

Ilkhomov v 133 Greenwich St. Assoc., LLC
2021 NY Slip Op 31173(U)
April 9, 2021
Supreme Court, Kings County
Docket Number: 508494/15
Judge: Karen B. Rothenberg
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: TRIAL TERM PART 35 x
 JAKHONGER ILKHOMOV,

Plaintiff(s),

Index No: 508494/15

-against-

:

133 GREENWICH STREET ASSOCIATES, LLC,
 HIDROCK REALTY, INC., BAY RIDGE
 MECHANICAL CORPORATION, CAVA
 CONSTRUCTION & DEVELOPMENT INC., and
 CAVA CONSTRUCTION CO., INC.,

DECISION AND ORDER

Defendant(s)

 133 GREENWICH STREET ASSOCIATES, LLC
 s/h/a GREENWICH STREET ASSOCIATES, LLC

x

Third-Party Plaintiff(s),

-against-

BAY RIDGE MECHANICAL CORPORATION,

Third-Party Defendant(s),

 BAY RIDGE MECHANICAL CORPORATION,

x

Second Third-Party Plaintiff(s),

-against-

PARKSIDE CONSTRUCTION BUILDERS, CORP.,

Second Third-Party Defendant(s).

 x

CAVA CONSTRUCTION & DEVELOPMENT INC.,
and CAVA CONSTRUCTION CO., INC.,

Third Third-Party Plaintiff(s),

-against-

PARKSIDE CONSTRUCTION BUILDERS, CORP.,

Third Third-Party Defendant(s).

Recitation as required by CPLR 2219(a), of the papers considered in plaintiff's motion [seq. no. 16] to vacate and/or adjust the liens against this action.

Papers	NYSCEF Doc. Nos.
Order to Show Cause/Motion and Affidavits Annexed.	376-413
Cross-motion and supporting papers.....	
Answering Affidavits.....	415-425; 426-427
Reply papers.....	

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Plaintiff seeks an order vacating and/or adjusting certain liens and/or agreements against his action held by non-parties New York State Insurance Fund [SIF] in the amount \$63,714.88, Green Legal Funding in the amount of \$150,000, Miracle Funding in the amount of \$47,000, and Cash Law in the amount of \$137,500¹.

Plaintiff sustained injuries while working on the construction of a Marriott Hotel in lower Manhattan. Plaintiff commenced this action against the defendants 133 Greenwich, Hidrock, Cava, and Bayridge asserting causes of action for common law negligence and for violations of Labor Law §§ 200, 240(1) and 241(6). On August 24, 2020, the action was settled at NAM for \$825,000. Plaintiff subsequently signed releases and plaintiff's counsel received checks from the defendants for a total of \$825,000, depositing same in the escrow account of his law firm Berke & Associates PLLC.

Prior to the settlement, plaintiff entered into several pre-settlement litigation funding agreements with Green Legal funding, Miracle Funding, and Cash Law.

¹ It is noted that these lien amounts represent the reduced amounts negotiated by plaintiff's counsel. The SIF lien was originally \$96,445.80; the Green Legal Funding lien was originally \$379,817.33; the Miracle Legal Funding lien was originally \$161,400; and the Cash Law lien was originally \$156,204.

In addition, plaintiff also applied for and received Workers' Compensation benefits from SIF. Plaintiff has directed his attorney not to pay any of the liens from the gross settlement claiming that these liens are unconscionable.

“A determination of unconscionability generally requires a showing that the contract was both procedurally and substantively unconscionable, i.e., ‘some showing of an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.’ ” (*Warburg, Pincus Equity Partners, L.P. v. Keane*, 22 AD3d 321, 322 [1st Dept 2005] [internal quotation marks and citations omitted]). Here, plaintiff fails to make any such showing with respect to the pre-settlement funding agreements with Green Legal Funding, Miracle Legal Funding, and Law Cash. Plaintiff sought the cash advances from these entities, acknowledged that he understood the terms of the agreement, and received the funds with no guaranteed obligation to repay, except from the proceeds, if any, recovered in his personal injury lawsuit (*see Cash4Cases, Inc. v Brunetti*, 167 AD3d 448, 449 [1st Dept 2018]). Thus, plaintiff's claim that the pre-settlement funding agreements should be vacated or reduced due to unconscionability is without merit.

With respect to the lien held by the New York State Insurance Fund, Workers' Compensation Law § 29(1) provides that, if an employee has received workers' compensation benefits, the compensation carrier liable for the payment of those benefits “shall have a lien on the proceeds of any recovery from [another], whether by judgment, settlement or otherwise, after the deduction of the reasonable and necessary expenditures, including attorney's fees, incurred in effecting such recovery, to the extent of the total amount of compensation awarded under or provided or estimated ... for such case and the expenses for medical treatment paid or to be paid by it and to such extent such recovery shall be deemed for the benefit of such ... carrier.” Thus, SIF has a valid lien that is enforceable against the entire amount of the settlement in plaintiff's personal injury action after subtraction of attorney's fees and other litigation costs.

Here, in consenting to plaintiff's settlement, SIF set forth its share of litigation expenses as 34.04% and agreed to accept \$63,614.88 in full satisfaction of its lien, which represents the full amount of its lien of \$96,445.80 reduced by its equitable percentage of litigation costs, including attorney's fees, incurred by plaintiff in obtaining the settlement. As SIF already reduced its lien by its share of the litigation expenses, the court is without authority to strike or reduce any further portion of SIF's lien so that plaintiff can recover more (*see Fernandez v Toyota Least, Trust*, 156 AD3d 435 [1st Dept 2017]; *see also Hammer v Turner Constr. Corp.*, 39 AD3d 705 [2d Dept 2007]).

Furthermore, SIF's statutory lien against the proceeds of the settlement has priority over the contractual liens in light of the inviolability of lien given to workers'

compensation carriers against recovery by a compensation claimant (*see Daniels v Monroe County Child Support Collection Unit*, 11 AD3d 944 [4th Dept 2004]).

In view of the foregoing, plaintiff's motion to vacate and/or adjust the liens held by SIF in the amount \$63,714.88, Green Legal Funding in the amount of \$150,000, Miracle Funding in the amount of \$47,000, and Cash Law in the amount of \$137,500 is denied.

This constitutes the decision/order of the Court

Dated: April 9, 2021

Enter,



Karen B. Rothenberg
J.S.C.