

Papageorgiou v Consolidated Edison Co. of N.Y., Inc.

2023 NY Slip Op 33217(U)

September 15, 2023

Supreme Court, New York County

Docket Number: Index No. 115106/2004

Judge: Lucy Billings

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 41

-----x

CONSTANTINA PAPAGEORGIU, as Special
Limited Guardian of LUIS CASAS,

Plaintiff

Index No. 115106/2004

- against -

DECISION AND ORDER

CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.,

Defendant

-----x

LUCY BILLINGS, J.S.C.:

I. THE MOTION

To the extent the motion by Flomenhaft Law Firm, PLLC, requires an examination of a long account, the court refers the motion to a referee to hear and determine. C.P.L.R. § 4317(b). The referee will hear and determine the allocation of attorneys' fees among the successive attorneys for Luis Casas and his appointed guardian in this action, based on any agreements between the attorneys and otherwise on a quantum meruit basis. N.Y. Jud. Law § 475. In particular, the referee will enforce the agreement between Michael Flomenhaft Esq. and Perecman Law Firm, P.L.L.C., that David Perecman Esq. would determine the fair and reasonable compensation to Flomenhaft for his work on this action when Perecman Law Firm represented plaintiff.

The allocation of attorneys' fees will consider whether any

attorney delayed the action without accomplishing results and whether the any such attorney consequently is entitled to reduced or no fees. The referee will determine these issues and also will hear and recommend to the court whether plaintiff and Flomenhaft Law Firm are entitled to sanctions. ^{C.P.L.R. §§ 43A, 4317(W);} 22 N.Y.C.R.R. § 130-1.1(c). Sanctions may be in the form of (1) interest on the settlement distributed to Luis Casas and on the attorneys' fees and expenses awarded to Flomenhaft Law Firm, to compensate for the delay in recovery, C.P.L.R. §§ 5001, 5004, or (2) a specified amount of additional fees incurred to combat another attorney's delay. Both forms of relief are to be charged to the attorney who caused the delay.

Finally, the referee will hear and recommend whether the conduct of any attorney who delayed or obstructed resolution of this action was so egregious, so intentionally deceitful or protracted, as to violate New York Judiciary Law § 487. ^{C.P.L.R. § 43A.} While the compensatory damages plaintiff and Flomenhaft Law Firm seek under Judiciary Law § 487 are the same as under 22 N.Y.C.R.R. § 130-1.1, interest on the settlement amount and attorneys' fees recovered or additional attorneys' fees, liability under the statute would trigger treble damages. Although Flomenhaft Law Firm complains about a malpractice action by Schwartz Goldstone Campisi & Kates, LLP (SGCK), and its obstruction of the proceedings to appoint a guardian for Luis Casas, Flomenthaft Law

Firm does not seek sanctions or damages for that conduct in this action.

The court denies Flomenhaft Law Firm's request to expunge SGCK's lien for attorneys' fees. SGCK is entitled to attorneys' fees for its work and accomplishments on plaintiff's behalf at the action's earlier stages. Whether sanctions against SGCK ultimately will cancel its recovery is an issue that the referee will hear and on which the referee will recommend a determination and that the court will finally determine.

Consequently, the court refers the issues delineated above to the Special Referee Clerk for placement on the calendar of the Special Referees' Part, which at the initial appearance shall assign the issues to a Judicial Hearing Officer (JHO) or Special Referee for a hearing and determination or recommended determination, as specified above. C.P.L.R. ^{4311,} § 4317^(b) Within 15 days after entry of this order, Flomenhaft Law Firm shall serve the order on all attorneys involved in the current motion and shall submit to the Special Referee Clerk a completed Information Sheet accessible at the "References" link on the court's website. The Special Referee Clerk then shall advise the attorneys involved of the date to appear on the Special Referees' Part calendar. The attorneys shall appear on that date with all witnesses and other evidence the attorneys seek to introduce and shall be ready to proceed with the assessment of attorneys' fees,

sanctions, and damages. Unless the assigned JHO or Special Referee orders otherwise, the assessment shall proceed from day to day.

II. THE CROSS-MOTION

The court denies SGCK's cross-motion for disclosure. While all attorneys agree that C.P.L.R. § 408 governs disclosure at this phase of the action, SGCK does not demonstrate its need for the disclosure sought that § 408 requires. People v. Northern Leasing Sys., Inc., 193 A.D.3d 67, 74 (1st Dep't 2021); Price v. New York City Bd. of Educ., 51 A.D.3d 277, 293 (1st Dep't 2008); Alloca v. Kelly, 44 A.D.3d 308, 309 (1st Dep't 2007); Suit-Kote Corp. V. Rivera, 137 A.D.3d 1361, 1364-65 (3d Dep't 2016).

SGCK's makes only two claims that bear on the allocation of attorneys' fees as opposed to expenses, which the court already has determined. First is the Rule of Professional Conduct that any attorney may not divide fees with another attorney not associated with the same law firm, unless, after full disclosure regarding the division of fees, the client agrees. 22 N.Y.C.R.R. pt. 1200 R. 1.5(g). This court does not enforce the Rules of Professional Conduct. 22 N.Y.C.R.R. §§ 1240.7, 1240.8. To the extent an attorney's fees are to be forfeited due to a violation of the Rules of Professional Conduct, Freeman Lewis LLP v. Financiera De Desarrollo Indus. y Commerical S.A., 172 A.D.3d 574, 574-75 (1st Dep't 2019); David v. Hack, 97 A.D.3d 437, 438

(1st Dep't 2012), SGCK concedes that Luis Casas executed a retainer agreement with H.G. Nguyen Esq. when he undertook representation of Casas that disclosed that Flomenhaft would be associated with Nguyen for purposes of the representation.

The only omission from the agreement of which SGCK complains relates to the attorneys' engagement of a business Flomenhaft owned that provided non-legal services distinguishable from tasks performed by paralegals or associates, at charges comparable or less than the expenses that would have been incurred had plaintiff's attorneys and their staff performed the tasks. SGCK concedes that the retainer agreement disclosed this engagement, too, but in any event this engagement relates not to the division of fees governed by the Rules of Professional Conduct, 22 N.Y.C.R.R. pt. 1200 R. 1.5(g), but to expenses that the court already has approved. Salas-Aleman v. Lenox Manor Owners, Inc., 210 A.D.3d 564, 565 (1st Dep't 2022).

SGCK nowhere shows that Nguyen was not working on Luis Casas's behalf. No attorney claims Nguyen and Flomenhaft were not working together. Under the retainer agreement, Flomenhaft might perform anywhere from 1% to 99% of the work entailed in the representation, plaintiff would pay the same amount of attorneys' fees regardless of that percentage, and the only potential dispute is how the fees for that representation are to be divided between Nguyen and Flomenhaft: a dispute about which SGCK

expresses no concern.

Second, SGCK points out that Flomenhaft's former firm, Flomenhaft & Cannata, LLP, which claims it undertook representation of Casas in 2008, did not file a retainer agreement until 2017, raising a question whether the firm was in fact retained in this action before then. SGCK may raise this issue at the hearing. SGCK does not indicate it needs any disclosure on this issue.

Moreover, all the acts of malfeasance by Nguyen and Flomenhaft of which SGCK complains are fully within its knowledge. Whether SGCK was attempting to help Casas's removed former guardian, his sister Betty Casas, demonstrate this malfeasance, to regain representation of plaintiff, or to derail the settlement and the distribution of the settlement proceeds is all within SGCK's knowledge. Again, SGCK does not indicate it needs disclosure on any of these issues.

SGCK emphasizes that it seeks disclosure regarding expenses to show it held a good faith belief about the impropriety of the expenses when it attempted to delay or obstruct approval of expenses. To the extent SGCK's good faith belief about the propriety of expenses is even relevant, as the court held it was not, that good faith belief, even if just about SGCK's standing to challenge the propriety of expenses, is determined based on what SGCK knew when it launched its challenges, not what it might

find out through future disclosure. No party or attorney disputes that SGCK considered many of the claimed expenses to be fraudulent. The only issue is whether, when SGCK made those claims, it held a good faith belief that it was entitled to do so in this action.

Specifically, SGCK seeks the depositions of Nguyen, Flomenhaft, Betty Casas, her former attorney in the guardianship proceedings, Maria Galante Esq., and plaintiff Papageorgiou. Nguyen was uninvolved in the last several years of this action, when plaintiff and Flomenhaft Law Firm claim SGCK delayed and obstructed the action. SGCK has the benefit of Flomenhaft's detailed affidavit, is free to interview any nonparties, and is free to call anyone as a witness. Most importantly, all the information SGCK seeks from these witnesses relates to issues regarding Flomenhaft's expenses, all of which plaintiff and the court have resolved: what documents plaintiff reviewed, what expenses she approved, and on what basis she approved them. This information would be relevant only were plaintiff claiming fraudulent or unwarranted expenses, but she makes no such claim now, since she and the court have approved the expenses.

III. CONCLUSION

In sum, the court grants the motion by plaintiff and Flomenhaft Law Firm, PLLC, to the extent of ordering an assessment as delineated above, C.P.L.R. §^{43a} 4317(b); N.Y. Jud. Law

§ 475, and denies the cross-motion by Schwartz Goldstone Campisi & Kates, LLP, for disclosure. C.P.L.R. § 408.

DATED: September 15, 2023


LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C