

Walsam 47th St LLC v Sett
2022 NY Slip Op 33031(U)
September 9, 2022
Supreme Court, New York County
Docket Number: Index No. 160178/2020
Judge: William Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY **PART** **23**

Justice

-----X

WALSAM 47TH ST LLC

Plaintiff,

- v -

SETT, DHANANJAY

Defendant.

-----X

INDEX NO. 160178/2020

MOTION DATE 04/05/2022

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 35

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Plaintiff Walsam 47th St LLC, the owner and landlord of the building located at 5 East 47th Street, New York, NY, commenced this action against Dhananjay Sett, the personal guarantor of a commercial lease agreement between Plaintiff and non-party Esha Jewels, Inc.

By decision and order dated March 7, 2022, the court granted Plaintiff’s motion sequence 001 for summary judgment, finding that the personal guaranty was clear and unambiguous and that the protections of the COVID-19-inspired New York City Administrative Code § 22-1005 (the “Guaranty Law”) did not apply because, as defined in the lease, Esha Jewels was a “wholesale/auction office”, not a retail establishment, as argued by Sett. (NYSCEF Doc No. 23.) The court also found that Plaintiff was entitled to reasonable attorneys’ fees pursuant to the terms of the guaranty and directed Plaintiff to submit an attorney’s affidavit and bill of costs, which have now been filed. (NYSCEF Doc No. 25, Fees.)

Sett subsequently filed motion sequence 002, seeking leave to reargue and reconsider the court's March 7, 2022 decision and order. Motion sequence 002 and the remaining portion of motion sequence 001 for attorneys' fees are consolidated for disposition.

Motion sequence 002

Sett moves to reargue the court's March 7, 2022 decision and order on the grounds that the court did not "have the opportunity to review the relevant facts as they had not been adequately presented before." (NYSCEF Doc No. 28, Ms002 Memo, at ¶ 4.) Sett then argues, for the first time, that Plaintiff failed to join Esha Jewels as a necessary party and that Plaintiff failed to serve Esha Jewels with a COVID-19 Declaration of Hardship. (*Id.* at ¶¶ 10-13.)

CPLR 2221[d] provides, in pertinent part, that a motion for leave to reargue "1. shall be identified specifically as such; [and] 2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." It is well settled that "[a] motion for reargument addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party ... to advance arguments different from those tendered on the original application." (*Foley v Roche*, 68 AD2d 558, 567-68 [1st Dept 1979].)

Sett's motion for reargument is denied, as he fails to present matters of fact or law overlooked or misapprehended by the court in determining motion sequence 001. Sett only raises new arguments, which requires denial of the motion. (*Talisman Services, Inc. v Hermitage Ins. Co.*, 2018 WL 6340781, at *4 [Sup Ct, NY County 2018].)

Motion sequence 001

As directed by the court, Plaintiff's counsel submitted documentation demonstrating the fees and costs incurred in this action. Plaintiff's counsel seeks \$16,735.00 for 45.50 hours of work, plus \$391.29 in costs, for a total of \$17,126.29. (NYSCEF Doc No. 25, Fees.)


“The relevant factors in the determination of the value of legal services are the nature and extent of the services, the actual time spent, the necessity therefor, the nature of the issues involved, the professional standing of counsel, and the results achieved.” (*542 E. 14th St. LLC v Lee*, 66 AD3d 18, 24 [1st Dept 2009].) “An award of attorneys' fees pursuant to such a contractual provision may only be enforced to the extent that the amount is reasonable and warranted for the services actually rendered.” (*M. Sobol, Inc. v Wykagyl Pharmacy, Inc.*, 282 AD2d 438, 439 [2d Dept 2001].)

Here, the court finds the amount of fees sought, \$16,735.00, to be unreasonable, as demonstrated by some of counsel's line items, such as the firm partner billing at \$400.00/hour for eFiling certain documents (Fees at 4); unrelated to the result (*id.* at 6 [“telephone conference with ZK re: elevator work”]); unnecessary (*id.* [“confirmation online of status of motion”]); or duplicative (*id.*; see *Citidress II v 207 Second Ave. Realty Corp.*, 59 AD3d 209, 210 [1st Dept 2009]; see also *Acrologic Business Solutions, LLC v Mellon*, 2022 WL 2793445 [Sup Ct, NY County 2022] [awarding \$2,250.00 in attorney's fees in action for unpaid rent against individual guarantor].) Upon review of the record and in the exercise of discretion, the court awards attorney's fees of \$9,245.00 which amount represents the reasonable value of legal services warranted in this matter. Thus, it is hereby

ORDERED that Defendant's motion sequence 002 for reargument is denied; and it is further

ORDERED that the remainder of Plaintiff's motion sequence 001 seeking reasonable attorneys' fees and costs is granted in part, in accordance with this decision; and it is further

ORDERED and ADJUDGED that Plaintiff Walsam 47th St LLC has judgment and recovers against Defendant Dhananjay Sett in the amount of \$255,911.08, with interest at the statutory rate from October 1, 2019 until entry of judgment, as calculated by the Clerk, plus reasonable attorneys' fees in the amount of \$9,245.00 and \$391.29 in costs, as taxed by the Clerk, and that Plaintiff has execution therefor.

<u>9/09/2022</u> DATE		 WILLIAM FRANC PERRY, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE