

**Sutton Apts. Corp. v Sene**

2023 NY Slip Op 30814(U)

March 15, 2023

Supreme Court, New York County

Docket Number: Index No. 654181/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT:** HON. ARLENE P. BLUTH **PART** **14**

*Justice*

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SUTTON APARTMENTS CORPORATION,  
Plaintiff,

- v -

CINDY LYNN SENE, PAPA LAMINE SENE,  
Defendant.

**INDEX NO.** 654181/2020

**MOTION DATE** N/A

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65, 66, 67, 70, 71

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

Plaintiff's motion for legal fees is granted.

**Background**

Previously, this Court granted plaintiff's motion for summary judgment in this action concerning unpaid fees owed to plaintiff (NYSCEF Doc. No. 57). The Court concluded that, per the rules of plaintiff, a shareholder selling their shares had to pay 50% of the profit realized from the sale of a unit to plaintiff and that defendants failed to pay what was owed (*id.*). It awarded plaintiff \$77,089.71 (*id.*). The Court also found that plaintiff was entitled to legal fees under the terms of the proprietary lease and directed plaintiff to make a separate motion for such fees (*id.*). This motion followed.

Plaintiff seeks \$26,512.50 in legal fees and attaches invoices supporting the requested amount (*see* NYSCEF Doc. No. 63). It claims that the proprietary lease requires defendants to pay the legal fees incurred in this matter. Plaintiff details how the lead attorney on this matter billed \$475 an hour, while another attorney billed \$400 and a paralegal billed \$135. Plaintiff

emphasizes that despite the fact that this case took more than two years, their costs remained under \$30,000.

In opposition, defendant Cindy Lynn Sene claims that plaintiff has no right to recover legal fees from defendants under the proprietary lease because they sold their shares in 2014. Ms. Sene also contends that the bills submitted by plaintiff are “over-exaggerated” and that this case did not need any document discovery because the plaintiff had all it needed. Ms. Sene insists that plaintiff should not be entitled to recover any fees for discovery.

### **Discussion**

“If the Tenant-Shareholder shall at any time fail to comply with, or be in default under any part of this Lease or of the House Rules and the Apartment Corporation shall incur any expense (whether paid or not) in causing such default to be cured or in performing any act which the Tenant-Shareholder is required to perform . . . including, but not limited to, . . . the prosecution of any arbitration, action or proceeding based on such default . . . the expense thereof the Apartment Corporation, including attorneys’ fees and disbursements shall be paid by the Tenant Shareholder” (NYSCEF Doc. No. 46, ¶ 2.6). The proprietary lease contains specific provisions about resale profits (*id.* at 39). Therefore, the fact that defendants defaulted under the terms of the proprietary lease by not paying the resale profits entitles plaintiff to recover legal fees.

The Court finds that the amount of fees sought are inherently reasonable and awards plaintiff \$26,512.50. Preliminarily, the Court observes that defendants made an initial motion to dismiss, which plaintiff opposed. Although defendants were certainly entitled to make such a motion, plaintiff can recover for the time it took to review that motion and draft its opposition. A

review of the invoices suggests that plaintiff's work was efficient and not an example of overbilling.

To the extent that Ms. Sene complains about charges billed by counsel for plaintiff for discovery, the fact is that this is a plenary action and both parties are entitled to do discovery. The invoices also contain charges related to *defendants'* discovery requests; of course, plaintiff can seek legal fees for time spent responding to defendants' demands. If defendants thought no discovery was necessary, then they should not have made discovery demands. And a review of the docket reveals that there were only a few conferences held. This is not a situation in which plaintiff slow-played the discovery process as part of an effort to run up the bills. The parties entered into a preliminary conference order, a compliance conference order, and a status conference order before the note of issue was filed.

At a broader level, the Court observes that the amount charged by plaintiff is reasonable in light of the motions made in this matter and the amount it recovered. The Court points out that the motion papers submitted by counsel for plaintiff were uniformly efficient (they were nowhere near the word limit imposed under the NYCRR). This Court often reviews papers that are overly verbose and likely involve many, many hours spent drafting them--- that was not the case here.

Moreover, counsel for plaintiff's hourly rates are well below what many attorneys charge for cases in New York County. Finally, while defendants are certainly entitled to make motions and demand discovery, when an agreement provides for attorneys' fees, the more defendants litigate, the higher the award of fees against them will be if they lose. And here, defendants lost and did not raise any specific issues with the invoices whatsoever. They simply offer conclusory assertions that the bills were exaggerated.

Because plaintiff's papers were efficient, the time spent reasonable, the rates on the low end for New York City, defendants' litigating caused more time to be spent, and the amount charged is quite low for more than two years of litigation, the Court finds the amount reasonable and that there is no reason to deny the motion.

Accordingly, it is hereby

ORDERED that plaintiff's motion for legal fees is granted and the Clerk is directed to enter judgment in favor of plaintiff and against defendants jointly and severally in the amount of \$26,512.50 upon presentation of proper papers therefor.

3/15/2023

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE