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Landmark Holdings NYC, LLC v. Bradshaw

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Landmark Holdings NYC, LLC v Bradshaw

2023 NY Slip Op 30929(U)

March 23, 2023

Supreme Court, New York County

Docket Number: Index No. 157335/2021

Judge: Lynn R. Kotler

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 8**

-----X
LANDMARK HOLDINGS NYC, LLC,

Plaintiff(s),

-against-

RAHIM BRADSHAW, et al

Defendant(s).
-----X

DECISION AFTER HEARING

INDEX No.: 157335/21

Present:

Hon. Lynn R. Kotler, J.S.C.

This is a decision after a hearing to determine issues of use and occupancy and attorney's fees.

As a way of background, in a decision and order dated January 28, 2022, the court held that plaintiff is entitled to recover use and occupancy since July 2021 until defendant vacates the apartment and that plaintiff is entitled to reimbursement for attorney's fees. In a subsequent decision dated December 6, 2022, the court ordered that an inquest be held to determine the amount plaintiff Landmark Holdings NYC, LLC (Landmark or Building) is entitled to recover from defendant Rahim Bradshaw for use and occupancy as well as for attorney's fees and scheduled the matter for a hearing.

The court conducted a hearing on February 21, 2023 to determine attorney's fees and use and occupancy as a result of the 12/6/22 Order. At the hearing, plaintiff called Guy Smilovich and Edward Hall, Esq., of Balsamo Rosenblatt & Hall (the firm). Defendant Bradshaw did not call any witnesses.

At the conclusion of the hearing, the court reserved decision.

Based upon the testimony and the evidence introduced at the hearing, the court

makes the following findings of fact and conclusions of law.

Facts

Guy Smilovich testified that he is the owner of Landmark Holdings NYC, LLC and that Landmark owns the building located at 351 West 48th Street, New York, New York. (NYSCEF 94). Smilovich testified that Bradshaw was the tenant at the building in apartment 1 C, that he signed the lease on March 31, 2021 for 12 months and that the monthly rent was \$2,850 per month. Smilovich testified that he went to Housing Court to evict Bradshaw and that Bradshaw vacated the apartment August 9, 2022. Smilovich further testified that Bradshaw never delivered the keys to the apartment to him nor did he sign a surrender agreement. Smilovich testified that the monthly rent between January 2022 and August 2022 was \$2850 per month for 8 months, none of which was paid by defendant. Plaintiff's attorney requested a money judgment in the amount of \$19,950 for use and occupancy.

Edward Hall, Esq., the managing partner at Balsamo Rosenblatt & Hall, testified that he has been a practicing attorney for over 17 years. Attorney Hall testified that he had a retainer agreement with Guy Smilovich for the Supreme Court proceeding against Rahim Bradshaw involving 351 W. 48th Street, NY, NY (Airbnb). (NYSCEF 97). He testified that he graduated from New York Law School while working for the City of New York. After graduating, Attorney Hall worked for several law firms specializing in landlord/tenant litigation before joining his current firm as an associate in 2010. Hall continues to practice in the area of landlord/tenant actions and handles trials, appeals and administrative proceedings in both Civil and Supreme Court. He further testified that his hourly billing rate for his services in 2021 was \$350, which is less than his

customary rate and that the hourly rate remained the same throughout this litigation. Hall further testified that his time records as to the fees and services rendered in this matter are kept contemporaneously, are prepared in his regular course of business and include a description of the exact service as shown on the invoice. Hall requested attorneys fees in the sum of \$26,215.

On cross-examination, defendant Bradshaw questioned Smilovich about the alleged text communications between plaintiff's attorney and Bradshaw. Smilovich claimed he never communicated with Bradshaw via text and that only his attorney communicated with Bradshaw. Smilovich further testified that he had no control over the apartment between January and August 2022 as Bradshaw had people coming in and out of the apartment. Bradshaw did not cross-examine Attorney Hall.

Defendant Bradshaw testified in the narrative. He testified that not only should the court not have held him in contempt in its January 28, 2022 order, but that NYSCEF document 100, the moving receipt, shows that he moved out of the apartment in January 2022. He further testified that "...the contempt was issued for 1/28, which I was no longer in the apartment, so there's no way that I could have been doing any type of Airbnb or whatever he's claiming that I was doing." Bradshaw denied any communications with either Smilovich or his attorney as that was "not with me or associated with my phone number." Bradshaw claimed that after he left the apartment, he "left the keys and everything in the apartment, I had no communication with the landlord because I was being harassed at the times prior." Bradshaw testified that plaintiff did not show that the attorney's fees were "specifically for me and reasonable in regards to only this case."

LAW**Attorneys Fees**

"[T]he award of reasonable counsel fees is within the sound discretion of the trial court". *Ebrahimian v Long Island Railroad*, 269 AD2d 488, 489 [2d Dept 2000]; see also *Matter of Massey*, 73 AD3d 1179, 1179 [2d Dept 2010]).

Using the lodestar method to determine the reasonableness of attorney fees, the court will take into account the issues in the proceedings, the attorneys' skill and experience, the amount of time and labor involved, the results obtained, and the customary fee for similar services (see *Morgan & Finnegan v Howe Chem. Co., Inc.*, 210 AD2d 62, 63 [1st Dept 1994]; *Ross v Congregation B'Nai Abraham Mordechai*, 12 Misc3d 559, 566 [Hous Part, Civ Ct, NY Cty 2006]).

To arrive at a fair and appropriate award of attorneys' fees under the lodestar method the court shall determine whether the number of hours claimed were reasonably "expended from contemporaneous time sheets." *Becker v. Empire of America Federal Savings Bank*, 177 AD2d 958 (4th Dept 1991); see also *Matter of Rahmey v. Blum*, 95 AD2d 294, 300-301 (2d Dept 1983). The following factors are also to be considered in assessing the reasonable hours worked: the extent to which the hours reflect inefficiency or duplicative work; legal work versus non-legal work, investigations, and other work performed by non-lawyers; time spent in court differentiated from out-of-court efforts; and the court's own knowledge, experience and expertise as to the time required to complete a similar task. *Id.*; see also *Matter of Spingarn*, 164 Misc2d 891, 894 (Sup Ct, NY County 1995).

The court, in assessing attorneys' fees, must next determine a reasonable hourly

rate for each attorney and each category of services rendered. *Rahmey*, 95 AD2d at 301. This determination is guided in large part by the "customary fee charged for similar services by lawyers in the community with like experience and of comparable reputation to those by whom the prevailing party was represented." *Id.* at 302. The applicable reasonable rate to be applied to each attorney should be "current rather than historic hourly rates." *Gierlinger v. Gleason*, 160 F3d 858, 882 (2d Cir 1998).

The court reviewed the following: plaintiff Exhibits NYSCEF 97, retainer agreement and NYSCEF 98 legal fee invoices from June 9, 2021 to January 30, 2023, total time 74.9 hours, for a total of \$26,215 for work performed by Edward Hall, Esq. and David Brookstone, Esq.

The court finds Attorney Hall's hourly rate of \$350.00 per hour to be reasonable for his level of expertise. Attorney Hall credibly testified that he's been practicing law in the area of landlord/tenant for over 17 years and that he is a managing partner in his current firm. Attorney Hall further testified about the legal services rendered in the Supreme Court action by him and his associate David Brookstone, Esq. including but not limited to court appearances, motion practice, correspondence and other communications.

Based upon the credible evidence and testimony presented, the court finds it appropriate to award plaintiff the amount of \$26,215.00 as and for attorneys fees.

Use and Occupancy

In a stipulation of settlement entered into between the parties in Housing Court, plaintiff contends that Bradshaw did not vacate the apartment until August 2022. In turn, respondent Bradshaw claims that he vacated in January 2022.

In the court's December 6, 2022 decision, the court found that "plaintiff is entitled to use and occupancy at a rate of \$2850. Plaintiff has shown that Bradshaw retained legal possession of the subject apartment until August 9, 2022". The court further held that Bradshaw is entitled to present his proof as to the date of vacatur since the issue could not be resolved on the submission of papers alone. Use and occupancy is an obligation imposed on a quantum meruit basis where a tenant remains in possession of real property but pays no rent. *Eighteen Associates LLC v. Nanjim Leasing Corp.*, 257 AD2d 559 [2d Dept 1999]. Use and occupancy is meant to compensate the owner/landlord for the loss of its ability to rent the subject property at the prevailing market rate.

Bradshaw offered no credible evidence at the hearing which would support his claim that he vacated the apartment in January 2022. Bradshaw relies on a moving receipt (NYSCEF 100) that lists various personal items that were allegedly moved from the apartment to a storage facility. Aside from the fact that the moving receipt is not a certified copy or otherwise in admissible form, the document does not unequivocally establish that Bradshaw vacated the apartment. Bradshaw also objected to the lease coming onto evidence contending that "the lease was never signed by me, that is not my signature". Bradshaw claimed he had a copy of the lease on the computer but that the lease he had on his computer was never filed with the court. Finally, Bradshaw submitted on NYSCEF, post-hearing, copies of an AT&T telephone bill (NYSCEF 100) in the name of "Kevin Bradshaw". This submission was presumably in response to Smilovich testifying that his attorney and Bradshaw had text communications. The AT&T telephone bill is in the name of a person not involved with this litigation. Even if

the telephone bill was in the name of "Rahim Bradshaw", it would not warrant a different result as to the issue of when the apartment was vacated. On this record, the court discredits Bradshaw's testimony as his allegations are unsupported by credible evidence.

Based on the foregoing, the court finds that plaintiff is entitled to use and occupancy from January 2022 through August 2022 at a monthly rate of \$2850.00 as set forth in the parties' lease for a total of \$22,800.

Accordingly, it is hereby **ORDERED** that after a hearing held, plaintiff Landmark Holdings NYC, LLC is awarded a money judgment in its favor and against defendant Rahim Bradshaw for the sum of \$22,800.00 plus interest from August 1, 2022 together with \$26,215.00 together with costs and disbursements; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: New York, New York
March 23, 2023

So Ordered:



Hon. Lynn R. Kotler, J.S.C.