

**ESRT One Grand Cent. Place, L.L.C. v Peoples
Foreign Exch., Corp.**

2023 NY Slip Op 34484(U)

December 20, 2023

Supreme Court, New York County

Docket Number: Index No. 654007/2021

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

ESRT ONE GRAND CENTRAL PLACE, L.L.C.

Plaintiff,

- v -

PEOPLES FOREIGN EXCHANGE, CORPORATION,

Defendant.

-----X

INDEX NO. 654007/2021

MOTION DATE 12/18/2023

MOTION SEQ. NO. 005 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 126, 127, 128, 129, 130

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 131, 132, 133, 134, 135, 136, 138, 139, 140, 141

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

Motion Sequence Numbers 005 and 006 are consolidated for disposition. In both motions, plaintiff seeks reasonable legal fees. Plaintiff apparently filed a second motion for the exact same relief because it did not file the notice of motion and the affirmation in support as separate documents for motion sequence 005. The amount of reasonable legal fees will be determined at a hearing.

Background

On November 6, 2023, this Court granted plaintiff’s motion for summary judgment and awarded it a judgment for \$41,655 arising out of the commercial lease signed by defendant (NYSCEF Doc. No. 120). The order also directed plaintiff to make a motion for legal fees and the instant application followed.

Plaintiff seeks \$37,691 and includes a chart detailing how much time its counsel expended on each task (NYSCEF Doc. No. 134).

In opposition, defendant complains that plaintiff is improperly seeking legal fees for the time before the lease expired. It insists that under the terms of the lease, the landlord can only recover as additional rent any legal fees that arose due to the tenant's default if it sends a bill or invoice for that amount. Defendant argues that plaintiff does not allege that it ever sent a bill for any amounts that accrued prior to the expiration of the lease.

Defendant also observes that plaintiff is not entitled to recover the amounts that it incurred from the settlement negotiations as that document (which both parties signed) stated that each party would bear their own costs. It also argues that plaintiff should not recover legal fees for filing the default judgment motion because defendant's counsel had passed away and that rendered any motion a nullity as the case was stayed. Defendant insists that plaintiff should not be able to recover the fees it expended in opposition to the motion to vacate the default judgment or a stipulation to extend a deadline and that the fees spent in replying to the summary judgment motion were excessive. It also points out that plaintiff seeks to recover for discovery requests that it never sent.

In reply, plaintiff points out that it sent an invoice for fees dated June 12, 2021 and that the lease expiration date was May 31, 2021. Plaintiff argues that it is entitled to recover for the settlement agreement because that agreement never became effective. It also insists that it was not aware of the death of defendant's attorney when it made the default judgment motion. Plaintiff admits that it never served the discovery demands but argues it is still entitled to recover these fees.

Discussion

“In determining reasonable compensation for an attorney, the court must consider such factors as the time, effort, and skill required; the difficulty of the questions presented; counsel's experience, ability, and reputation; the fee customarily charged in the locality; and the contingency or certainty of compensation. While a hearing is not required in all circumstances, the court must possess sufficient information upon which to make an informed assessment of the reasonable value of the legal services rendered” (*People's United Bank v Patio Gardens III, LLC*, 143 AD3d 689, 691, 38 NYS3d 262 [2d Dept 2016] [internal quotations and citations omitted]).

Clearly, there is a need for a hearing in this case because the parties have multiple disputes concerning the reasonableness of plaintiff's legal fees including, but not limited to, the amount expended in drafting the reply papers and the fees related to both the default judgment motion and the opposition to defendant's motion to vacate the default. As is its right, defendant has contested the vast majority of the fees for which plaintiff seeks recovery.

The hearing shall take place virtually on February 6, 2024 at 10 a.m. The parties shall upload any exhibits they plan to use at the hearing by January 30, 2024 (even if these exhibits have been uploaded in connection with the instant motion or some prior motion). Any documents not uploaded by January 30, 2024 cannot be used at the hearing, absent good cause shown (i.e., for rebuttal purposes). The Court also observed that plaintiff may request legal fees incurred in connection with its preparation for the hearing and the hearing itself, although the Court may, or may not, award such fees depending on the outcome of the hearing.

In order to assess reasonableness, it would be very helpful if the plaintiff organized its testimony on a project basis as opposed to line-by-line entries. For example, from the time the client came into the office until the complaint was filed took “X” hours, motion sequence 001

took "X" hours, etc. In other words, grouping key action items or events is usually better than going through every single time entry.

12/20/2023

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE