

Matter of George Estates LLC v 72 George St., LLC
2023 NY Slip Op 30235(U)
January 20, 2023
Supreme Court, Kings County
Docket Number: Index No. 503862/2020
Judge: Richard J. Montelione
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At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, Brooklyn, NY 11201, on the ___ day of ___ 2023.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

DECISION
and
ORDER

-----X
In the Matter of the Application of
GEORGE ESTATES LLC,

Petitioner,

Index No.: 503862/2020
Motion Date: 1/18/2023
Motion Cal. No.: 13
Mot. Seq. 3

For a License Pursuant to RPAPL § 881 for Access to
Adjoining Property,

-against-

72 GEORGE STREET, LLC,

Respondent.
-----X

After oral argument on the record, the following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	NYSCEF DOC. #
Notice of Motion/Order to Show Cause/Affidavits/Affirmations/Exhibits.....	72-85
Answering Affirmations/Affidavits/Exhibits.....	86-89
Reply Affirmations/Affidavits/Exhibits.....	
Other.....	

MONTELIONE, RICHARD J., J.

This proceeding commenced as an application pursuant to RPAPL § 881 for a license to enter the premises having an address of 72 George Street, Brooklyn, NY. This court granted the petition, and a license was issued and paid for under the terms of a prior order of the court. The only issue remaining (MS#3) is respondent's reasonable attorneys' fees and costs. See 419 BR Partners LLC v Zabar, 209 AD3d 604, 604, 175 NYS3d 722, 2022 NY Slip Op 06061, 2022 WL

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14955668 [1st Dept 2022]:

As to the statutory basis for respondents' petition, RPAPL 881 allows entities seeking to make improvements to their own property to petition the court for a license to access a neighboring property, and does empower a court to award reasonable attorneys' and engineering fees to the owners or lessees of the neighboring property when the court grants the license (*see Matter of Panasia Estate, Inc. v. 29 W. 19 Condominium*, 204 A.D.3d 33, 37, 164 N.Y.S.3d 551 [1st Dept. 2022] lv dismissed 38 N.Y.3d 1125, 172 N.Y.S.3d 675, 192 N.E.3d 1154 [2022]).

Notwithstanding petitioner's arguments to the contrary, the court may award costs. *See 419 BR Partners LLC v Zabar*, supra. The court has reviewed the work sheets of legal services rendered by respondent's counsel (NYSCEF No. 62) to determine reasonable time and labor expended. *See Boruch v Rommi Realty, LLC*, 2023 NY Slip Op 00073, 2023 WL 152017, at *1 [2d Dept Jan. 11, 2023]:

“ ‘An award of ... reasonable attorney's fee[s] is within the sound discretion of the Supreme Court based upon such factors as the time and labor required, the difficulty of the issues involved, the skill required to handle the matter, and the effectiveness of the legal work performed’ ” (*Wodecki v. Vinogradov*, 125 A.D.3d 645, 646, 2 N.Y.S.3d 590, quoting *Juste v. New York City Tr. Auth.*, 5 A.D.3d 736, 736, 773 N.Y.S.2d 597; *see Pyong Woo Ye v. Pasha*, 175 A.D.3d at 738, 105 N.Y.S.3d 311; *Loja v. Lake Newel, Ltd.*, 168 A.D.3d 822, 823, 89 N.Y.S.3d 913).

In *Rahmey v Blum*, 95 AD2d 294 (2d Dept 1983) which is a seminal case on the calculation of a reasonable attorney's fee, the Court laid out an “analytical framework....to aid the courts in computing a reasonable attorney's fee.” (*See also Law Office of Thaniel J. Beinert v. Litinskaya*, 43 Misc. 3d 1205[A], 990 N.Y.S.2d 437 [Civ. Ct. 2014]).

The court in *Ousmane v. City of New York*, 22 Misc. 3d 1136(A); 880 N.Y.S.2d 874; 2009 N.Y. Misc. LEXIS 574 2009 NY Slip Op 50468(U); 241 N.Y.L.J. 62 (NY Cty. Supt. Ct. 2009), which

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utilized the lodestar method, as elaborated in *Rahmey*, of determining the reasonableness of awarding attorney's fees and that methodology is expressed as follows:

A. Hours Reasonably Expended

The first step to be taken in arriving at a fair and appropriate award of attorneys' fees under the lodestar method is to determine whether the number of hours claimed were reasonably 'expended from contemporaneous time sheets.' *Becker v. Empire of America Federal Savings Bank*, 177 AD2d 958, 577 N.Y.S.2d 1001 (4th Dept 1991); *see also Rahmey*, 95 AD2d at 300-301. The court need not automatically accept inadequately documented hours or those hours which reflect 'padding, i.e., hours that are excessive or otherwise unnecessary.' *Rahmey*, 95 AD2d at 301. The following factors are also to be considered in assessing the reasonable hours worked: the extent to which the hours reflect inefficiency or duplicative work; legal work versus non-legal work, investigations, and other work performed by non-lawyers; time spent in court differentiated from out-of-court efforts; and the court's own knowledge, experience and expertise as to the time required to complete a similar task. *Id.*; *see also Matter of Spingarn*, 164 Misc. 2d 891, 894, 626 N.Y.S.2d 650 (Sup Ct, NY County 1995).

Regarding the hourly fee charged by counsel making the application for attorney's fees, the court in *Carroll v Weill*, 2008 N.Y. Misc. LEXIS 9409; 2008 NY Slip Op 32512(U) (Supt. Ct. NY Cty., Ramos, J.S.C. 2008), stated,

To determine the reasonable hourly billing rate, the 'prevailing market rate' or the rate 'prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation' applies (*Blum v Stenson*, 465 U.S. 886, 896, 104 S. Ct. 1541, 79 L. Ed. 2d 891 [1984]); *Farbotko v Clinton County*, 433 F 3d 204 [2d Cir 2005]).

Even where the attorney rate is found to be reasonable, the court may reduce the fee if it finds the amount of time spent rendering legal services was excessive. *See Metropolitan Lofts of NY, LLC v Metroeb Realty 1, LLC*, 46 Misc. 3d 1222(A); 2015 N.Y. Misc. LEXIS 589; 2015 NY Slip Op 50251(U) (Supt. Ct., NY Cty. Demarest, J. 2015):

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The Court has further determined, however, that a 10% discount is necessitated by the duplication apparent in some of the billing. Although the hourly billing rates are reasonable, the number of hours is found to be excessive (*see NYCTL 1996-1 Trust v Stavrinis Realty Corp.*, 113 AD3d 602, 604-605, 978 N.Y.S.2d 320 [2d Dept 2014]; *Kaygreen Realty Co., LLC v IG Second Generation Partners, L.P.*, 78 AD3d 1008, 1010, 913 N.Y.S.2d 663 [2d Dept 2010]; *Friedman v Miale*, 69 AD3d 789, 791, 892 N.Y.S.2d 545 [2d Dept 2010]).

The Court in *DeGregorio v Bender*, 52 AD3d 645, 646 [2d Dept 2008], summarized the standards “(i)n fixing an award of legal fees in *quantum meruit*, the court should consider ‘evidence of the time and skill required in that case, the complexity of the matter, the attorney’s experience, ability, and reputation, the client’s benefit from the services, and the fee usually charged by other attorneys for similar services.’” citing *Rosenzweig v Gomez*, 250 AD2d 664, 672 NYS2d 907 (1998).

The Attorney Affirmations by Respondent’s Counsel

The attorney affirmation of Charles W. Marino and the attorney affirmation of Yelkena Sharova, the only attorney affirmations submitted in support of the motion, fails to provide any information as to the attorneys’ years of experience, or the hourly rate of any of those employed by the law firm except Ms. Sharova’s rate of \$400.00 per hour. The court can infer that the initials found within the legal invoices (Exhibit 2, NYSCEF Doc.# 88) reflect the initials “YS” for Yelena Sharova and “CWM” for Mr. Marino, but there is no foundation for the court to consider any of the invoices in support of the application for attorneys’ fees. There is no indication in the attorney affirmations that the invoices were kept in the usual and regular course of the law firm’s business, that the records were maintained in the usual and regular course of the law firm’s business or that the transactions found within them were entered at or near the time when those events occurred. *See* CPLR 4518. There is nothing to indicate the titles, years of

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experience or other information that would assist the court in determining the qualifications of the person providing the services, the hourly rates charged by the firm or the members whose initials appear to be “CB, MS, FD, HS.” The defendant through counsel has “...failed to lay the proper foundation for the admission of those documents under the business records exception to the hearsay rule (*see* CPLR 4518[a]), since he failed to attest that he was personally familiar with (firm’s) record-keeping practices and procedures...” (*see San Antonio v 340 Ridge Tenants Corp.*, 204 AD3d 713, 715, 166 NYS3d 256, 259, 2022 NY Slip Op 02298, 2022 WL 1020992 [2d Dept 2022]). In short, there is no legal basis for the court to consider the invoices in support of the application for attorneys’ fees. Even if this evidentiary barrier did not exist, there are numerous entries that reflect “phone call,” “draft documents,” “draft revisions & electronic filing documents,” “research,” “civil litigation team meeting,” “Email,” etc. but these entries give no information as to whom was called, the purpose of the call, specific documents that were drafted, specific documents that were revised, the topic researched, or the recipient of email communications. None of the missing information is privileged and the missing information would be the only way the court can ensure that the work performed was relevant and pertained to the instant matter. In any event, the court would not award attorneys fees for respondent’s motion to dismiss or any other unsuccessful motion.

Notwithstanding the foregoing, the petitioner by submitting a proposed order on June 30, 2021 containing a provision of \$3,000 for legal fees payable to respondent admits that those fees were reasonable. (Exhibit L, NYSCEF Doc.# 53). The court cannot and will not decide the issue of reasonable attorneys’ fees based on the insufficiencies of the attorney affirmations in support of the motion, the inadmissibility of the legal invoices and the small effort required to provide the necessary information and to provide a basis for the admissibility of this

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documentation. However, the court will award attorneys' fees based on quantum merit using an attorney rate of \$250 per hour, excluding respondent's motions which were unsuccessful, the time and skill required as gleaned from the written submissions, the complexity, respondent's benefit from the services, and the fee usually charged by other attorneys for similar services. *See DeGregorio v Bender*, 52 AD3d 645, 646 (2d Dept 2008):

In fixing an award of legal fees in quantum meruit, the court should consider "evidence of the time and skill required in that case, the complexity of the matter, the attorney's experience, ability, and reputation, the client's benefit from the services, and the fee usually charged by other attorneys for similar services" (*Rosenzweig v Gomez*, 250 AD2d 664, 672 NYS2d 907 [1998]; *see* Code of Professional Responsibility DR 2-106 [b] [22 NYCRR 1200.11 (b)]). An award in quantum meruit should be made after weighing all the relevant factors (*see Padilla v Sansivieri*, 31 AD3d 64, 65, 815 NYS2d 173 [2006]).

Based on the foregoing,

It is,

ORDERED that respondent's motion for attorneys' fees is granted and such fees are awarded in the amount of \$12,500.00 together with costs and disbursements to be determined by the clerk of the court, and engineer costs and disbursements of \$4,250.00, interest to accrue from the date judgment is entered; and it is further

ORDERED that respondent shall settle a judgment on notice within 60 days which may be presented to the clerk who is directed to enter such judgment.

A copy of this decision and order shall be served by the moving party with notice of entry within ten days of entry. This constitutes the decision and order of the Court.

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Hon. Richard J. Montelione
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