

Jones Law Firm, P.C. v Peck

2023 NY Slip Op 32198(U)

June 27, 2023

Supreme Court, New York County

Docket Number: Index No. 651700/2020

Judge: Frank P. Nervo

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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. FRANK P. NERVO

PART 04

Justice

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JONES LAW FIRM, P.C.,

INDEX NO. 651700/2020

Plaintiff,

- v -

**DECISION FOLLOWING
INQUEST**

IAN PECK, PATRIOT CREDIT COMPANY, LLC, BLUEFIN
CAPITAL PARTNERS, LLC, MODERN ART SERVICES,
LLC, BLUEFIN SERVICING, LTD

Defendant.

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This matter initially proceeded to inquest on June 15, 2022. However, the Court found it had improperly truncated defendants' cross-examination upon plaintiff's counsel's erroneous representation that judgment had already been awarded. The Court, therefore, referred the inquest to the Special Referee Part for a new hearing. That hearing was not scheduled by the Special Referee Part, and pursuant to administrative order, the inquest was reassigned to this Court. Thereafter, the Court issued a second inquest scheduling order, and such inquest was held on May 16, 2023. At the parties' request, the Court permitted the parties to file post-hearing briefs by June 16, 2023, and the Court directed the parties file a copy of the March 16, 2023 inquest's stenographic transcript. Neither post-hearing briefs nor the stenographic transcript were filed by the parties. This decision following inquest results.

OTHER ORDER – NON-MOTION

Plaintiff law firm seeks recovery of attorney's fees incurred as a result of its representation of defendants in three actions. Defendants oppose contending, inter alia, that plaintiff committed legal malpractice in the underlying actions and the fees are otherwise unreasonable.

Whether Jones Law Firm committed legal malpractice is an issue not before this Court. The Court, in this proceeding, must pass only on whether the legal fees sought herein are reasonable. Given the procedural history of this matter, including defendants' default leading to this inquest, the Court declines to conduct a trial-within-a-trial regarding claims of legal malpractice (*Amusement Bus. Underwriters v. American Intl. Group*, 66 NY2d 878 [1985] a defaulting defendant admits all traversable allegations in the complaint, including liability). In any event, to the extent that defendants allege legal malpractice, it is beyond cavil that defendants have not satisfied their burden establishing same in these proceedings, as there has been no showing, inter alia, that defendant would have prevailed in the underlying action but for the alleged malpractice (*see e.g. Rudolf v. Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 442 [2007]).

Where attorney fees are authorized, either by statute or agreement, the fee sought must be reasonable; where the fee is unreasonable, inflated, or needlessly incurred, the Court may dismiss the claim for attorney's fees (*American Motorists Ins. Co. v. Napco Sec. Systems Inc.*, 244 AD2d 197 [1st Dept 1997]). In determining the reasonableness of attorney's fees, the Court considers the attorney's affidavit and submissions to elicit the "difficulty of the issues and the skill required to resolve them; the lawyers' experience, ability and reputation; the time and labor required; the amount involved and benefit resulting to the client from the services; the customary fee charged for similar services; the contingency or certainty of compensation; the results obtained and the responsibility involved" (*Bankers Federal Sav. Bank FSB v. Off West Broadway Developers*, 224 AD2d 376 [1st Dept 1996]).

The party seeking attorney's fees bears the burden of establishing that the attorney's hourly rate and number of hours expended by counsel are reasonable (*Gutierrez v. Direct Marketing Credit Survives, Inc.*, 267 AD2d 427 [2d Dept 1999]). An attorney's affirmation that they regularly bill at a given rate, standing alone without evidence of "customary fees charged for similar services by lawyers in the community with like experience and of comparable reputation" is insufficient to establish that rate as reasonable (*see Gamache v.*

Steinhaus, 7 AD3d 525 [2d Dept 2004] quoting *Getty Petroleum Corp. v. G.M. Triple S. Corp.*, 187 AD2d 483 [2d Dept 1992]). Likewise, an attorney affidavit which fails to set forth their experience, ability, reputation and prevailing hourly rate in community for comparable legal work necessarily fails to establish the attorney's fees are reasonable, and precludes award of attorney's fees based upon the deficient submission (*People's United Bank v. Patio Gardens III, LLC*, 143 AD3d 689 [2d Dept 2016]).

Here, pursuant to the retainer agreements, plaintiff billed at hourly rates of \$450.00 for the principal attorney, \$400.00 for of counsel attorneys, \$350.00 for senior associate attorneys, \$300.00 for junior associates, and \$150.00 for paralegals. Plaintiff, however, has not provided any evidence as to the customary rates charges by lawyers with like experience and reputation, as required (*see Gamache v. Steinhaus, supra*). Furthermore, plaintiff's affirmation does not detail the experience, ability, or reputation of those attorneys performing work on this matter. Consequently, there is no basis for this Court to find the rates billed by counsel reasonable, and endorsement by the Court of the hourly rate would constitute error (*see Gamache v. Steinhaus, supra*; quoting *Getty Petroleum Corp. v. G.M. Triple S. Corp., supra*; *People's United Bank v. Patio Gardens III, LLC, supra*). Without determining whether

an attorney may cure their deficient affirmation via testimony at an inquest hearing, the Court notes that plaintiff's testimony here did not detail the experience, ability, or reputation of the attorney's performing work on this matter.

Furthermore, there can be no argument that plaintiff's services did not benefit defendants in the underlying matters and served to prejudice defendants. Notably, plaintiff allowed the deadline to file an answer on behalf of defendants to expire prior to moving to be relieved as counsel. It is beyond cavil that plaintiff's failure to timely file answers or seek an extension of the deadline to file same placed its clients in default and, at a minimum, formed the basis for multi-million dollar default judgments to be entered against defendants.

While it is inarguable that plaintiff performed some work on behalf of defendants, under these circumstances where plaintiff has failed to meet its burden to establish the legal fees sought are reasonable and plaintiff's services prejudiced its former client, the Court cannot award any damages to plaintiff. As noted above, this inquest represents the second hearing before the Court on the issue of attorney's fees. The Court will not provide a further opportunity to

submit sufficient evidence to support plaintiff's claim. Indeed, the principles of due process, fundamental to the fair administration of justice by the courts, do not permit repetitive trials upon the initial failure to meet one's burden of proof.

Accordingly, it is

ORDERED that plaintiff's submissions are deficient and, as a matter of law, plaintiff has failed to meet its burden establishing the attorney's fees sought herein are reasonable; and it is further

ORDERED, DECLARED, and ADJUDGED that defendants IAN PECK, PATRIOT CREDIT COMPANY, LLC, BLUEFIN CAPITAL PARTNERS, LLC, MODERN ART SERVICES, LLC, BLUEFIN SERVICING, LTD, shall have judgment dismissing the claims of plaintiff, JONES LAW FIRM, P.C., in this matter with prejudice without costs; and it is further

ORDERED that the Clerk of the Court shall enter any necessary judgment dismissing plaintiff's action as against defendants under this index number; and it is further

ORDERED that any judgment shall be filed with the Clerk of the Court, and not chambers, unless directed otherwise by that office; and it is further

ORDERED that defendants shall file, via NYSCEF, the stenographic transcript of the May 16, 2023 inquest within 30 days of this decision and order, or the relief granted herein may be waived; and it is further

ORDERED that the matter shall be marked disposed.

THIS CONSTITUTES THE COURT'S DECISION FOLLOWING INQUEST

DATE: 06/27/2023



HON. FRANK P. NERVO
J.S.C.

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)