

Gedula 26, LLC v Lightstone Acquisitions III LLC

2024 NY Slip Op 33274(U)

September 12, 2024

Supreme Court, New York County

Docket Number: Index No. 653977/2014

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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GEDULA 26, LLC, 485 SHUR LLC, BSD 777-26
MANAGER LLC, BSD SHEVA MANAGER LLC,

Plaintiffs,

- v -

LIGHTSTONE ACQUISITIONS III LLC, 485 SEVENTH
AVENUE ASSOCIATES LLC, THE LIGHTSTONE
GROUP, LLC,

Defendants.

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INDEX NO. 653977/2014

MOTION DATE 06/26/2024

MOTION SEQ. NO. 020

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 020) 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1165, 1167

were read on this motion for ATTORNEY FEES.

Plaintiffs Gedula 26, LLC, 485 Shur LLC, BSD 777-26 Manager LLC, and BSD Sheva Manager, LLC (collectively, the “Plaintiffs”) move for an Order (i) awarding reasonable attorneys’ fees in favor of Plaintiffs and against defendants Lightstone Acquisitions III LLC, 485 Seventh Avenue Associates LLC, and The Lightstone Group, LLC (collectively, “Defendants”) in the amount of \$53,796.25 or such other amount as determined by the Court, pursuant to the Decision After Non-Jury Trial dated June 12, 2024; (ii) awarding reasonable costs and disbursements in favor of Plaintiffs and against Defendants in the amount of \$1,824.00 or such other amount as determined by the Court, pursuant to the Decision After Non-Jury Trial dated June 12, 2024; and (iii) upon the awarding of legal fees and costs and disbursements in favor of

Plaintiffs, directing the Clerk of the Court to enter judgment accordingly. Defendants oppose this motion.¹ For the following reasons, Plaintiffs' motion is granted in part.

Following the nonjury trial of this action, the Court issued its Decision After Non-Jury Trial dated June 12, 2024 ("Decision") which held that Plaintiffs are entitled under Section 17 of the Purchase and Sale Agreement to reasonable attorneys' fees and court costs actually incurred specifically in connection with the Fourth Cause of Action for Breach of the Post-Occupancy Agreement (NYSCEF 1137). Plaintiffs were awarded \$322 in compensatory damages in connection with a one-day lockout based on per-diem rent for that day (*id.*).

"An award of attorneys' fees pursuant to such a contractual provision may only be enforced to the extent that the amount is reasonable and warranted for the services actually rendered" (*Kamco Supply Corp. v Annex Contr. Inc.*, 261 AD2d 363, 365 [2d Dept 1999]). "The determination of what constitutes a reasonable attorney's fee is a matter within the sound discretion of the Supreme Court" (*Lancer Indem. Co. v JKH Realty Group, LLC*, 127 AD3d 1035, 1035-36 [2d Dept 2015]). Among the factors to be considered 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 Freeman's Estate*, 34 NY2d 1, 9 [1974] [citations omitted]).

¹ The parties also filed letters relating to the appropriateness of Plaintiffs' reply brief (NYSCEF 1166, 1167). While the Court's trial decision did not include reply in the briefing schedule, the Court has considered portions of Plaintiff's reply in response to the arguments raised by Defendants.

Further, “[t]he issue of apportionment of an attorney’s fee is controlled by the circumstances and equities of each particular case, and the trial court is in the best position to assess such factors” (*Rodriguez v Ryder Truck Rental, Inc.*, 171 AD3d 963, 964 [2d Dept 2019]). The Court has the broad power and discretion to adjust and allocate an attorney’s fees to arrive at an appropriate fee calculation (*see Hernandez v Kaisman*, 139 AD3d 406, 407 [1st Dept 2016] [“The court was not required to reduce fees further to reflect a relative “lack of success”; the unsuccessful claims “involve[d] a common core of facts or were based on related legal theories, so that [m]uch of counsel’s time w[as] devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis”]).

As to the \$53,796.25 requested in attorney’s fees, Plaintiff submits through the affidavits of its attorneys that the firm arrived at that number by identifying the time entries from its regular billing records for attorney’s time actually expended and billed with respect to matters that included, in whole or in part, the claim for Breach of the Post-Occupancy Agreement (NYSCEF 1142 [“Gangemi Aff”] ¶¶26-29). Then, secondly, utilizing those targeted time entries (previously entered in Tabs3 by the attorneys), the firm prepared a separate excel spreadsheet compiling only those identical Tabs3 time entries that it asserts pertained, in whole or in part, to the claim for Breach of the Post-Occupancy Agreement (NYSCEF 1158 [the “Spreadsheet”]). Third, the firm attributed a percentage for each entire time entry to account for the percentage of time it believes was expended for legal services relating solely to the claim for Breach of the Post-Occupancy Agreement, ranging from 5 to 33 percent.

Defendants argue, among other things, that Plaintiff failed to explain why their requested attorneys’ fees are reasonable under the governing *Freeman* factors, and that their request of \$53,796.25 is not reasonable in light of a damages award of \$322. Defendants also cite an

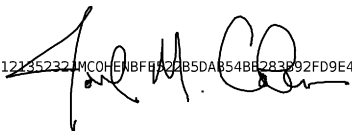
unrelated but purportedly similar case (*Lorraine Arms Apartments, LLC v Williams*, 74 Misc 3d 1207(A) [NY City Ct 2021]), in which attorneys' fees of \$2,505 were awarded.

Although Defendants arguments are not particularly persuasive, the Court is not comfortable with the amount requested. The claim on which Plaintiff prevailed was not factually or legal complicated and had little monetary value. Moreover, given that Plaintiff's application is based on essentially unreviewable post hoc judgment calls by counsel allocating the portion of time devoted to the particular claim as to which fees were ordered, there is a substantial risk that an award of fees would improperly compensate Plaintiff for claims as to which it did not prevail. Based on the Court's familiarity with the various claims in this case, it concludes that an award of \$10,000 for fees and costs with respect to this claim is fair and reasonable.

Accordingly, it is

ORDERED that Plaintiffs' Motion is **GRANTED IN PART**, and Plaintiffs are awarded legal fees and disbursements in the total amount of \$10,000.00 and the Clerk of the Court is directed to enter judgment accordingly upon submission by Plaintiffs.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

9/12/2024
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE