

4413 LLC v 1313-45 Realty LLC

2023 NY Slip Op 33793(U)

October 24, 2023

Supreme Court, Kings County

Docket Number: Index No. 502882/2019

Judge: Robin K. Sheares

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS-----X
4413 LLC, BENNETT MARKS, and STEWART MARKS,

Plaintiff(s),

- against -

1313-45 REALTY LLC, ERNEST BERKOVITS, DAVID
SINGER, NAOMI SINGER and APPLE BANK FOR
SAVINGS,Defendant(s).
-----X

Index No. 502882/2019

**DECISION/ORDER
after
Hearing****Recitation, as required by CPLR §2219(a), of the papers considered in the review of this Motion:**

<u>Papers</u>	<u>NYSCEF Document No:</u>
Decision on Motion Sequence No. 04 dated November 30, 2022	125
Affirmation of Legal Fees	128
Exhibits	129 -130
Affirmation in Opposition	131
Exhibits	132 - 133

Based on the foregoing papers, and after a hearing held on August 8, 2022, and February 21, 2023, this Court GRANTS the application for an award of attorney fees in the amount of \$6,819.29.

The Court, by Amended Decision and Order dated November 30, 2022¹, granted Plaintiffs' Order to Show Cause to the extent that the Court appointed a receiver to remove that portion of Defendants' building which encroached upon Plaintiffs' property and ordered a hearing on attorney's fees incurred in bringing this contempt motion.

Prior to this hearing, the Court ordered Plaintiffs' counsel to submit an affirmation of legal fees on or before December 30, 2022 and ordered Defendant's counsel to submit opposition on or before January 13, 2023². A hearing on this matter was held on February 21, 2023.

¹ The prior court order dated November 28, 2022 was amended to correct a typo.

² Defendant's opposition was submitted timely.

Plaintiffs' counsel submitted an affirmation in which he asserts that he is entitled to sanctions in the amount of \$11,900.00 for billable fees (39 hours and 40 minutes at \$300.00 an hour) and \$159.29 for costs and expenses for a total of \$12,059.29. Plaintiff submitted time and expense billing records for the period of February 22, 2022 to December 28, 2022. Plaintiff also submitted copies of invoices underlying the cost/expense charges set forth which he asserts reflect court costs for filing motion papers, postage, and parking.

Defendant opposed the application. Defendant alleged that the application sought attorneys' fees and costs beyond the scope granted by the Court's November 30, 2022 Decision and Order. Specifically, Defendant states that the November 30, 2022 order stated that Plaintiff could seek fees incurred in *bringing* the order. However, Plaintiff included fees that were not only incurred in bringing the order, but also those that were incurred after the motion was "brought" on June 3, 2022, as well as costs and expenses which were not to be included. Defendant further argued that as Plaintiff seeks reimbursement for attorney fees and expenses from June 10, 2022 through December 28, 2022, a total of 27.3 hours amounting to \$8,190.00 which are outside the scope of the November 30, 2022 Decision and Order. Defendant also argued that clerical work, non-legal work, and the legal work expended to correct and address errors made in the November 28, 2022 decision and order should not be charged to the Defendant.

The determination of reasonable counsel fees is a matter within the sound discretion of the trial court (see *Curtis v Nutmeg Ins. Co.*, 256 A.D.2d 758, 681 N.Y.S.2d 620 (3d Dept 1998)). A judge can award fees pursuant to the parties' contractual agreement, statutes, and/or court rules. The factors considered in determining attorney fees are the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability, and reputation; the amount involved and benefit resulting to the client from the

services, the customary fee charged by the Bar for similar services, the contingency or certainty of compensation; the results obtained; and the responsibility involved. (*In re Estate of Freeman*, 34 NY2d 1 [1974]).

The attorney bears the burden of establishing the reasonable value of the services rendered, based upon a showing of the hours reasonably expended and the prevailing hourly rate for similar legal work in the community. (*Lancer Indem. Co. v. JKH Realty Group, LLC*, 127 AD3d 1035, 8 N.Y.S.3d 356 [2nd Dept 2015][internal citations and quotations omitted]; see also *Rahmey v Blum*, 95 AD2d 294, 466 N.Y.S.2d 350 [2nd Dept 1983]). Here, Plaintiffs' counsel has sufficiently demonstrated entitlement to a fee of \$300.00 an hour. Counsel was admitted to practice law in 2007 and has worked primarily on commercial and real estate related litigation in both the federal and state levels. Plaintiff indicated that \$300.00 an hour is the rate charged to his clients in similar commercial litigation. Plaintiff also stated that he has since raised his hourly rate to \$400, but that he was not seeking that rate in this matter.

After hearing the testimony and after reviewing the records, the Court finds that from May 31, 2022 to November 30, 2022, Plaintiff allotted 21.8348 hours in bringing this Order to Show Cause for Contempt. Using \$300 per hour, that amounts to \$6,550.44 for attorney fees. In addition, the Court reduces both the \$130.00 billed for services rendered on July 11 2022, and the \$407.70 billed for services rendered on June 21, 2022 by half. Therefore, on those dates, the Court awards a total of \$268.85, for a total of \$6,819.29.

Furthermore, while Defendant maintains that the November 30, 2022 Decision and Order does not allow for costs and expenses, this Court will allow them as they are necessary expenses in bringing this motion. Therefore, the Court will allow the following expenses, totaling \$148.50:

\$46.35	06/03/2022	Filing Fee: Contempt Motion
\$32.70	06/21/2022	USPS: Mailing OSC
\$25.52	07/19/2022	Serve notice of entry of order

\$33.00	08/08/2022	Parking Fee: Contempt Hearing appearance
\$10.93	09/14/2022	UPS: Mailing of letter re: Plaintiff's engineer

Therefore, based on the above, the Court GRANTS a total of \$6,967.79 for attorney fees, costs, and expenses; it is hereby

ORDERED, that pursuant to the Court's November 30, 2022 Decision and Order, Plaintiff is entitled to attorneys' fees in the amount of \$6,819.29, and costs and expenses in the amount of \$148.50; it is hereby

ORDERED, that the Clerk of the Court is directed to enter a money judgment against Defendants 1313-45 REALTY LLC, DAVID SINGER, and NAOMI SINGER, joint and severally in favor of Plaintiffs, 4413 LLC, BENNETT MARKS, and STEWART MARKS, in the amount of \$6,967.79.

This constitutes the Decision/Order of the Court.

Dated: October 24, 2023

ENTER:



Hon. Robin K. Sheares, J.S.C.

For clerks use only
Motion Seq. # 04
MG
MD