

<b>131 Perry St. Apt. Corp. v Clauser</b>
2022 NY Slip Op 33610(U)
October 20, 2022
Supreme Court, New York County
Docket Number: Index No. 155397/2022
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

131 PERRY STREET APARTMENT CORPORATION

Plaintiff,

- v -

ROBERT CLAUSER,

Defendant.

-----X

INDEX NO. 155397/2022

MOTION DATE 10/18/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49

were read on this motion to/for ATTORNEY - FEES

Defendant's motion for reasonable attorney's fees is granted in part.

Background

This Court previously dismissed this case on the ground that defendant was not bound by an agreement signed by the previous owner of an apartment to provide for the long-term maintenance of certain atrium doors (NYSCEF Doc. No. 29). The Court observed that because all of the causes of action related to the agreement with the prior owner, the fact that certain proprietary lease provisions might provide a basis upon which plaintiff could recover did not save the complaint from dismissal (id.). However, the Court emphasized that nothing prevented plaintiff from bringing another action based on the proprietary lease and the responsibility to make the necessary repairs to the atrium doors (id.).

In the previous decision, the Court directed that defendant should make a motion for reasonable legal fees and the instant motion followed. Defendant seeks \$36,434.90 in reasonable legal fees in connection with his counsel's defense of this action.

In opposition, plaintiff contends that this issue is not ripe as plaintiff is appealing this Court's decision. It claims that a hearing is necessary in the event the Court decides that it should decide the instant issue.

Movant served a rejection for this opposition and claimed it was untimely. The parties then engaged in a letter writing campaign in which they disagreed about a potential requested adjournment of the motion.

Defendant eventually submitted a reply in which he claimed the issue is ready for determination and that he has proven the amount his counsel seeks.

### **Discussion**

As an initial matter, the Court will consider the opposition and the reply. Defendant suffers no prejudice from the untimely opposition and, in any event, the issue is moot given that he offered a reply.

With respect to the merits of the issue, the Court finds that it must hold a hearing to assess the reasonable amount of legal fees. "An award of an attorney's fee pursuant to a contractual provision may only be enforced to the extent that the amount is reasonable and warranted for the services actually rendered. In determining reasonable compensation for an attorney, the court must consider such factors as the time, effort, and skill required; the difficulty of the questions presented; counsel's experience, ability, and reputation; the fee customarily charged in the locality; and the contingency or certainty of compensation. While a hearing is not

required in all circumstances, the court must possess sufficient information upon which to make an informed assessment of the reasonable value of the legal services rendered” (*Citicorp Tr. Bank, FSB v Vidaurre*, 155 AD3d 934, 935, 65 NYS3d 237 [2d Dept 2017] [internal quotations and citations omitted]).

A hearing is required because plaintiff lodged valid objections to the time entries submitted by defendant. Moreover, the amount sought by defendant (while not facially outrageous by any means) is substantial enough that a hearing is the most equitable process to assess legal fees.

The Court finds that the reasonable legal fees issue is not premature as plaintiff argues. That plaintiff may be pursuing an appeal is of no moment. Plaintiff does not contend that the appeal has been fully briefed or that a decision from the appellate court is imminent. Parties routinely withdraw appeals and so the Court finds that it is most efficient to hold the legal fees hearing now even if plaintiff successfully pursues an appeal.


Because a hearing is required, the Court observes that defendant may be entitled to recover fees for preparing for the hearing as well as conducting the hearing. However, if the Court decides that defendant’s requested amount was not reasonable (and the amount requested is too much), then it may not award any fees to defendant in connection with the hearing.

Accordingly, it is hereby

ORDERED that the motion by defendant for reasonable legal fees is granted to the extent that there must be a hearing to assess the reasonable amount due to defendant.

The hearing shall be an in-person hearing on November 17, 2022 at 10 a.m. By November 9, 2022, defendant must provide plaintiff with all document defendant intends to

introduce at the hearing. If everything has already been provided in the motion, then defendant must so advise the plaintiff in writing by that date.

<u>10/20/2022</u> DATE					 ARLENE P. BLUTH, 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		<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	REFERENCE