

**605 Fifth Prop. Owner, LLC v Rehab World Physical
Therapy PLLC**

2022 NY Slip Op 32178(U)

July 8, 2022

Supreme Court, New York County

Docket Number: Index No. 158628/2021

Judge: Sabrina Kraus

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publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

-----X

605 FIFTH PROPERTY OWNER, LLC,

Plaintiff,

- v -

REHAB WORLD PHYSICAL THERAPY PLLC, RICARDO
ERLANO, ESTRELLA ERLANO

Defendant.

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INDEX NO. 158628/2021

MOTION DATE 06/24/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for ATTORNEY - FEES.

BACKGROUND

Plaintiff commenced this action seeking a judgment against Rehab World Physical Therapy PLLC, (Tenant) and Ricardo Erlano, Estrella Erlano (collectively Guarantors) based on a lease agreement and personal guaranty executed by the parties for the third floor of 65 Fifth Avenue, New York, New York (Subject Premises).

On April 20, 2022, the court awarded Plaintiff summary judgment and dismissed Defendant's counterclaims. Among the relief Plaintiff requested in the motion for summary judgment was a hearing to determine attorneys' fees, however the court did not grant a hearing, finding Plaintiff had failed to request a specific amount of fees or submit documentation detailing the amount of fees sought.

In the April 20, 2022 decision and order, the court found that Plaintiff was entitled to attorneys' fees pursuant to the Lease, Defendant did not oppose the request for attorneys' fees,

and that Plaintiff could move for a specific amount of attorneys' fees with supporting documentation and the court would then determine if a hearing was necessary.

PENDING MOTION

On June 24, 2022, Plaintiff moved for attorneys' fees or in the alternative a hearing to determine the same. Defendant filed opposition on June 21, 2022¹ and Plaintiff submitted reply on June 22, 2022. On June 24, 2022 the motion was submitted and the court reserved decision.

DISCUSSION

Plaintiff is seeking \$30,577.14 in attorneys' fees in connection with this action. Plaintiff submits, in support, the affidavit of Brian Bendy, Esq. (NYSCEF doc 38); a copy of the summons and complaint (NYSCEF Doc 39); answer (NYSCEF doc 40); reply to counterclaims (NYSCEF Doc 41); a copy of the court's Decision and Order of the Motion for Summary Judgment (NYSCEF doc 42); copies of the billing statements detailing hours worked on this action sent to Plaintiff (NYSCEF doc 43); biographies of the attorneys' that performed work and billed in this action (NYSCEF doc 44); case law (NYSCEF doc 45); and a copy of the lease (NYSCEF doc 46).

In opposition, Defendant incorrectly argues that the motion for attorneys' fees should be denied since Plaintiff was granted relief in the amount of a judgment of over \$113,000.00. However, the judgment awarded to Plaintiff consisted of rent arrears, real estate taxes, AC charges, water charges and administrative fees and interest. The judgment did not include attorneys' fees, which Plaintiff is entitled pursuant to the Lease, and for which Defendant did not oppose initially in the summary judgment motion.

¹ Plaintiff filed a Notice of Rejection in regards to Defendant's opposition, arguing the submission was late, however the court finds the late filing de minimis and will consider the opposition

Defendant also argues that a determination of attorneys' fees requires a hearing, particularly in light of a companion litigation in Queens Supreme Court. This argument is also incorrect. The court has already found that Plaintiff is entitled to attorneys' fees pursuant to the Lease between the parties. In addition, Defendant fails to raise any specific objections to the billing statements and explanation of work performed by Plaintiff's counsel, which would require a hearing, *Utica Mutual Insurance Co. v. Cardet Construction Co.* 114 A.D.3d 847 (2d Dept. 2014).

In addition, the Queens Supreme Court action, although it may involve the same parties, the subject matter of that action is entirely different from the instant action, as the Queens Supreme Court action involves an allegation of fraudulent conveyance. Defendant's remaining arguments of financial hardship are also unavailing.

Plaintiff has established that the hours billed are reasonable in light of the work performed in this action and that the overall fees charged are justified in light of the controversy.

CONCLUSION

Wherefore, it is hereby

ORDERED that Plaintiff's motion for attorneys' fees is granted; and it is further

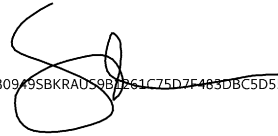
ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants in the amount of \$30,577.14, together with interest at the rate of 9 % per annum from the date of September 20, 2021 until the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

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7/8/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE