

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 19-02165

PRESENT: SMITH, J.P., CARNI, TROUTMAN, WINSLOW, AND DEJOSEPH, JJ.

FLEIG SERVICES INC., DOING BUSINESS AS
CNC PRODUCTIVITY, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

AMERICAN RECYCLING & MANUFACTURING CO., INC.,
DEFENDANT-APPELLANT.

KNAUF SHAW LLP, ROCHESTER (ALAN J. KNAUF OF COUNSEL), FOR
DEFENDANT-APPELLANT.

Appeal from an order and judgment (one paper) of the Supreme Court, Monroe County (Renee Forgens Minarik, A.J.), entered April 26, 2019. The order and judgment, inter alia, awarded plaintiff money damages after a nonjury trial and awarded plaintiff costs, disbursements and attorneys' fees.

It is hereby ORDERED that the order and judgment so appealed from is unanimously modified on the law by vacating the award of costs and disbursements and attorneys' fees and as modified the order and judgment is affirmed without costs and the matter is remitted to Supreme Court, Monroe County, for further proceedings in accordance with the following memorandum: On appeal from an order and judgment entered following a nonjury trial that awarded plaintiff damages, costs and disbursements, and attorneys' fees, defendant contends that the award of costs and disbursements and attorneys' fees is excessive. In determining the proper amount of those items, a court "should consider the 'time spent, the difficulties involved in the matters in which the services were rendered, the nature of the services, the amount involved, the professional standing of the counsel, and the results obtained' " (*Matter of HSBC Bank USA, N.A. [Vaida]*, 151 AD3d 1712, 1713 [4th Dept 2017]; see *Matter of HSBC Bank USA, N.A. [Campbell]*, 150 AD3d 1661, 1663 [4th Dept 2017]). Because Supreme Court failed to make any findings with respect to those factors, we are unable to review the court's implicit determination that the costs and disbursements and attorneys' fees are reasonable (see *HSBC Bank USA, N.A. [Vaida]*, 151 AD3d at 1713). We therefore modify the order and judgment by vacating the award of costs and disbursements and attorneys' fees, and we remit the matter to Supreme Court for a determination whether those costs and disbursements and fees are reasonable, following a hearing, if necessary (see *id.*).

We have reviewed defendant's remaining contentions and conclude that they do not warrant reversal or further modification of the order

and judgment.

Entered: February 5, 2021

Mark W. Bennett
Clerk of the Court