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2022-04-26

Franco v. Sky East, LLC

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Franco v Sky East, LLC
2022 NY Slip Op 02756
Decided on April 26, 2022
Appellate Division, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: April 26, 2022

Before: Renwick, J.P., Kapnick, Gesmer, Moulton, Shulman, JJ.

Index No. 152032/18 Appeal No. 15804 Case No. 2021-02126

[*1] Carlos A. Franco, Plaintiff-Appellant,

v

Sky East, LLC, Defendant-Respondent.

Law Offices of Karim H. Kamal, New York (Karim H. Kamal of counsel), for appellant.

Rose & Rose, New York (James E. Bayley of counsel), for respondent.

Order, Supreme Court, New York County (Arlene P. Bluth, J.), entered May 6, 2021, which, to the extent appealed from as limited by the briefs, granted defendant-landlord's (landlord) cross motion for sanctions under 22 NYCRR 130-1.1, unanimously reversed, on the law and the facts, without costs, and the cross motion denied.

Each party sought sanctions for the other's violation of the terms of their stipulation of settlement dated August 7, 2018. Plaintiff tenant (tenant) had violated the provision in which he agreed not to file any further motions, and both parties had violated the provision in which they agreed to "bear their own atty [sic] fees."

While we ordinarily defer to the motion court in determining whether to award sanctions (22 NYCRR 130-1.1[a]), we find that, under the circumstances of this case, it was inequitable to award sanctions only against tenant in the amount of \$6,825.00, representing landlord's attorneys' fees incurred in responding to tenant's motion to vacate the parties' stipulation.

We have considered tenant's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 26, 2022

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