

**Butler v Knights Collision Experts, Inc.**

2020 NY Slip Op 31922(U)

June 16, 2020

Supreme Court, New York County

Docket Number: 650631/2015

Judge: Shawn T. Kelly

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 27

-----X  
BRETT BUTLER, JUAN SMITH, ELLIOT WATERS,  
BERNARD WHITE, ALTON SMITH, BART BUTLER,  
HELPIS GARCIA

Plaintiffs,

- v -

KNIGHTS COLLISION EXPERTS, INC., KNIGHTS  
TOWING CORP., JOSEPH ROBLES, ADAM ROBLES,

Defendants.

INDEX NO. 650631/2015

MOTION DATE N/A

MOTION SEQ. NO. 008

**DECISION + ORDER ON  
MOTION**

-----X  
HON. SHAWN T. KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 131, 132, 133, 134, 135, 137, 138, 139, 140, 141

were read on this motion to/for ATTORNEY - FEES

Upon the foregoing documents, it is hereby ordered as follows

Plaintiffs Juan Smith, Alton Smith, Edgar Bravo, and Anthony Alicea ("Plaintiffs") filed this post-judgment motion for reasonable attorney fees and expenses to be paid by Defendants Knights Collision Experts, Inc., Knights Towing Corp., Joseph Robles and Adam Robles ("Defendants"). Plaintiffs were previously employed by Defendants as tow truck drivers. On February 25, 2015, Plaintiffs commenced an action to recover unpaid wages. On February 20, 2020, a jury awarded Plaintiffs \$82,831.96 in damages and restitution. Plaintiffs move for an Order pursuant to Labor Law Sections 198(1-a), 198(1-b), 198(1-d), & 215(2) awarding Plaintiffs their reasonable attorneys' fees and expenses.

Plaintiffs are seeking attorneys' fees of \$395,000 for 1085 hours, which began January 5, 2015, and ended March 16, 2020. Plaintiff's attorney Robert Meister completed the bulk of the work. He hired David Harrison as co-counsel on June 11, 2018. The 1085 hours are broken down

between several staff members, and the hourly rates for each member of staff varies. For example, Robert Meister has an hourly rate of \$600 and he worked 473 hours, associate Randi Melnick has an hourly rate of \$250 and worked for 22.90 hours, and law clerk Courtney Begley has an hourly rate of \$200 and worked for 37.50 hours. Further, paralegals Adam Wilson, Emma Stein, and Jeremy Busch worked a combination of 303.20 hours, at \$150 an hour.<sup>1</sup> Additionally, David Harrison billed at the rate of \$450 for 181.30 hours, associate Julie Salwen at \$350 an hour for 24.90 hours, and law clerk Fable Avison \$100 an hour for 42 hours<sup>2</sup>. The expenses requested for this case are \$5,960.98. Plaintiffs are requesting \$395,000 in total.

Defendants seek to reduce the attorneys' fees requested as they contend that the attorneys' fees and costs are unreasonable. Specifically, Defendants cite Labor Law Sections 198(1-a), 198(1-b), 198(1-d) and 215(2b). Section 198(1-a) states, "[i]n any action instituted in the Courts upon a wage claim...in which the employee prevails, the court shall allow such employee to receive all reasonable attorneys' fees." Defendants allege the total hours billed are grossly inflated and that the case is only worth between \$50,000 and \$60,000.

Defendants also assert that Plaintiff's attorneys' fees were not reasonably related to the services provided. Defendants contend that any costs that can be attributed to Plaintiffs that previously settled should be barred.<sup>3</sup> In support, Defendants submit a copy of plaintiff Bart Butler's settlement agreement, which states that it is a "[f]ull and final release by Butler. Butler, for himself and on behalf of his agents, representatives, attorneys..." Lastly, Defendants argue,

---

<sup>1</sup> The employees of the law firm Pedowitz and Meister

<sup>2</sup> The law firm of Harrison, Harrison, and Associates LLP

<sup>3</sup> Plaintiffs Brett Butler, Elliot Waters, Bernard White, Bart Butler, and Helpis Valdez Garcia settled prior to trial.

that the attorneys' bills were inflated due to the hiring of unnecessary staff and costly hourly rates for each employee.

Plaintiffs assert that over 1,085 hours were spent on this case and that in light of the time spent, the complexity of the case and the expertise of each member of staff, their fees are reasonable. Specifically, Plaintiffs contend that this is a reasonable sum based on the lodestar method. Further, Plaintiffs submit that the hours billed for matters which were previously settled represent work done to advance the claims of all plaintiffs. Plaintiffs also contend that the hiring of co-counsel was necessary given the impending retirement of Mr. Meister.

The burden is on the party seeking attorneys' fees to submit sufficient evidence to support the hours worked and the rates claimed (*see Hensley v Eckerhart*, 461 US 424, 453, 103 SCt 1933, 76 LEd2d 40 [1983]). As instructed by the Supreme Court in *Fox v Vice*, - US -, 131 SCt 2205, 2216, 180 LEd2d 45 (2011), when trial courts examine a fee application, they "need not, and indeed should not, become green-eyeshade accountants" (*see also In re Bracken, Margolin, Besunder, LLP v Raymond*, No. 20020-12, 2013 WL 3833734, at \*6 [NY Sup Ct 2013]).

A court may calculate reasonable attorneys' fees by either the lodestar method (multiplying the hours reasonably billed by a reasonable hourly rate, then applying a multiplier based on more subjective factors) or based on a percentage of the recovery (*Fiala v Metro. Life Ins. Co.*, 27 Misc 3d 599, 602, 899 NYS2d 531, 540 [Sup. Ct. 2010]).

In the present matter, the court finds that the use of the lodestar method to determine the reasonableness of attorneys' fees is appropriate. The lodestar method takes into account counsel's reasonable time multiplied by counsel's reasonable hourly rate (*see Queenie, Ltd. v Nygard Intl.*, 204 FSupp.2d 601, 607-608 [S.D.N.Y.2002]). To determine a reasonable hourly rate, the court

considers “the nature of the services rendered, the complexity and novelty of the issues, the attorney's professional reputation and experience, the level of skill involved in handling the case, the result obtained and the going rate in the community for services of this kind performed by attorneys of comparable skills” (*Solow v Wellner*, 150 Misc2d 642, 652, 569 NYS2d 882 [1991], *mod. on other grnds.* 86 NY2d 582, 635 NYS2d 132 [1995]). Petitioner was the prevailing party and entitled to attorney fees. After applying the lodestar analysis, the court finds Plaintiffs’ request for attorney fees and disbursements reasonable.

The following formula is suggested for evaluating an attorney's claim for hours expended: (1) hours which reflect inefficiency or duplication of services should be discounted; (2) hours that are excessive, unnecessary, or which reflect "padding" should be disallowed; (3) legal work should be differentiated from non-legal work, such as investigation, clerical work, the compilation of facts, and other types of work that can be accomplished by non-lawyers who command lesser rates; (4) time spent in court should be differentiated from time expended for out-of-court services; and (5) the hours claimed should be weighed against the court's own knowledge, experience, and expertise as to the time required to complete similar activities. (*See In re Appointment of a Guardian of Spingarn*, 164 Misc 2d 891, 892, 626 NYS2d 650, 650, [1995]).

As regards the 837.65 hours of work done by Pedowitz and Meister LLP between January 5, 2015, and March 16, 2020, Plaintiffs submitted a lengthy accounting of all the hours worked and the staff members that completed each task. Each entry was supported by a description of the task completed and indicated the time spent completing the task. Plaintiffs’ submission details the 248.20 hours expended by Harrison, Harrison, and Associates Ltd. in the same manner.

Plaintiffs' submission details each employee's credentials and outlines why the fees requested are reasonable. And indeed, in 2011 similar fees by Plaintiffs' counsel for similar work were found to have been reasonable (see *Castagna v Madison Square Garden, L.P.*, 09-CV 10211 LTS HP, 2011 WL 2208614 [SDNY June 7, 2011]).


In determining a reasonable hourly rate, courts consider whether "the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation" (*Blum v Stenson*, 465 US 886, 895 n. 11, 104 SCt 1541, 79 LEd2d 891 [1984]).

Accordingly, it does not appear that Plaintiffs' attorneys' fees requested are unreasonable and Plaintiffs' motion for attorneys' fees and expenses is granted.

Based on the foregoing, it is hereby,

ORDERED and ADJUDGED that plaintiffs are entitled to \$395,000 in attorneys' fees and disbursements.

The Clerk is directed to enter judgment accordingly.

6/16/2020 DATE	 SHAWN T. KELLY, 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
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE