

207-209 W. 107th St. v de la Cruz
2026 NY Slip Op 32095(U)
June 18, 2026
Civil Court of the City of New York, New York County
Docket Number: Index No. LT-314400-23NY
Judge: Yekaterina Blinova
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Civil Court of the City of New York
County of New York

Index # **LT-314400-23NY**

207-209 WEST 107TH STREET,

Petitioner(s)

Decision / Order

-against-

Mot seq 02

ORLANDO DE LA CRUZ,
JOHN DOE,
JANE DOE,

Respondent(s)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:
NYSCEF Doc Nos. 63 – 85.

Respondent in this licensee holdover proceeding moves (mot. seq. 02) for attorneys' fees following approximately two-year litigation, culminating in a stipulation of settlement wherein respondent was awarded succession of the subject rent-stabilized premises from the former tenant of record, Maria de la Cruz. The stipulation contained an attorneys' fees reservation provision. Respondent argues that because he prevailed on his succession claim, which prior to the stipulation of settlement was contested by petitioner, resulting in litigation, respondent is entitled to attorneys' fees.

In support of their motion respondent further presents a 1976 Lease for the subject premises between Maria de la Cruz, the former tenant of record, and Jemomil Realty Corporation (NYSCEF Doc No. 25). The lease document states, in paragraph 9:

“That in case of default in any of the covenants or if the premises become vacant, the Landlord may re-enter by means of summary proceedings or any other method prescribed by law, with or without notice of an intention so to do, and resume possession and relet the premises in his own name, without terminating this lease or in any manner affecting the obligation of the Tenant to pay the rent herein covenanted to be paid, in which event, however, there shall be credited to the account of the Tenant the amount received from re-letting after **deducting the expenses of such summary or other proceedings as may be necessary in order to regain possession under this provision**, as well as the cost of re-letting the premises, and re-pairing and redecorating if any, and the execution of a new lease for the same premises shall not terminate the tenant's liability or obligations hereunder, which shall in any event remain in full force and effect for the full term

of this lease and a Tenant, who has once vacated may not re-enter without the consent of the Landlord or his agents, and no act or thing done by the Landlord or his Agents during the term hereby granted, shall be deemed an acceptance or a surrender of said premises, and no agreement to accept a surrender of said premises shall be valid, unless the same be made in writing and personally sub-scribed by the Landlord. And the Landlord further reserves the right to rent the premises for a longer period of time than fixed in the original lease without releasing the original Tenant from any liability. The Tenant hereby expressly waives any and all right of redemption in the event the Tenant shall be dispossessed by judgment or warrant, of any court or judge, and the Tenant waives and will waive all right to trial by jury in any summary proceeding hereafter instituted by the Landlord against the Tenant in respect of the demised premises or in any action brought to recover rent or damages hereunder.”

Paragraph 16 of the document reads: “That this agreement shall be binding on the heirs, executors, administrators and assigns of both parties” (*Id.*)

Petitioner opposes the motion, arguing that (1) The Housing Stability and Tenant Protection Act (hereinafter “HSTPA”) amendment of RPAPL § 702 bars recovery of legal fees in summary eviction proceedings; (2) petitioner contests that the lease between the parties’ predecessors in interest contains an attorney’s fees provision; (3) petitioner also disputes that the lease in question was properly authenticated. Petitioner does not dispute respondent’s status as a prevailing party, respondent’s counsel’s qualifications, or the billing time presented by respondent in respondent’s motion.

DISCUSSION

The reciprocal provisions of Real Property Law § 234 continue to apply post-HSTPA (*201 Ave. A Corp. v Rizzo*, 66 Misc 3d 139(A), 120 NYS3d 697 [App Term 1st Dept 2020]). RPAPL §702, which defines what constitutes rent in a summary eviction proceeding, was amended as a part of 2019 HSTPA enactment to read as follows:

“Rent in a residential dwelling. (1) In a proceeding relating to a residential dwelling or housing accommodation, the term "rent" shall mean the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant

to a written or oral rental agreement. No fees, charges or penalties other than rent may be sought in a summary proceeding pursuant to this article, notwithstanding any language to the contrary in any lease or rental agreement.”

The clear intent of the statute is to preclude collection of non-rent charges as a part of summary eviction proceedings, rather than to abrogate RPL § 234.

Under RPL § 234, the prevailing party’s right to recover attorneys’ fees in actions or summary proceedings arises out of the lease. In succession cases, where the successor tenant is not the original signatory to the lease document (and perhaps neither is the landlord at the time of litigation), the successors in interest are bound to an attorneys’ fees clause in the original parties’ lease so long as the lease contains a provision making it binding upon the parties’ successors/assignees (*245 Realty Assocs. v. Sussis*, 243 AD2d 29, 33 [1st Dept 1998]); *530 Second Ave. Co., LLC v Zenker*, 67 Misc 3d 46, 2020 NY Slip Op 20063 [App Term 1st Dept 2020]).

Here, paragraph 16 of the lease makes it binding upon “the heirs, executors, administrators and assigns of both parties,” making any attorneys’ fees provision contained therein binding upon the parties now before the Court.

Petitioner’s next point of contention is that the lease does not in fact contain an attorneys’ fees clause, disputing that the wording of paragraph 9 of the lease constitutes a provision authorizing collection of attorneys’ fees in a summary proceeding. Through petitioner does not cite caselaw for this proposition, wording similar to that at issue here has been extensively litigated. The present state of appellate-level caselaw holds that the remedial intent of RPL § 234 encompasses language wherein the landlord is entitled to deduct costs and fees of a court proceeding from the proceeds of reletting being credited against the former tenant’s lease obligation, and creates a reciprocal claim to attorneys’ fees for respondents in eviction proceedings (*Graham Ct Owner’s Corp v Taylor*, 24 NY3d 742; 28; 5 NYS3d 348 [2015]).

Parenthetically¹, petitioner argues that the lease relied upon by respondent in this motion has not been authenticated. Respondent argues that the lease document was authenticated as a part of respondent's motion for summary judgment. The court notes that petitioner did not file opposition to that motion with its objection to the lease authentication. Additionally, the 1976 lease is admissible as an ancient document (*Southbridge Towers Inc. v Pion*, 25 Misc 3d 132(A), 132A [App Term 1st Dept 2009] citing *Tillman v Lincoln Warehouse Corp.*, 72 AD2d 40, 44-45, 423 NYS2d 151 [1979]).

Respondent seeks \$20,407.50 in attorneys' fees and \$64.10 in expenses for a total of \$20,471.60. Respondent's counsel was admitted to the New York State bar in 1982, and has practiced in the landlord-tenant area of law since that time, as an attorney with various landlord-tenant firms and organizations, and since the year 2016 as a partner in the firm that is the attorneys of record for respondent.

The Court may make its own determinations as to reasonableness of hourly billing rates for attorneys (*Delgado v Delgado*, 160 AD2d 385, 386 [1st Dept 1990]; *TAG 380 LLC v Estate of Howard P. Ronson*, 89 AD 3d 411, 412 [1st Dept 2011]). Here, however, the reasonableness of hourly billing rate or the number of hours billed is not questioned in petitioner's opposition papers, and therefore not at issue.

Based on the foregoing, respondent's motion for attorneys' fees is granted. Respondent is awarded a monetary judgment against petitioner in the amount of \$20,471.60, representing \$20,407.50 in attorneys' fees and \$64.10 in expenses. This constitutes the decision and order of this court.

Date: 6/18/26

YEKATERINA BLINOVA
JUDGE, HOUSING COURT

Judge of the Civil Court

¹ See FN 1 of Petitioner's Affirmation in Opposition, NYSCEF Doc No. 80.

CHECK ONE:
MOTION SEQ. #: 02
CHECK IF APPROPRIATE:

☐	CASE DISPOSED	☐	NON-FINAL DISPOSITION	☐	
☒	GRANTED	☐	DENIED	☐	OTHER
☐	SETTLE ORDER	☐	SUBMIT ORDER	☐	STAY CASE
☐	INCLUDES TRANSFER/REASSIGN	☐	FIDUCIARY APPOINTMENT	☐	REFERENCE

NOTES

Civ-GP-85