

**Fuks v Rakia Assoc.**

2023 NY Slip Op 33400(U)

October 3, 2023

Supreme Court, New York County

Docket Number: Index No. 122768/1996

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M**

*Justice*

-----X

MALI FUKS,

Plaintiff,

- v -

RAKIA ASSOCIATES,

Defendant.

-----X

INDEX NO. 122768/1996

MOTION DATE 06/14/2023

MOTION SEQ. NO. 032

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 032) 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 156, 157, 158, 159, 160, 161, 162, 163, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187

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

In Motion Sequence No. 32, defendant Ruth Shomron (“Shomron”) moves to be reimbursed by plaintiff R&L Realty Associates in the amount of \$352,890.20 for attorneys’ fees and costs defendant Shomron allegedly paid or incurred on behalf of R&L in connection with her successful prosecution of the related action, *Shomron v. Fuks, et. al.* (Sup. Ct. N.Y. County Index No. 102882/02).

Plaintiff Mali Fuks, individually and on behalf of R&L Realty Associates, in turn, cross-moves for an Order imposing sanctions upon Defendant Ruth Shomron and her counsel, Guy Halperin, Esq., precluding Mr. Halperin from continuing to represent adverse parties in these actions, imposing a fine of \$10,000.00, and awarding Fuks her costs and reasonable attorney’s fees.

## Discussion

### **I. Attorneys' Fees**

Defendant Shomron seeks \$352,890.20 for the legal fees and costs she paid or incurred in connection with the prosecution of this case. That amount is comprised of \$301,678.25 for legal fees for the period through February 11, 2017, \$11,840.00 for legal fees after February 11, 2017, and an additional \$39,371.95 in expert fees. However, the court declines to award the full amount Shomron seeks on this motion.

An award of reasonable attorneys' fees is within the sound discretion of the court (*see Diakrousis v Malanga*, 61 AD3d 469 [1st Dept 2009]). When evaluating the reasonableness of attorneys' fees, the court examines several factors, "including the time and labor required, the difficulty of the issues involved, and the skill and effectiveness of counsel...reduc[ing] the amount requested to eliminate work that was duplicative or was unnecessarily performed by an attorney, rather than a secretary or paralegal" (*JK Two LLC v Garber*, 171 AD3d 496, 496 [1st Dept 2019]; *S.T.A. Parking Corp. v Lancer Ins. Co.*, 128 AD3d 479, 480 [1st Dept 2015]). The burden of proving the reasonableness of the requested fees is on the requesting party (*EVUNP Holdings LLC v Frydman*, 154 AD3d 558, 559 [1st Dept 2017]).

The court may reduce fees that are excessive (*see Solow Management Corp. v Tanger*, 43 AD3d 691 [1st Dept 2007]). The court may also reduce fees where the amount requested lacks proof (*Josefsson v Keller*, 141 AD2d 700 [1st Dept 1988]). Additionally, a fee award may be reduced where there is block billing — the practice of lumping multiple charges together in a single billing entry (*see Matter of Silverstein v Goodman*, 113 AD3d 539, 540 [1st Dept 2014]; *RMP Capital Corp. v Victory Jet, LLC*, 139 AD3d 836, 840 [2d Dept 2016] [25% reduction of fee award "due to the use of block billing, including vague and nonspecific billing entries, and the

nature of th[e] lawsuit”). Specifically, courts permit a reduction of fees when the use of block billing makes it “makes it exceedingly difficult for the court to identify whether the amount of time spent on a particular task is reasonable” (*546-552 W. 146th St. LLC v Arfa*, 99 AD3d 117, 123 [1st Dept 2012]).

In support of the fee request, counsel for Shomron has submitted several attorney invoices and timesheets that set forth the hours billed and the work that was performed. However, these invoices and timesheets are deficient for several reasons and ultimately prevent the court from determining the reasonableness of Shomron’s attorneys’ fee request.

First, in the April 10, 2023 dated decision on Motion Seq. No. 29, the court denied the part of the motion seeking a modification to Shomron’s alleged attorneys fees, without prejudice to a separate motion for REASONABLE attorney’s fees and limited to those fees incurred prosecuting the constructive trust claim (Doc 115 [4/10/23 Decision] at 12). However, the time records submitted in support of this attorneys’ fee request do not differentiate between those fees generally incurred in prosecuting this case, versus those fees that were specifically incurred in prosecuting the constructive trust claim, as specified in the Order. In fact, counsel submits over a hundred pages of time records and invoices for this motion, but fails to direct the court’s attention, in any way, to the relevant entries related to just those fees incurred in prosecuting the constructive trust claim.

Additionally, the invoices and time entries are also unclear on whether such work was being performed for one action, the other action, or both, and ultimately fail to differentiate what work is being done for which case. The time records and invoices counsel submitted also clearly highlight the duplicative and unnecessary work that was performed throughout the past three decades that this case has been pending. The records and invoices are clear evidence of

overlitigation and underscore the numerous instances of unnecessary legal work that counsel performed.

The invoices and time entries are also rife with instances of block billing, making it nearly impossible for the court to discern how much time was spent on each specific task and ultimately prevents the court from determining the reasonableness of the fee request.

For instance, the March 24, 2014 entry for 3.25 hours states the following: “Telephone call with Barry Tempkin; e-mails to Tempkin transmitting documents; e-mails to Barry Fertel; telephone with Ruth Shomron; telephone with Michael Lippman; e-mails to Lippman transmitting documents; drafted proposed affidavit for Lippman per conversation” (Doc 130 [Time Records]).

In another example, the November 3, 2017 entry for 2.75 hours provides the following: “Drafted letter and sent same to Referee Hewitt in support of in limine motion to preclude testimony of Fuks' proposed expert witness Richard Farren re: rents and profits; telephone with Lawler, and emails to/from Lawler and Referee re: same” (Doc 130 [Time Records]).

Accordingly, the court declines to award Shomron the \$352,890.20 it seeks on this motion and instead awards Shomron attorneys' fees in the amount of \$176,445.10, approximately 50% of the requested award, to account for inefficiencies, overlitigation, excessiveness, duplicative efforts and work, and excessive block-billing (*see David Z. Inc. v Timur on Fifth Ave., Inc.*, 7AD3d 257, 258 [1st Dept 2004] [reducing award of attorneys' fees from \$13,793 to \$7,500 after finding the original award “excessive”]). These fees are awarded pursuant to the R&L Partnership Agreement (Doc 133 [R&L Partnership Agreement] Section 7.03), and Partnership Law §§ 40 and 71.

## **II. Cross-Motion**

In her cross-motion, Plaintiff Fuks seeks an order precluding Mr. Halperin from representing those persons and entities that are suing R&L or are making claims against R&L in

this or any court. Plaintiff also requests that the court impose sanctions upon Shomron and her counsel in the amount of \$10,000.00 plus the costs and reasonable legal expenses incurred in preparing for and appearing at the inquest.

The cross-motion for sanctions is denied. Upon further consideration, the court cannot conclude that Shomron and her counsel's actions were willful, contumacious, or in bad faith.

The court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that Motion Sequence No. 32, defendant Ruth Shomron's motion for attorneys' fees, is granted in part in accordance with this decision; and it is further

ORDERED that the Plaintiff Fuks' cross-motion for sanctions is denied; and it is further

ORDERED that R&L Realty Associates is directed to reimburse defendant Ruth Shomron the amount of \$176,445.10.

10/3/2023  
DATE

  
MELISSA A. CRANE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	
	<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	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE