

Tao Liu v Sobin Chang

2023 NY Slip Op 30013(U)

January 3, 2023

Supreme Court, New York County

Docket Number: Index No. 656209/2020

Judge: Frank P. Nervo

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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: IAS PART IV

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TAO LIU,

Plaintiff,

-against-

**DECISION FOLLOWING
INQUEST**

Index No. 656209/2020

SOBIN CHANG

Defendant.

-----X

HON. FRANK P. NERVO, J.S.C.

By decision and order on motion sequence 002, the Court directed defendant’s answer be stricken for non-appearance and non-compliance, and further directed that the matter proceed to inquest (*see* NYSCEF Doc. No. 50). Thereafter, by order dated June 30, 2022, the Court directed the inquest proceed on paper submissions only on August 22, 2022 (*see* NYSCEF Doc. No. 53). Defendant sought an adjournment of the inquest due to, inter alia, difficulties surrounding overseas notarization, and the Court adjourned the inquest to December 19, 2022, with defendant’s papers in opposition due by December 16, 2022. On defendant’s deadline to submit opposition papers, defendant filed a letter seeking, inter alia, reconsideration of the Court’s decision and order on motion sequence 002 and a further adjournment of the inquest.

To the extent that defendant’s letter seeks reconsideration of the Court’s decision and order on motion sequence 002, the Part Rules prohibit letter motions (*see* Part IV Rules, “IV. Motions A. Letter Motions. Letter motions are prohibited and will not be considered.”). Were the Court to consider same, it is inarguable that the reconsideration request is untimely. A

motion seeking reconsideration must be filed before the expiration of the time to appeal (*In re Huie*, 20 NY2d 568 [1967]). Put simply, an application for reconsideration, whether reargument or renewal, must be filed within 30 days of notice of entry of the decision seeking to be reconsidered (*Foley v. Roche*, 68 AD2d 558 [1st Dept 1979]; *Luming Cafe, Inc. v. Birman*, 125 AD2d 180 [1st Dept 1986]). Notice of entry of the Court's decision and order on motion sequence 002 was served on June 28, 2022, accordingly defendant's reconsideration request was due on July 28, 2022. Defendant's December 16, 2022, request is, therefore, untimely by nearly five months.

To the extent that defendant's letter seeks further adjournment, same is denied. "A pro se litigant acquires no greater rights than those of any other litigant and cannot use such status to deprive defendant of the same rights as other defendants" (*Brooks v. Inn at Saratoga Ass'n*, 188 AD2d 921 [3d Dept 1992]; *see also Walter v. Jones, Sledzik, Garneau & Nardone*, 67 AD3d 671 [2d Dept 2009]).¹ The inquest in this matter was previously adjourned at defendant's request, and the Court granted a 120-day adjournment, despite defendant requesting only a 30-day adjournment. Furthermore, in adjourning the inquest, the Court provided defendant with approximately 30-days to oppose plaintiff's filings. Now, in this further adjournment request filed on the opposition deadline, defendant concedes receiving the discovery demands early this year and failing to respond to same, the very conduct giving rise to the Court's decision and

¹ The Court is constrained to note that in consideration of defendant's pro-se status, and given the preference to adjudicate matters on the merits, the Court deemed defendant's opposition to the summary judgment motion an application to accept an untimely answer and compelled plaintiff to accept same (NYSCEF Doc. Nos. 25 & 37). Notwithstanding, defendant failed to appear at the Court's Preliminary Conference or to respond to plaintiff's demands (NYSCEF Doc. No. 39 & 40 – 50).

order in motion sequence 002 striking defendant's answer (*see* NYSCEF Doc. No. 71 at ¶ 4).

Although defendant contends that the failures to respond to demands or appear in Court are the result of the hospitalization of the attorney hired on her behalf, notably absent from the record of this matter is a notice of appearance by any counsel on behalf of defendant. Likewise, defendant's contention that this same counsel is now able to appear on her behalf is belied by the absence of any notice of appearance filed by counsel on her behalf. Under these circumstances, the Court will not further adjourn the inquest.

Turning to the merits of the inquest and considering the procedural posture of this matter - namely the striking of defendant's answer, defendant is "deemed to admit all traversable allegations in the complaint, including the basic allegation of liability" (*Curiale v. Ardra Ins. Co., Ltd.*, 88 NY2d 268 [1996]). Accordingly, the only issue before the Court is "plaintiff's conclusion as to damages" (*id.*).

Plaintiff has established the following by a preponderance of the evidence (see generally NYSCEF Doc. Nos. 57 – 66). Plaintiff owns a residential apartment located at 157 West 57th Street in the City, County, and State of New York (NYSCEF Doc. No. 59). The subject apartment was leased to defendant pursuant to a written lease agreement, for a monthly rent of \$13,000 in addition to utility charges, for a one-year period beginning in July 2019 and ending July 2020 (NYSCEF Doc. No. 60). The apartment was managed by plaintiff's sister, due to plaintiff's location outside of the United States (NYSCEF Doc. No. 57 & 58). Defendant breached the parties' lease agreement by failing to remit payment in accordance with the lease beginning in March 2020. Defendant did not return possession of the apartment to plaintiff at

the expiration of the lease (NYSCEF Doc. No. 64). Thereafter, on October 10, 2020, defendant emailed plaintiff's managing agent referring to herself as the "former tenant" and plaintiff as the "former landlord" (NYSCEF Doc. No. 63). Plaintiff sought to confirm whether defendant had vacated the apartment, based upon defendant's email, but plaintiff received no response to the inquiry (NYSCEF Doc. No. 65). Consequently, defendant was deemed to have vacated the subject apartment on October 26, 2020 (NYSCEF Doc. No. 65); and upon inspection of the apartment on October 27, 2020, it was confirmed that defendant had vacated the apartment (NYSCEF Doc. No. 58 at ¶ 26). The rental and utilities owed plaintiff for the aforementioned period, March 15, 2020, through October 26, 2020, total \$149,080.68 (*id.* at ¶ 29).

The parties' lease agreement provides that defendant shall be responsible for plaintiff's attorney's fees resulting from defendant's default (NYSCEF Doc. No. 60 at ¶18 "REMEDIES OF OWNER AND YOUR LIABILITY"). Notwithstanding, where attorney fees are authorized, either by statute or agreement, the fee sought must nevertheless be reasonable; where the fee is unreasonable, inflated, or needlessly incurred, the Court may dismiss the claim for attorney's fees (*American Motorists Ins. Co. v. Napco Sec. Systems Inc.*, 244 AD2d 197 [1st Dept 1997]; *Miller Realty Assocs. v. Amendola*, 51 AD3d 987 [2d Dept 2008]). In determining the reasonableness of attorney's fees, the Court considers the attorney's affidavit and submissions to elicit the "difficult of the issues and the skill required to resolve them; the lawyers' experience, ability and reputation; the time and labor required; the amount involved and benefit resulting to the client from the services; the customary fee charged for similar services; the contingency or certainty of compensation; the results obtained and the responsibility involved" (*Bankers Federal Sav. Bank FSB v. Off West Broadway Developers*, 224 AD2d 376 [1st Dept 1996]).

Here, plaintiff's counsel seeks to recover \$25,630.39 for its services in this matter (NYSCEF Doc. Nos. 67 & 69). The invoices of plaintiff's counsel establish counsel charged an hourly rate of between \$400.00 and \$550.00, depending on the attorney performing the work, and the majority of work was performed by attorneys charging lower rates with a minority of work reviewing same by attorneys charging higher rates (*id.*). A review of the invoices establishes that the amount of time expended on the various components of the litigation of this matter by plaintiff's counsel were imminently reasonable (*id.*). Accordingly, plaintiff's counsel is entitled to recover fees and disbursements in the amount of \$25,630.39 from defendant.

Finally, turning to the interest sought on the above awards, plaintiff and plaintiff's counsel pray for interest on the awards, without providing the date by which same should be calculated. The Court finds that interest on the breach of the lease agreement, as a contract, should be calculated by the date of said breach (*Brushston-Moira Cent. School Dist. v. Fred H. Thomas Associates, P.C.*, 91 NY2d 256, 261 [1998]; *Rodriguez v. Moore-McCormack Lines*, 32 NY2d 425, 429 [1973]). As the defendant's breach continued from March 2020 through mid-October 2020, the Court uses the midpoint of this continuing breach, July 6, 2020, as the date by which to calculate interest (CPLR § 5001[b]). Interest on the award of counsel's fees is properly calculated from the date counsel's client was determined to be the prevailing party (*see Solow Mgmt. Corp. v. Tanger*, 19 AD3d 225 [2d Dept 2005]). Here, the Court's decision and order on motion sequence 002, striking defendant's answer, is the date plaintiff was determined to be the prevailing party on the issue of liability. Accordingly, interest from the date that decision and order was deemed filed, June 28, 2022, is appropriate.

ORDERED and ADJUDGED that plaintiff, TAO LIU, 157 West 57th Street Apt. 39A New York, NY 10019, shall have judgment in the amount of \$149,080.68 as against defendant, SOBIN CHANG, 157 West 57th Street Apt. 40A New York, NY 10019, with interest at the statutory rate from July 6, 2020, as calculated by the Clerk of the Court and together with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED and ADJUDGED that plaintiff's counsel, MOULINOS & ASSOCIATES LLC, 150 East 58th Street 25th Floor, New York, NY 10022, shall have judgment in the amount of \$25,630.39 as against defendant, SOBIN CHANG, 157 West 57th Street Apt. 40A New York, NY 10019, with interest at the statutory rate from June 28, 2022, as calculated by the Clerk of the Court, and together with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that judgment shall be submitted to the Clerk of the Court, unless directed otherwise by that office, and not to chambers.

THIS CONSTITUTES THE DECISION, ORDER, AND JUDGMENT OF THE COURT FOLLOWING INQUEST.

Dated: January 03, 2023

E N T E R:



HON. FRANK P. NERVO
J.S.C.