

Mansfield Realty, I, LLC v Mansfield LLC

2023 NY Slip Op 31419(U)

April 25, 2023

Supreme Court, New York County

Docket Number: Index No. 651437/2021

Judge: Frank P. Nervo

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM PART IV

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MANSFIELD REALTY, I, LLC, MANSFIELD
REALTY II, LLC, MANSFIELD REALTY, III, LLC,
MANSFIELD REALTY, IV, LLC, and MANSFIELD
REALTY, V, LLC,

Plaintiff,

-against-

MANSFIELD LLC,

Defendants.

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

**DECISION
FOLLOWING
INQUEST**

Index No.
651437/2021

Plaintiffs’ summary judgment motion was granted without opposition by the Hon. Louis L. Nock, J.S.C. (NYSCEF Doc. No. 29). Thereafter, the inquest of this matter was administratively assigned to this Court (NYSCEF Doc. No. 33). This Court directed that the inquest proceed on paper submissions, absent a request for cross-examination by defendant (*id.*). Defendant did not appear at inquest and no request for cross-examination was filed. This decision after inquest results.

Notwithstanding that the inquest is unopposed, the Court does not function as a rubber stamp to approve fees sought. The Court is charged with determining whether the attorneys’ fees sought via the instant inquest are

reasonable. In determining the reasonableness of these attorneys' fees, the Court considers the attorneys' affidavit and submissions to elicit the "difficulty 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]). The party seeking attorney's fees bears the burden of establishing that the attorney's hourly rate and number of hours expended by counsel are reasonable (*Gutierrez v. Direct Marketing Credit Survives, Inc.*, 267 AD2d 427 [2d Dept 1999]). An attorney's affirmation that they regularly bill at a given rate, standing alone without evidence of "customary fees charged for similar services by lawyers in the community with like experience and of comparable reputation" is insufficient to establish that rate as reasonable (*see Gamache v. Steinhaus*, 7 AD3d 525 [2d Dept 2004] [internal citations omitted]). Where an attorney's records reflect block-billing, the grouping of several tasks in single billing entry, a reduction of the amount of billed is generally appropriate; however, there is no set "maximum or minimum that block-billed fees should be reduced to account for

unnecessary work” (*Community Counseling & Mediation Services v. Chera*, 115 AD3d 589 [1st Dept 2014]).

On this unopposed inquest for attorneys’ fees, plaintiffs’ counsel has established, by a preponderance of the evidence, that it performed legal services in connection with the instant case (NYSCEF Doc. Nos. 34 & 35). Counsel has further established that the parties’ lease agreement provides for the recovery of legal fees incurred by the landlord in connection with the tenant’s failure to comply with the lease (NYSCEF Doc. Nos. 16 & 18).

However, the billing records provided by counsel have inextricably interwoven the legal work performed in this matter with that of, apparently, another matter pending in another court. By way of exemplar: the billing records repeatedly reference a “holdover petition”¹ when it is beyond cavil that no holdover petition was filed in this matter, this matter having been initiated by a summons and complaint; the records further detail actions taken “as per

¹ See e.g. NYSCEF Doc. No. 35 “12/09/20 Attention to holdover complaint”; “12/11/20 Draft holdover petition”; “12/21/20 Research regarding commercial holdover petitions in NY”; “12/23/20 ... revise holdover petition”; “08/02/21 Attention to holdover proceeding on restaurant tenant”

court order”² more than one year before any order was issued under this index number; the records indicate counsel “prepare[d] for tomorrow’s hearing” and appeared at a “Court hearing on Mansfield case”³ approximately six months before the first appearance occurred in this matter; and the records indicate that a “state court complaint” was drafted on “02/12/21”. As a fair reading of the billing records indicates that counsel worked on more than one action on behalf of plaintiffs, counsel must detail what work was performed under each action. Counsels’ billings records do not, however, differentiate between these actions. In the absence of such detail, it is impossible for any Court to determine whether the entries following “02/12/21,” – when the “state court complaint” was drafted – relate to this state court action or some other unspecified holdover petition (*see* NYSCEF Doc. No. 35).

Stated differently, it is inescapable that counsels’ billing records indicate it worked on separate Supreme Court and Civil Court (Landlord-Tenant)

² See NYSCEF Doc. No. 35 “03/03/2021 Revise and file holder over as per court order...and warrant of eviction”; the first Court Order issued in this matter was more than one year later on June 21, 2022 (NYSCEF Doc. No. 29).

³ See NYSCEF Doc. No. 35 “07/13/21 ... prepare for tomorrow’s hearing” and “07/14/2021 Court hearing on Mansfield case – initial appearance”. The first Court appearance in this matter occurred on January 12, 2022, in Room 130 where plaintiff’s summary judgment motion was marked “Fully Submitted - No Opposition”.

actions without differentiating between the two actions. This Court cannot determine whether the work performed, such as the dozens of hours expended attempting settlement, was in furtherance of settlement of this action or the unspecified holdover action (*see generally* NYSCEF Doc. No. 35). The Court declines to award attorneys' fees for work performed in another action not pending before this Court, and is unaware of any authority providing for same. Furthermore, counsels' affidavit provides no basis for recovery of attorneys' fees in a separate matter and, as counsel bears the burden of proof establishing attorney's fees, same is denied.

Plaintiff's counsel has failed to meet its burden establishing the number of hours expended in furtherance of this action. The records submitted in support of the attorneys' fee sought indicate counsel has intermingled billing records for multiple matters; consequently, no court can determine whether the fees sought are reasonable, recovery of any fee must be denied, and the inquest dismissed. The Court declines to afford counsel another attempt to submit corrected records; the principles of due process, fundamental to the fair administration of justice by the courts, do not permit repetitive trials upon the initial failure to meet one's burden of proof.

As an alternative holding and assuming, *arguendo*, that the billing records relate solely to this action sufficient for this Court to pass upon the reasonableness of the hours expended, the Court finds same needlessly inflated. The Court's own research reveals that where attorneys' fees sought are exorbitant, the Appellate Division, First Department has denied the request to recover fees outright and dismissed the claim entirely (*see e.g. American Motorists Ins. Co. v. Napco Sec. Systems Inc.*, 244 AD2d 197 [1st Dept 1997]). Federal appellate courts have reached the same conclusion (*Clemens v. New York Central Mutual Fire Ins. Co.*, 903 F.3d 396 [3d Cir. 2018]; *Brown v. Stackler*, 612 F.2d 1057 [7th Cir. 1980]; *Scham v. District Courts Trying Criminal Cases*, 148 F.3d 554 [5th Cir. 1998]; *Fair Hous. Council of Greater Wash. v. Landow*, 999 F.2d 92 [4th Cir. 1993]; *Lewis v. Kendrick*, 944 F.2d 949 [1st Cir. 1991]; *Envtl. Def. Fund, Inc. v. Reilly*, F.3d 1254 [D.C. Cir. 1993]). "Underling these decisions is the idea that if courts did not possess this kind of discretion, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such conduct would be reduction of their fee to what they should have asked for in the first place" (*Clemens v. New York Central Mutual Fire Ins. Co.*, 903 F.3d at 402 [internal citation omitted]).

The instant fee request is precisely the type of palpably unreasonable demand sought to be discouraged; plaintiffs' counsel seeks to recover for 136 hours of work performed in this straightforward commercial landlord-tenant matter. Indeed, plaintiffs were successful after counsel filed a single unopposed summary judgment motion. Counsel avers that 4 hours were devoted to drafting this successful summary judgment motion;⁴ however, 34 hours were devoted to reviewing and revising same.⁵ It is beyond cavil that review of a motion should not exceed the time to draft same by an order of magnitude; this can only be described as unreasonable and inflated. In the multitude of similar unopposed commercial lease matters in which this Court has presided, no counsel has sought to recover for as many hours of work as the instant plaintiff's. The Court, based upon its own experience, would expect an application for attorney's fees to be less than half of that sought here (*see e.g. Park Towers South Co. LLC, v. Columbus Circle Parking LLC*, NY Index No. 653757/2020 Decision Following Inquest April 3, 2023 [Nervo, J.], 51 hours

⁴ NYSCEF Doc. No. 35 entries dated: 06/1/21 and 06/14/21.

⁵ NYSCEF Doc. No. 35 entries dated: 06/18/21; 06/21/21; 06/22/21; 06/23/21; 06/24/21; 07/06/21; 07/07/21; 07/08/21; 11/19/21(ZGK); 11/19/21(JBSS); 11/22/21; 11/26/21; 11/29/21(ZGK); 11/29/21(JBSS); 11/30/21; 12/02/21; 12/03/21; 12/07/21; 12/09/21; 12/09/21; 12/10/21.

reasonable compensation for commercial lease matter with additional motion practice not found in the instant matter).

Furthermore, review of the billing records indicates that the majority of the work was performed by a partner billing at a higher hourly rate and a minority of work was performed by associated billing at a lower hourly rate. Counsels' affidavit provides no basis for this lopsided delineation of work resulting in higher fees.

Turning to the hourly rate, the Court also finds same inflated. Plaintiffs' counsel avers that its customary hourly rate in 2022 reached \$720.00 for the partner and \$505.00 for the associate on this matter. Counsel has not provided any evidence as to the customary rates charges by lawyers with like experience and reputation, as required (*see Gamache v. Steinhaus*, 7 AD3d 525 [2d Dept 2004] “attorney’s own self-serving statements that they regularly bill at [a given rate]” insufficient to establish customary fee charged for similar services in the community). Consequently, the Court evaluates the reasonability of these rates based upon caselaw. The Appellate Division found \$415/hr reasonable compensation for a partner with more than 30 years of experience in 2016 (*RMP Capital Corp. v. Victory Jet, LLC*, 139 AD3d 836 [2d Dept 2016]). Adjusting for

inflation, in accordance with data from the United States Bureau of Labor Statistics of which the Court takes judicial notice, \$415/hr in 2016 is equivalent to approximately \$520/hr in 2023.⁶ Here, the partner performing work in this matter has approximately 25 years of experience. Accordingly, the Court reduces the hourly rate of the partner performing legal services on this matter to \$520.00. Likewise, while there is comparatively less caselaw regarding the reasonability of associates' hourly rates, the Appellate Division has found approximately \$233.00 an hour reasonable compensation; federal courts have found senior associates entitled to approximately \$400.00 an hour (*Getty Petroleum Corp. v. G.M. Triple S. Corp.*, 187 AD2d 483 [2d Dept 1992] \$110/hr reasonable compensation for associate in 1992, adjusted for inflation approximately \$233/hr in 2023 dollars; *see e.g. Sass v. MTA Bus Co.* 6 F.Supp.3d 238 [EDNY 2014] \$325/hr reasonable compensation for senior associate in 2014, adjusted for inflation approximately \$411/hr in 2023 dollars). Therefore, the Court finds reasonable compensation for associates performing work on this matter to be \$400.00 an hour, given their experience.

⁶ U.S. Bureau of Labor Statistics CPI Inflation Calculator available at: https://www.bls.gov/data/inflation_calculator.htm

“[A] fee request is not the opening salvo in a back and forth negotiation with the court. The request is not the sticker price on a used car that all parties understand is the starting point for spirited dickering” (*M.G. v. Eastern Regional High School Dist.*, 2009 WL 3489358 [DNJ 2009] *vacated and remanded on other grounds* 386 Fed. Appx. 186 [3d Cir. 2010]).

Accordingly, as an alternative holding, the Court finds the fees demanded by plaintiff’s counsel are needlessly inflated and dismisses the claim for same in its entirety (*American Motorists Ins. Co. v. Napco Sec. Sys.*, 244 AD2d 197 [1st Dept 1997]).

CONCLUSION

Plaintiff’s counsel has failed to meet its burden establishing the number of hours expended in the prosecution of this matter. Counsel’s records intertwined work performed in apparently related matters pending in another court(s) with work performed in this matter, rendering it impossible for this Court to determine the number of hours expended in this matter and, consequently, whether same is reasonable. Thus, the Court is constrained to deny and dismiss the demand for attorneys’ fees.

Alternatively, and assuming that the records submitted by plaintiff's counsel reflect only work performed in this matter, the Court has considered plaintiff's counsel's experience and the novel issues that arose in cases of this nature during the COVID pandemic. The Court has further considered the benefit of counsel's services to plaintiff, namely securing judgment in excess of \$3,000,000.00. Finally, the Court has considered the customary rate charged for services of this type, and the rates previously sanctioned by the Appellate Division for attorneys with comparable experience. Notwithstanding, the Court finds that plaintiffs' counsel's demand is inflated and unreasonable. The Court, in accordance with decisions from the Appellate Division, First Department, denies the demand for the inflated and unreasonable fees outright.

Accordingly, it is

ORDERED, ADJUDGED, and DECLARED that plaintiff's counsel, Davis + Gilbert LLP, has failed to establish the attorneys' fees demanded are reasonable and related solely to this matter, and therefore has failed to meet its burden of proof to recovery attorneys' fees in this matter; and it is further

ORDERED, ADJUDGED, and DECLARED that the claim for attorneys' fees is dismissed with prejudice; and it is further

ORDERED that the matter shall be marked disposed

ORDERED that the Clerk of the Court is directed to enter judgment in accordance with the above.

THIS CONSTITUTES THE DECISION FOLLOWING INQUEST OF THE COURT.

Dated: April 25, 2023

ENTER:



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