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COD, LLC v Miras Ljuljdjuraj

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R
----- X
COD, LLC,

Petitioner, Index No. 308455/2021

- against -

DECISION/ORDER

MIRAS LJULJDJURAJ,

Respondents.
----- X

Present: Hon. Jack Stoller
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

Pages	numbered
Notice of Motion and Supplemental Affirmation annexed	1, 2
Affirmation In Opposition	3
Reply Affirmation	4

Upon the foregoing papers, the Decision and Order on this motion are as follows:

COD, LLC, the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Miras Ljuljdjuraj, the respondent in this proceeding (“Respondent”), seeking possession of 151 East 80th Street, Apt. 9A, New York, New York (“the subject premises”) on the basis that Respondent’s occupancy was incidental to his employment with Petitioner and that Petitioner terminated Respondent’s employment. The Court dismissed the proceeding. The Court then denied Petitioner’s motion to dismiss Respondent’s counterclaim for attorneys’ fees. Respondent now moves for a judgment on his counterclaim for attorneys’ fees.

The decision denying Petitioner’s motion to dismiss Respondent’s counterclaim, at NYSCEF #83 of this proceeding, demonstrates both that the parties had the kind of lease that entitles Respondent to a judgment on his counterclaim pursuant to RPL §234 and that

Respondent was the prevailing party in this proceeding. What the Court decides on this motion is whether the hourly rate for which Respondent seeks reimbursement is reasonable and whether the hours billed by Respondent's counsel are reasonable.

Respondent's counsel makes a showing on this motion practice that he has been practicing landlord/tenant law since 1980, that he has had extensive experience in all levels of landlord/tenant litigation, involving the representation of tenants in a substantial number of publicly-reported decisions, and being consulted as an expert and instructor in a variety of contexts. Respondent makes a showing that an associate attorney who did some work on this matter has been regularly practicing landlord/tenant law since 2010. Petitioner's opposition does not raise a fact issue as to the experience of Respondent's attorneys. Accordingly, no hearing is needed for the Court to resolve the issues before it. McGrath v. Pub. Adm'r (In re Keele), 305 A.D.2d 145, 146 (1st Dept. 2003).

The Court may be its own expert with regard to the reasonableness of hourly billing rates for attorneys, Delgado v. Delgado, 160 A.D.2d 385, 386 (1st Dept. 1990), and may make a determination as to the reasonableness of this rate without reference to expert testimony. TAG 380 LLC v. Estate of Howard P. Ronson, 89 A.D.3d 411, 412 (1st Dept. 2011), *leave to appeal denied*, 18 N.Y.3d 804 (2012). In 2018, this Court found that a rate of \$550.00 an hour was reasonable for an attorney who had been practicing law since graduating from law school in 1977. Rangoon Inc. v. Lin, 60 Misc.3d 1220(A)(Civ. Ct. N.Y. Co. 2018). Respondent's counsel has demonstrated a slightly longer tenure as a litigator than the attorney in that matter and six years have elapsed since that decision.

Respondent's associate had been practicing law for twelve years at the time of the entries that he billed. In 2014, a Court found that an hourly rate of \$300 was reasonable for the Kings

County community for an experienced attorney of 10 to 15 years. Law Office of Thaniel J. Beinert v. Litinskaya, 43 Misc.3d 1205(A)(Civ. Ct. Kings Co. 2014). In 2020, an hourly rate of \$350 for an attorney with eight years' experience in a landlord/tenant practice in New York County was found to be reasonable. Zi Chang Realty Corp. v. Chen, 2020 N.Y.L.J. 78 (Civ. Ct. N.Y. Co.).

In finding a reasonable rate, Courts also consider the complexity of issues involved. Kessler v. Kessler, 33 A.D.2d 42, 49 (2nd Dept. 2006), *appeal dismissed*, 8 N.Y.3d 968 (2007). Cf. In re Estate of Freeman, 34 N.Y.2d 1, 9 (1974), Gordon v. Verizon Commc'ns, Inc., 148 A.D.3d 146, 165 (1st Dept. 2017)(the Court considers the following well-established factors: the time and labor required, the difficulty of the questions involved, the skill required to handle the issues presented, the experience, ability and reputation of counsel, the proposed amount of fees, the benefit resulting to the putative class from the services, the customary fee charged for similar services, the contingency or certainty of compensation, the results obtained, and the responsibility involved). The resolution of this matter, which involved motion practice, discovery, a summary determination, an appeal, and a motion for leave for a further appeal, entailed sophisticated legal arguments concerning, *inter alia*, interpretation of leases, the parol evidence rule, and the law of the case effect of a denial of summary judgment. Accordingly, Respondents show that the hourly rate of \$575 for Respondent's counsel and \$350 for Respondent's counsel's associate are reasonable.

Petitioner argues that Respondent has not proven that he paid fees at the rate sought by Respondent's counsel. However, actual payment of attorneys' fees is not a condition precedent to a party's recovery under RPL §234. Senfeld v. I.S.T.A. Holding Co., 235 A.D.2d 345 (1st Dept. 1997), *appeal denied*, 92 N.Y.2d 818 (1998), 1097 Holding LLC v. Ballesteros, 19

Misc.3d 1126(A)(Civ. Ct. Bronx Co. 2008), Goldman v. Rosen, 10 Misc.3d 1065(A)(Civ. Ct. N.Y. Co. 2005). Indeed, a limitation of a fee award to tenants of sufficient means to afford an attorney would thwart the Legislature's intent with regard to RPL §234. Maplewood Management, Inc. v. Best, 143 A.D.2d 978, 979 (1st Dept. 1988).

In addition to proving an hourly rate, Respondent must show that the time expended on this matter was reasonable by the submission of contemporaneous time records. Bankers Trust Co. of Cal., N.A. v. W. Shore Apt. Corp., 281 A.D.2d 351, 351-352 (1st Dept.), *leave to appeal dismissed*, 97 N.Y.2d 638 (2001). Respondents do so. As Petitioner does not raise a fact issue as to the time records, a hearing is not needed for the Court to evaluate the reasonableness of the hours expended. McGrath, *supra*, 305 A.D.2d at 146.

At a rate of \$575 an hour, Respondent's counsel billed 3.2 hours in total for communications with Respondent, 3.05 hours in total for communications with opposing counsel, and 0.2 hours in total for emails with the Court, which is reasonable for litigation that has lasted two years as this was has; 1 hour in total for review of documents, which is reasonable; 9.2 hours for 10 Court appearances; and 2.5 hours for drafting the answer, which are reasonable.

At a rate of \$575 an hour, Respondent's counsel billed 22 hours for a summary judgment motion. Petitioner opposes an award of fees for this motion on the ground that the Court denied Respondent's motion. The Court may reduce the amount awarded with regard to unsuccessful claims. RSB Bedford Assoc. LLC v. Ricky's Williamsburg, Inc., 112 A.D.3d 526, 528 (1st Dept. 2013), Nestor v. Britt, 16 Misc.3d 368, 380 (Civ. Ct. N.Y. Co. 2007), *affirmed for the reasons stated*, 19 Misc.3d 142(A)(App. Term 1st Dept.), *leave to appeal from the Appellate Term denied*, 2008 N.Y. App. Div. LEXIS 10374 (1st Dept. 2008). Respondent argues that

Respondent's summary judgment motion, even if initially unsuccessful, articulated the same basis upon which Respondent ultimately prevailed. Respondent's argument has merit, although the flip side of Petitioner's opposition is why Respondent then needed to bill an additional 22.25 hours for work on the summary determination of this matter that would have effectively duplicated arguments from the summary judgment motion. The Court will credit Petitioner's argument in opposition to the extent of discounting the total 44.25 hours on the summary judgment motion and the summary determination of the matter by 25%, to 33.19 hours.

For a motion for discovery, Respondent bills 7.5 hours at an hourly rate of \$575 and 3.8 hours at an hourly rate of \$350. While Petitioner argues that the Court only granted Respondent's motion in part, Petitioner does not show the extent to which the Court's denial of the motion was attributable to the hours devoted to the motion. A motion for leave to obtain discovery entails citation to the same legal standard for what was denied and what was granted. Petitioner's argument that Respondent did not obtain anything meaningful in discovery to the outcome of this proceeding is not consistent with Petitioner's opposition to Respondent's initial summary judgment motion on the ground that a fact dispute precluded summary relief.

Be that as it may, Petitioner is correct that Respondent's opposition to Petitioner's motion to restore was not successful and the Court does not award the 2.5 hours Respondent's counsel billed for that.

At a rate of \$575 an hour, Respondent's counsel billed 0.75 hours for reading a decision of the Court, 1.35 hours on preparation of a notice of entry; 27.1 hours for work on Petitioner's appeal; and 24 hours on work on the fee application itself, which Respondent can obtain. Goidel & Siegel, LLP v. 122 E. 42nd St., LLC, 143 A.D.3d 567, 568 (1st Dept. 2016). This amount of hours is reasonable.

Respondent also shows an entitlement to \$2,063.30 in disbursements.

Respondent seeks to recover 0.5 hours for scanning motion documents and 0.4 hours for requesting an audio recording of an oral argument of the summary judgment motion. The Court cannot award billed at attorney rates for work that can be done by a secretary or a paralegal.

76th St. Owners’ Corp. v. Elshiekh, 29 Misc.3d 1225(A)(Civ. Ct. Bronx Co. 2010).

The total amount of hours Respondent shows can be awarded at an hourly rate of \$575 is 99.04. The total amount of hours Respondent shows can be awarded at an hourly rate of \$350 is 3.8. The sum of this these hours together with the reimbursements is \$60,341.30.

Accordingly, it is ordered that the Court awards Respondent a judgment against Petitioner in the amount of \$60,341.30.

This constitutes the decision and order of the Court.

Dated: New York, New York
August 2, 2024



HON. JACK STOLLER
J.H.C.