

**Inwood Gardens, Inc. v Udoh**

2023 NY Slip Op 34696(U)

October 10, 2023

Civil Court of the City of New York, New York County

Docket Number: Index No. L&T 66616/14

Judge: Travis J. Arrindell

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART C

-----X  
INWOOD GARDENS, INC.,

Petitioner - Landlord,

**DECISION AND ORDER**

v.

CHARLES UDOH,

L&T 66616/14

Respondent – Tenant,  
-----X

Present: HON. TRAVIS J. ARRINDELL  
Judge, Housing Court

Recitation, as required by CPLR §2219(A), of the papers considered in the review of Petitioner’s Motion to Restore for Attorney’s Fees and Petitioner’s Motion to Quash Respondent’s Subpoena:

Papers	Numbered
Petitioner’s Motion to Restore (Numbered 16-21 on NYSCEF).....	1
Respondent’s Opposition (Numbered 24 on NYSCEF) .....	2
Petitioner’s Reply (Numbered 22-23 on NYSCEF) .....	3
Petitioner’s Motion to Quash (Numbered 31-38 on NYSCEF).....	4
Respondent’s Opposition (Numbered 54-56 on NYSCEF).....	5
Petitioner’s Reply (Numbered 57 on NYSCEF) .....	6
Subpoena (Numbered 38 on NYSCEF .....	7

TRAVIS J. ARRINDELL, J.:

After review of all the papers, this Court denies Petitioner’s motion for an order restoring this matter for a determination on attorney’s fees because Petitioner is unable to establish that they are a prevailing party. Furthermore, this Court grants Petitioner’s motion seeking to quash Respondent’s subpoena.

**Facts**

This case has a long-protracted history, including two appeals to the Appellate Term, which this Court will not detail here. In the instant proceeding, Petitioner commenced this non-payment alleging that Respondent failed to pay \$12,011.92 in rental arrears.<sup>1</sup> Petitioner, in their most recent reply, states that \$6,739.70 of the \$12,011.92 represented surcharges assessed against the Respondent because they failed to certify their income.<sup>2</sup> Because of Respondent’s failure to pay the above rental arrears, Petitioner sought both a possessory and monetary judgment.<sup>3</sup> In response, Respondent denied he owed Petitioner \$12,011.92.<sup>4</sup> Respondent insisted

<sup>1</sup> See Petitioner’s Non-Payment Petition (NYSCEF Doc # 7) at ¶ 5-6.

<sup>2</sup> See Petitioner’s Reply Affirmation in Further Support of Motion to Quash and For A Protective Order and Attorney Fees, at ¶ 26.

<sup>3</sup> See Petitioner’s Non-Payment Petition (NYSCEF Doc # 7) at pg. 4.

<sup>4</sup> See Respondent’s Answer (NYSCEF Doc #85) at Exhibit C.

he did not owe any amount to Petitioner. Respondent also argued despite them timely providing Petitioner their annual income certifications, Petitioner had not taken the steps to rectify the late fees charged for their alleged failure to submit the certifications on time.<sup>5</sup> Finally, Respondent raised many other defenses; however, they were all later dismissed by the court.<sup>6</sup>

On April 30, 2018, The Hon. Anne Katz, after trial, found in favor of Petitioner.<sup>7</sup> The trial court issued a possessory and money judgment in the amount of \$5,329.72.<sup>8</sup> This amount was significantly less than what Petitioner sought in their pleadings.<sup>9</sup> The court credited Respondent's defense that they did in fact recertify their 2012 annual registration, invalidating Petitioner's \$306.09 monthly surcharge. The court also mentioned that even though Petitioner initially accused Respondent of not submitting their 2010 certification, Petitioner eventually found Respondent's 2010 income affidavit and gave them a credit of \$3,416.76 for the 2010 surcharges.<sup>10</sup> Additionally, the court also noted that surcharges based on a tenant's failure to verify income was a penalty and did not constitute "rent."<sup>11</sup> Consequently, the trial court held that "surcharges for failure to submit an income affidavit were not a proper subject of a summary non-payment proceeding."<sup>12</sup>

### Legal Discussion

To determine whether a party has 'prevailed' for the purpose of awarding attorneys' fees, the court must consider the 'true scope' of the dispute litigated and what was achieved within that scope. To be considered a 'prevailing party,' one must simply prevail on the central claims advanced, and receive **substantial relief** in consequence thereof.<sup>13</sup>

In *Amato v. Dayton Beach Park No.1 Corp.*, 201 A.D.3d 684, 685 (2d Dep't 2022), a case in which Petitioner relies upon, the court found the landlord was the prevailing party. The landlord sought \$11,079.33 in rental arrears. Unrelated to rent, charges amounting to \$2,079.33 were severed by the court, providing a final judgment of \$9,000. The court stated,

the defendant secured a judgment ... that included all of the maintenance and electricity arrears it sought, as well as a possessory judgment.... The remaining categories of unpaid fees, which were **relatively minor** in comparison, were severed. Thus,

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<sup>5</sup> Id.

<sup>6</sup> See the Hon. Anne Katz's Decision/Order dated April 30, 2018; See also the Hon. Jack Stoller's Decision/Order dated February 16, 2017 (dismissing Respondent's defenses regarding the use of a parking space, and property damage pursuant to Petitioner's summary judgment motion).

<sup>7</sup> See the Hon. Anne Katz's Decision/Order dated April 30, 2018.

<sup>8</sup> Id., at pg. 8.

<sup>9</sup> See Petitioner's Non-Payment Petition (NYSCEF Doc # 7) at ¶ 5-6.

<sup>10</sup> Id., at pg. 7.

<sup>11</sup> Id.

<sup>12</sup> Id. (citing Riverbay Corporation v. Carrey, supra, 29 Misc.3d 855, 906 NYS2d 744 (2010)).

<sup>13</sup> See Sykes v. RFD Third Ave. I Assoc., LLC, 39 A.D.3d 279, 279 (emphasis added) (citations omitted).

contrary to the plaintiffs' contention, the defendant sufficiently prevailed in that proceeding.<sup>14</sup>

The landlord successfully secured 81% of the total arrears they sought.

In contrast, in Park Towers Tenants Corp. v. Gashi, NYLJ 9/21/94, 21:1 (AT1 Parness; McCooe, Glen) the court found the landlord failed to show they were a prevailing party. Only maintenance charges remained after the court vacated the landlord's recovery of late charges and attorney's fees, reducing the landlord's judgment. The court held that "since the landlord has not prevailed on the issues of late charges, which represented a substantial portion of the arrears sought in the petition, it should not be deemed a 'prevailing party' entitled to the recovery of attorney's fees."<sup>15</sup> The late charges represented approximately 40% of what the landlord sought at trial.<sup>16</sup> Moreover, courts have ruled that if a party only recovers less than half of their initial claim, they may not be deemed the prevailing party. In Wheeler v. Andriani, NYLJ 3/19/01, 24:5 (AT1 Parness; McCooe, Davis) a tenant sued for their security deposit in the amount of \$4,275 after stopping payment on their final rent check in the amount of \$2850. The court determined the landlord did not have a basis to withhold the tenant's security deposit, however, the lower court erred when it failed to offset the security deposit by the tenant's failure to pay their last month's rent. Since the tenant's recovery of \$1,425.00 was "less than one-half the amount sued for," they are not a prevailing party.<sup>17</sup>

Here, Petitioner commenced the instant non-payment seeking a possessory judgment for respondent's failure to pay \$12,011.92 in rental arrears. After trial, the court awarded Petitioner a possessory and money judgment in the amount of \$5,329.72, less than half of what Petitioner sought. Petitioner, in their reply, states that the original \$12,011.92 included \$6,739.70 in surcharges.<sup>18</sup> The trial court noted surcharges based on the tenant's failure to verify income was a penalty and did not constitute "rent."<sup>19</sup> Consequently, the trial court found that "surcharges for failure to submit an income affidavit were not a proper subject of a summary non-payment proceeding."<sup>20</sup> Since Petitioner has not prevailed on the issues of surcharges, which represented a substantial portion of the arrears sought in their petition, they are unable to show they are the prevailing party.<sup>21</sup> Furthermore, the trial court also found that Respondent certified their 2012

<sup>14</sup> Amato v. Dayton Beach Park No.1 Corp., 201 A.D.3d 684, 686 (emphasis added).

<sup>15</sup> See Park Towers Tenants Corp. v. Gashi, NYLJ 9/21/94, 21:1 (AT1 Parness; McCooe, Glen); See also Balfour Owners Corp., v. Hopkins, NYLJ 3/2/99, 33:2 (AT 2 & 11 Kassoff, Aronin, Chetta) (after the lower court awarded the landlord a possessory and money judgment the Appellate Term held after striking landlord's late fees from the judgment, the landlord was no longer a prevailing party.)

<sup>16</sup> Id., at Hon. William P. McCooe's dissent.

<sup>17</sup> See Wheeler v. Andriani, NYLJ 3/19/01, 24:5 (AT1 Parness; McCooe, Davis); See also D.A.S. Contr. Corp. v. Nova Cas. Co., 14 Misc. 3d 1213(A) ("One who recovers less than 50% of the amount sought cannot reasonably be found to have obtained substantial relief.") (citing Excelsior 57th Corp. v Winters, 227 AD2d 146, 147, 641 N.Y.S.2d 675 [1st Dept 1996] [granting fees to landlord as "prevailing party" where landlord sought 54 months' rent and tenants received 4.5 months' abatement out of a total 24 months sought]).

<sup>18</sup> See Petitioner's Reply Affirmation in Further Support of Motion to Quash and For A Protective Order and Attorney Fees, at ¶ 26.

<sup>19</sup> See the Hon. Anne Katz's Decision/Order dated April 30, 2018, at pg. 7 (citing Riverbay Corporation v. Carrey, supra, 29 Misc.3d 855, 906 NYS2d 744 (2010)).

<sup>20</sup> Id.

<sup>21</sup> See Park Towers Tenants Corp. v. Gashi, NYLJ 9/21/94, 21:1 (AT1 Parness; McCooe, Glen); See also Balfour Owners Corp., v. Hopkins, NYLJ 3/2/99, 33:2 (AT 2 & 11 Kassoff, Aronin, Chetta) (holding after striking landlord's late fees from the judgment, the landlord was no longer a prevailing party.)

annual registration and Petitioner's surcharges were "inappropriate."<sup>22</sup> Additionally, Petitioner provided during the pendency of this case, and prior to trial, a credit for \$3,416.76 in surcharges to Respondent for his alleged failure in certifying their 2010 annual income. The trial court noted regarding Respondent's 2010 certification, though Petitioner accused Respondent of not submitting the 2010 certification, Petitioner did eventually locate Respondent's 2010 income affidavit.<sup>23</sup> Even if surcharges could be sought in this proceeding, Respondent has successfully offset the entire \$6739.70 in surcharges sought by Petitioner. Since Petitioner recovered less than half of what they originally sought, they are not a prevailing party.<sup>24</sup> Therefore, this Court denies Petitioner's motion to restore this matter for a determination on attorney's fees.

The Court grants Petitioner's motion to quash Respondent's subpoena. Respondent's attempt to use such subpoena to obtain a copy of the governing occupancy agreement in hopes to oppose Petitioner's motion for attorney's fees is now moot.<sup>25</sup> Furthermore, Respondent's request for an updated rent ledger appears to be an attempt to reconcile an alleged accounting error post-trial.<sup>26</sup> If Respondent is challenging the trial court's accounting, then a subpoena is an inappropriate mechanism to make such a challenge. If Respondent seeks to receive a "zero-out" ledger from Petitioner, the continued litigation of this matter to obtain said ledger, under these circumstances, is also inappropriate.<sup>27</sup>

This constitutes the decision and order of the Court.

Dated: October 10, 2023  
New York, New York



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TRAVIS J. ARRINDELL  
JHC

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<sup>22</sup> See the Hon. Anne Katz's Decision/Order dated April 30, 2018, at pg. 7.

<sup>23</sup> Id.

<sup>24</sup> See Wheeler v. Andriani, NYLJ 3/19/01, 24:5 (AT1 Parness; McCooe, Davis); See also D.A.S. Contr. Corp. v. Nova Cas. Co., 14 Misc. 3d 1213(A) ("One who recovers less than 50% of the amount sought cannot reasonably be found to have obtained substantial relief.") (citing Excelsior 57th Corp. v Winters, 227 AD2d 146, 147, 641 N.Y.S.2d 675 [1st Dept 1996] [granting fees to landlord as "prevailing party" where landlord sought 54 months' rent and tenants received 4.5 months' abatement out of a total 24 months sought]).

<sup>25</sup> See Respondent's Affirmation in Opposition (NYSCEF Doc. No. 54) at ¶ 22.

<sup>26</sup> Id., at ¶ 33.

<sup>27</sup> Id., at ¶ 36.