012 and 1013 to intervene for the purpose of objecting to the confirmation of the referee's report, and pursuant to CPLR 4403 to reject the

referee's report (MOT SEQ 009). The non-parties' motion is denied. The referee's report is confirmed.

Intervention as a right under CPLR 1012 is permitted "when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." Permissive intervention under CPLR 1013 is permitted "when the person's claim or defense and the main action have a common question of law or fact." However, distinctions between intervention as of right and discretionary intervention are no longer sharply applied. See Yuppie Puppy Pet Prod., Inc. v St. Smart Realty, LLC, 77 AD3d 197 (1st Dept. 2010); see also Berkoski v. Bd. of Trustees of Inc. Vill. of Southampton, 67 AD3d 840 (2nd Dept. 2009) ("[I]ntervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings.").

Non-parties claim that because of an ongoing legal malpractice action between the defendants in this case and the non-parties, seeking to hold the non-parties liable for the damages and fees incurred in the instant action, they should be allowed to intervene. Non-parties do not dispute the outcome of the underlying action to recover the security deposit or seek to assert any claims or affirmative defenses of their own in the instant action, they only object to the reasonableness of the attorneys' fees recommended in the referee's report, as they may be found responsible for said fees depending upon the outcome of the malpractice litigation. Indeed, non-parties recognize in their motion to intervene that it is "perhaps more appropriate to view [their] motion as one to proceed as amicus curiae since [the non-parties] do not really assert any claims or defenses against any party, and vice versa."

Inasmuch as the non-parties do not have a claim or defense they wish to assert with a common question of law or fact in the main action (see CPLR 1013) and the defendants and the non-parties share an interest in persuading the court to reject the referee's report (see CPLR 1012) intervention is not proper. Nor is amicus curiae relief proper. Such a motion would require a showing that: 1) the parties are not capable of a full and adequate presentation and that movants could remedy that deficiency; 2) that movants would invite the court's attention to law or arguments that might otherwise escape its consideration; or 3) that movants would otherwise be of special assistance to the court. See 22 NYCRR 500.23. The non-parties fail to

demonstrate any of these criteria as the current parties are capable of a full and adequate presentation, the non-parties do not seek to interject law or arguments beyond what has already been brought forth by the defendants or analyzed and discussed in the referee's report, and the non-parties would not be of special assistance to the court. Therefore, the non-parties' motion is denied.

The factors used to determine the reasonableness of legal fees "include the time and labor expended, the difficulty of the questions involved and the required skill to handle the problems presented, the attorney's experience, ability, and reputation, the amount involved, the customary fee charged for such services, and the results obtained (citations omitted)." Matter of Barich, 91 AD3d 769, 770 (2nd Dept 2012); see Matter of Freeman, 34 NY2d 1, 9 (1974). As a general rule, the court should not disturb the findings of a referee, and the report should be confirmed if the referee's findings are supported by the record, the referee has clearly defined the issues, and resolved matters of credibility. See Board of Mgrs. of Boro Park Vil.-Phase I Condominium v Boro Park Townhouse Assoc., 284 AD2d 237 (1st Dept. 2001); Freedman v Freedman, 211 AD2d 580 (1st Dept. 1995). The court concludes that the referee's findings as to the number of hours properly expended by the plaintiffs' counsel in prosecuting the action, and its hourly billing rate, are supported by the record, that the referee clearly defined the issues referred to her, and that she resolved all matters involving the credibility of the claim of the number of hours reasonably expended and the appropriateness of the hourly billing rate. There is no basis upon which to conclude that the fees and costs, in the amount recommended by the referee, are not properly recoverable here. The report is thus confirmed.

Accordingly, it is

ORDERED that the motion of the plaintiffs Joel Quadracci and Caran Quadracci seeking to confirm the report of Referee Deborah Edelman dated December 24, 2018 (MOT SEQ 008), is granted and the report is confirmed; and it is further,

ORDERED that the cross-motion of the defendants Alex Klein and Drmak Realty LLC to reject the report of Referee Deborah Edelman dated December 24, 2018 (MOT SEQ 008) is denied; and it is further

ORDERED that the motion of non-parties Green & Cohen, P.C. and Michael Cohen pursuant to CPLR 1012 and 1013 (MOT SEQ 009) is denied in its entirety; and it is further,

ORDERED that the Clerk shall enter a judgment in favor of the plaintiffs and against the defendants, jointly and severally, in the sum of \$153,102.94.

This constitutes the Decision and Order of the court.

12/24/2019
DATE



NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

CHECK ONE:

SEQ 008

SEQ 009

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

OTHER

REFERENCE