

Moby S.P.A. v. Stanley

Supreme Court of New York, New York County

September 8, 2022, Decided; September 15, 2022, Published

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Reporter

2022 NYLJ LEXIS 1241 *

MOBY S.P.A. v. Morgan Stanley

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(MOBY S.P.A. v. Morgan Stanley, NYLJ, Sep. 15, 2022 at p.17, col.3)

Core Terms

billing, attorney's fees, statute's application, impermissible, restructuring, reduction, baseless, block

Judges: [*1] Judge: Justice Jennifer G. Schechter

Opinion

Plaintiff, an Italian shipping company, brought tortious interference claims against defendants, two of its creditors, for allegedly interfering in plaintiff's business relations with its other creditors in an attempt to obtain a controlling majority of the company's bonds to thwart its restructuring plan. The court found that plaintiff's claims lacked merit and constituted a baseless SLAPP suit, dismissing its complaint. Defendants filed a motion pursuant to [CPLR 3211\(g\)](#) seeking attorneys fees from plaintiff. The court held that the statute's application to a foreign plaintiff is not impermissible because [Civil Rights Law § 70-a\(1\)\(a\)](#)'s procedural fee shifting rule broadly defines actions involving public petition and participation. However, the court rejected the amount defendants requested in attorney's fees after thoroughly reviewing the billing record, finding that nearly \$300,000 in fees and billing more than 100 hours for work that began in March 2022 was excessive. Also, some block billing warranted reduction. Accordingly, the court awarded defendants \$150,000 in attorney's fees.

Full Case Digest Text

[ORDER Civil Rights Law §70-a\(1\)\(a\)](#) provides that

"costs and attorney's fees shall be recovered" when, as here, the court [*2] grants a motion pursuant to [CPLR 3211\(g\)](#). This is a procedural rule ([Brady v. NYP Holdings, Inc.](#), 2022 WL 992631, at *11 [SDNY Mar. 31, 2022], citing [La Liberte v. Reid](#), 966 F3d 79, 87 [2d Cir 2020]; see [Zervos v. Trump](#), 171 AD3d 110, 130 [1st Dept 2019]). That other parts of the statute, such as [§§70-a\(1\)\(b\)](#) and [76-a\(2\)](#), may be substantive does not change the nature of [§70-a\(1\)\(a\)](#)'s procedural fee-shifting rule. The statute's application here is not impermissibly extraterritorial. [Section 76-a\(1\)](#) was amended to broadly define "action involving public petition and participation" to include "any lawsuit" in which the claim is based upon "any communication" of the sort set forth in the statute ([Aristocrat Plastic Surgery, P.C. v. Silva](#), 206 AD3d 26, 29 [1st Dept 2022] [emphasis added]). Plaintiff is obligated to pay Di Meo's fees is because it filed a baseless SLAPP suit in this court.

Here, moreover, all of the claims asserted against Di Meo involved allegations implicating the anti-SLAPP statute, such as attempting to undermine the restructuring by, among other things, filing the Involuntary Petition and TRO (see Dkt. 1 at 47-55).

Nonetheless, having carefully reviewed the billing records, the court agrees with plaintiff that the total amount sought nearly \$300,000 in fees and expenses (Dkt. 120 at 2-3; see Dkts. 121, 122) is excessive (see [Matter of Freeman](#), 34 NY2d 1, 9 [1974]). While the underlying facts and procedural issues were complex, and while the hourly rates of counsel are reasonable, having multiple attorneys [*3] bill more than 100 hours is still too much considering the work only began in March 2022. Additionally, while the bills are mostly itemized there is some block billing that warrant reductions. While the quality of the work and result achieved were excellent, it would be unreasonable to award the amount that was billed. A reasonable fee award would be \$150,000 (see [De Bernardo v. De Bernardo](#), 180 AD2d 500, 502 [1st Dept 1992]).

Accordingly, it is ORDERED that plaintiff Moby S.p.A.

shall pay \$150,000 to counsel for defendant Antonello Di Meo within two weeks, and if payment has not been made by that time, the Clerk is directed to enter judgment in favor of Di Meo and against plaintiff in that amount and Di Meo may file a proposed judgment to the Clerk.

Check One: ☒ Case Disposed Non-Final Disposition

Dated: September 8, 2022

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