

SUPREME COURT : STATE OF NEW YORK
IAS PART WESTCHESTER COUNTY
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

-----X
TERENCE O'CONNELL,

Plaintiff,

-against-

JORAM J. ARIS,

Defendant.
-----X

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

DECISION & ORDER

Index No: 69292/2014

Motion Return Date:
November 17, 2017
Motion Seq. #13 & #14

The following papers (e-filed documents 308-321; 327-352) were read on (1) the motion by plaintiff for an order increasing damages after trial, an order awarding attorneys fees, and an order directing discovery on the issue of punitive damages; and (2) the cross-motion by defendant for an order setting aside the verdict upon the grounds the verdict is contrary to the weight of evidence (CPLR 4404[a]).

Order to Show Cause, Affidavit, Affirmations (Exhibits A-J)
Affirmation in Opposition
Notice of Cross-Motion, Affirmation
Affirmation (Exhibits A-H) (Plaintiff)
Affidavit (Exhibits A-K) (Plaintiff)

Upon reading the foregoing papers it is

ORDERED the motion is denied; and it is further

ORDERED the cross-motion is denied.

Plaintiff sues claiming defendant improperly represented him in an underlying partition action. The complaint sets forth seven causes of action including breach of contract, legal malpractice and a violation of Judiciary Law 487.

Defendant defaulted in appearing. Plaintiff moved for a default judgment and defendant opposed. The court (Bellantoni, J.) granted the motion to the extent of granting a default judgment on the causes of action for breach of contract and legal malpractice, and, in effect,

presentation of evidence plaintiff made a motion seeking to conform the pleadings to the proof by submitting the issue of whether defendant violated Judiciary Law 487 to the jury. Judge Bellantoni granted the motion. The next day plaintiff orally moved to include as damages in the Judiciary Law 487 cause of action the legal fees plaintiff incurred in prosecuting the present action and the legal fees plaintiff incurred in defending a Bronx County action brought by defendant.¹ Although it is not clear from the motion record it appears Judge Bellantoni ruled the limit of fees that could be included as damages for the Judiciary Law 487 cause of action could not exceed \$100,000.00. Judge Bellantoni also ruled that, because the jury did not hear evidence concerning the legal fees incurred in either the present action or the Bronx County action, the issue of the legal fees incurred by plaintiff in those actions would not be presented to the jury. However, Judge Bellantoni ruled a post-judgment motion for an award of attorneys fees would be permitted.²

On June 16, 2017, the jury returned a verdict awarding \$129,000.00 in damages on the legal malpractice claim and \$100,000.00 on the Judiciary Law 487 claim. On January 22, 2018, plaintiff entered judgment against the defendant in the sum of \$528,539.75 (\$129,000.00 plus \$300,000.00 [\$100,000.00 trebled pursuant to Judiciary Law 487] plus \$99,539.75 in interest).

Plaintiff's Motion

Increase Jury Verdict

The court cannot increase the jury verdict since the jury did not hear sufficient evidence concerning legal fees incurred in either the present action or the Bronx County action. Moreover, a review of the transcript of proceeding on June 15, 2017, indicates that Judge Bellantoni authorized only a post-judgment motion for an award of attorneys fees incurred in the prosecution of the present action.

Award of Attorneys Fees

It appears from a review of the reckoning of legal fees attached as Exhibit D to the present motion some fees awarded as damages by the jury on the Judiciary Law 487 cause of action included fees for the prosecution of the present action. To the extent that plaintiff is moving for an award of attorneys fees in addition to those awarded by the jury on the Judiciary Law 487 cause of action (which were then trebled), the motion is denied in the discretion of the court.

¹ The Bronx County action, in which defendant sought legal fees from plaintiff for the

Punitive Damages

In its verdict sheet the jury was asked whether plaintiff was entitled to punitive damages, but the jury was not asked to determine the amount of those damages, if awarded. The jury determined that plaintiff was entitled to punitive damages but, since it was not asked, the jury did not determine the amount of punitive damages. The jury was dismissed without being presented with the question of the amount of punitive damages to award. Plaintiff has not advised the court whether, and if so, under what circumstances, Judge Bellantoni ordered a bifurcated trial on the issue of punitive damages. Moreover, the jury which heard the case in chief is no longer available to hear a trial of the amount of punitive damages to award. Accordingly, the branch of the motion seeking an order directing discovery on the issue of punitive damages is denied.

Defendant's Cross-Motion

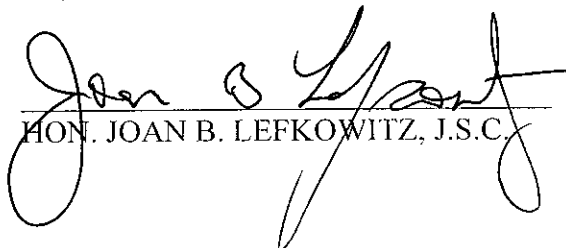
Defendant cross-moves for an order setting aside the verdict as contrary to the weight of the evidence.

"A jury verdict is contrary to the weight of the evidence when the evidence so preponderates in favor of the movant that the verdict could not have been reached on any fair interpretation of the evidence. Whether a jury verdict should be set aside as contrary to the weight of the evidence does not involve a question of law, but rather requires a discretionary balancing of many factors. We accord deference to the credibility determinations of the factfinders, who had the opportunity to see and hear the witnesses" (*Peterson v. MTA*, 155 A.D.3d 795, 798, 64 N.Y.S.3d 266, 269 [2d Dept 2017] [internal quotation marks and citations omitted]).

Applying those principles here, the court finds the jury's verdict is supported by a fair interpretation of the evidence.

ENTER,

Dated: White Plains, New York
May 23, 2018


HON. JOAN B. LEFKOWITZ, J.S.C.