

3868 Broadway Realty LLC v Armynavydeals.com Corp.

2023 NY Slip Op 30467(U)

February 14, 2023

Supreme Court, New York County

Docket Number: Index No. 654467/2020

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK P. NERVO

PART IV

Justice

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3868 BROADWAY REALTY LLC,

INDEX NO. 654467/2020

Plaintiff,

- v -

ARMYNAVYDEALS.COM CORP., RICHARD GEIST

**AMENDED DECISION
FOLLOWING INQUEST**

Defendant.

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The Court issues this Amended Decision correcting scrivener’s errors which omitted the final judgment amount in its decision of January 26, 2023. The inquest in this matter was transferred to Part IV. By scheduling order, the Court directed that the inquest proceed on paper submissions (NYSCEF Doc. No. 15; *see* 22 NYCRR § 202.46). The Court has received plaintiff’s submission in support of damages (NYSCEF Doc. No. 16); no submissions in opposition have been filed.

Considering the procedural posture of this matter, namely defendant’s default, defendant is “deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v. Mendon Leasing Corp.*, 100 NY2d 62 [2003]). Accordingly, the only issue

OTHER ORDER – NON-MOTION

before the Court is “plaintiff’s conclusion as to damages” (*Curiale v. Ardra Ins. Co., Ltd.*, 88 NY2d 268 [1996]).

Upon consideration of plaintiff’s papers in support of damages, the Court finds plaintiff has established the following by admissible evidence sufficient to prove a viable cause of action, as required (*see Woodson v. Mendon Leasing Corp., supra.*; NYSCEF Doc. No. 16). Plaintiff owns certain real property located at 3868 Broadway in the City, County and State of New York, and leases both commercial and residential units at same (*id.* at p. 7, Ruhl Affidavit). Pursuant to a lease agreement, defendant leased a commercial unit from plaintiff (*id.* at p. 21). Defendant defaulted under the parties’ lease agreement, failing to make the requisite payments and vacated the premises on June 1, 2018 (*id.* at p. 9 and 43-44). The rent, taxes, and fees owed plaintiff for the aforementioned period, June 1, 2018, through January 3, 2019, total \$88,553.36 (*id.*).¹

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¹ The rent statement provides for a total outstanding balance of \$88,553.36 (NYSCEF Doc. No. 17 at Exhibit E p. 43-44). To the extent that plaintiff’s affidavit and counsel’s affidavit seek recovery in the amount of \$88,533.26 and \$88,533.36, respectively, the Court deems same to be scrivener’s errors and awards the amount provided by the rent statement.

The parties' lease agreement provides that defendant shall be responsible for plaintiff's attorney's fees resulting from defendant's default (NYSCEF Doc. No. 16 at p. 23 ¶18 "REMEDIES OF OWNER AND WAIVER OF REDEMPTION"). The Court is constrained, however, to note that the quality of the scanned lease submitted is only just sufficient to permit legibility – with great strain upon the reader. Notwithstanding, where attorney fees are authorized, either by statute or agreement, the fee sought must nevertheless be reasonable; where the fee is unreasonable, inflated, or needlessly incurred, the Court may dismiss the claim for attorney's fees (*American Motorists Ins. Co. v. Napco Sec. Systems Inc.*, 244 AD2d 197 [1st Dept 1997]; *Miller Realty Assocs. v. Amendola*, 51 AD3d 987 [2d Dept 2008]). In determining the reasonableness of attorney's fees, the Court considers the attorney's affidavit and submissions to elicit the "difficulty of the issues and the skill required to resolve them; the lawyers' experience, ability and reputation; the time and labor required; the amount involved and benefit resulting to the client from the services; the customary fee charged for similar services; the contingency or certainty of compensation; the results obtained and the responsibility involved" (*Bankers Federal Sav. Bank FSB v. Off West Broadway Developers*, 224 AD2d 376 [1st Dept 1996]).

Here, plaintiff seeks to recover \$26,100.00 for legal fees incurred in this matter (NYSCEF Doc. Nos. 16 at p. 6). However, while plaintiff's counsel has submitted an affirmation reciting the various legal considerations attendant to an award of attorney's fees, conspicuously absent from the affirmation is: the hourly rate charged for counsel's services, the amount of time expended on each action performed by counsel, or a recitation of the actions performed by counsel. Counsel's conclusions that it expended a reasonable amount of time and the hourly rate charge for such time was reasonable do not serve to substitute its judgment for that of the Court. Indeed, the Court cannot determine whether counsel's hourly rate is reasonable nor whether the amount of time expended was reasonable in the absence of an affirmation detailing same. Furthermore, it is unclear whether the judgment related to the attorney's fees would be entered in favor of the plaintiff, if plaintiff has already paid counsel, or plaintiff's counsel, if counsel has not yet received recompense for its services. The failure to submit admissible proof of damages at inquest necessarily fails to establish a parties' damages and outright dismissal of such claims is reasonable (*see e.g. Wine Antiques, Inc. v. St. Paul Fire & Marine Ins. Co.*, 40 AD2d 657 [1st Dept 1972]; *In re Estate of Goldberg*, 31 Misc.3d 1217(A) [Surrogates Court, Bronx County 2011]). Notwithstanding, the Court, in its discretion and as a courtesy, will permit plaintiff's counsel to submit further

proof sufficient for this Court to find counsel's billing reasonable including, but not limited to, the hourly rate charged for counsel's services, a detailed recitation of the amount of time expended on this matter, and in whose favor the judgment should be entered.

Finally, turning to the interest sought on the above awards, plaintiff prays for interest on the award. The Court finds that interest on the breach of the lease agreement, as a contract, should be calculated by the date of said breach (*Brushston-Moira Cent. School Dist. v. Fred H. Thomas Associates, P.C.*, 91 NY2d 256, 261 [1998]; *Rodriguez v. Moore-McCormack Lines*, 32 NY2d 425, 429 [1973]). As the defendant's breach continued from June 1, 2018, through January 3, 2019, the Court uses the midpoint of this continuing breach, September 17, 2018, as the date by which to calculate interest (CPLR § 5001[b]).

Accordingly, it is

ORDERED and ADJUDGED that plaintiff, 3868 BROADWAY REALTY LLC, 157 West 57th Street Apt. 39A New York, NY 10019, shall have judgment for breach of the lease agreement in the amount of \$88,553.36 as against defendants, ARMYNAVYDEALS.COM CORP, 33 West 8th Street New York, NY 10011, and RICHARD GEIST, 18 West 12th Street New York,

NY 10011, jointly and severally, with interest at the statutory rate from September 17, 2018, as calculated by the Clerk of the Court and together with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that plaintiff does not, at this time, recover for its third cause of action, attorney's fees, for want of admissible proof of the actions taken by counsel, the amount of time expended on these actions, and the hourly rate charged by counsel for such time; and it is further

ORDERED that plaintiff's counsel shall file additional evidence, as outlined herein, sufficient for the Court to award counsel's fees, via NYSCEF with courtesy copy to the Part via mail, no later than February 17, 2023. The failure to timely submit same shall constitute abandonment of the third cause of action; and it is further

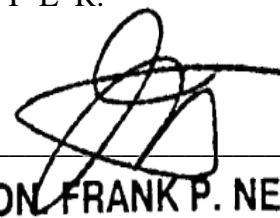
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ORDERED that judgment shall be submitted to the Clerk of the Court,
unless directed otherwise by that office, and not to chambers.

THIS CONSTITUTES THE DECISION, ORDER, AND JUDGMENT OF THE COURT FOLLOWING INQUEST.

Dated: February 14, 2023

E N T E R:

A handwritten signature in black ink, appearing to be 'Frank P. Nervo', written over a horizontal line.

HON. FRANK P. NERVO
J.S.C.