

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK : PART 84

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THOMAS CLOZEL and CHINE LABBE,

Index No. 11227/12

Plaintiffs,

-against-

Decision & Order

HASAN JALISI and AZRA JALISI,

Defendants.

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FRANK P. NERVO, J:

Plaintiff moves for attorney fees pursuant to terms of a residential lease, having succeeded by default on a claim for return of a security deposit of \$6,400 and treble damages. Plaintiff's counsel, Mayer Brown LLP, asserts it is due \$126,026.88, after waiving certain costs, such as research fees from vendors, and its usual fees for services of administrative personnel and docket clerks at \$110 to \$125 per hour. A hearing on the motion was conducted on December 2, 2013. Given the fact that the items billed for, and the number of hours allegedly spent on them, is incredible, the court finds there is no basis to award any fee. This is particularly true given the

additional fact that counsel is not even billing its client for legal services and by its own admission used the case to garner good will.

Plaintiff submits a fourteen (14) page statement for counsel services. This statement demonstrates much duplicated effort, research on the most basic and banal legal principles that a client could reasonably expect counsel charging minimally \$405 per hour would have prior knowledge of, not requiring review or oversight by a more senior associate, Jason I. Kirschner, at \$615 per hour and a partner, Lee N. Abrams, at \$895 per hour, all as unabashedly invoiced here. This is particularly egregious considering Mayer Brown LLP asserts it has attained a reputation as a "global law firm with a large litigation practice...routinely represent[ing] clients in connection with disputes arising from. . .landlord/tenant [matters]". For the sake of brevity, the court notes only the following as examples of the duplicative and unnecessary fees charged.

February 15, 2012: Counsel Bridget P. Kessler "Researched. . .Civil Court procedural rules and pleadings requirements; researched New York law regarding security deposits and Real Estate licensing; drafted New York City Civil Court complaint

seeking recovery of security deposit." Four and a half hours at \$405 per hour: \$1822.50. The court finds these are legal matters about which counsel is presumed to know and tasks that, even were they necessary, could have been performed within minutes. The court cannot discern any need to research the topic of real estate licensing, as it has nothing to do with the legal issue in question.

In a nearly identical billing notation the next day, movant notes:

February 16, 2012: "Researched...Civil Court procedural rules and pleading requirements; researched Maryland law regarding security deposits; researched New York state law regarding conversion of security deposits; drafted New York City Civil Court Complaint seeking recovery of security deposits."

Duplicating the effort of the prior day fails to make it any more warranted or valuable to the client, at a charge of \$405 per hour for four hours, another \$1620.00. The court will not award a fee for this simple task. While legal research may be billed for under appropriate circumstances, merely reading a court rule is not research.

On the following day, February 17, 2012, some part of four and a quarter hours was devoted to 'Revis[ing] a draft New York City Civil Court Complaint to recover security deposit; and on February 23, 2012, some part of an additional four and a half hours was spent again revising a draft complaint, albiet "based on additional factual information and legal research."

However, after spending nearly five hours drafting the complaint, the substance of which could well have been pled by a summons with endorsed complaint, over the period February 24, 25, 27, and March 2, 2012 seven hours were spent exclusively on reviewing emails and documentation related to the security deposit in issue. Counsel asserts spending seven hours at \$405.00 per hour, thus billing the matter \$2835.00, reviewing documentation related to a one time security deposit for which plaintiffs, as set forth in their eventual complaint, were in possession of a receipt. This is a grossly unnecessary amount of time for such a simple matter. Indeed, the basis upon which any attorney can actually occupy himself or herself over seven hours reviewing this nominal and uncomplicated material, in a simple case like this, defies imagination.

On March 12, 13, 14, and 27, 2012, counsel Kessler states that she spent four and three-quarter hours researching and discussing with her client and others trial strategy of the matter: \$1923.75. This court cannot envision the inordinate circumstances under which any trial of this matter - had it gone to trial - would extend beyond sixty minutes, and preparation for that trial, in view of the time purportedly spent on the matter previously, would require much more than another sixty minutes. Thus, the court can find no reasonable basis for this excessive allocation of hours and the resultant fee.

July 18, 19 and 20, 2012 counsel Kessler spent the better part of two hours researching, drafting, reviewing, conversing, conferring, and discussing with others, then revising and serving the Notice of Inquest. The Notice of Inquest is a one-sided Blumberg form requiring the preparer to add the caption of the matter, check off two boxes, and answering a series of eight rather basic questions to assure compliance with pretrial procedures, all of which were correctly noted as "Not Applicable" in this case. To demand compensation for two hours of professional or non-professional time over three days to accomplish this essentially ministerial task, asserting it required researching, drafting, conversing, conferring and

discussing of some sort, the court finds unbelievable.

Further demonstrating the incredibility of this entire submission for counsel fees, on July 18, 2012, counsel Kessler billed for her "research regarding inquest" and "enforcing judgements," obviously before judgment was even entered, as well as the time a paralegal expended requesting a New York Practice Series book, presumably from the library of Mayer Brown, LLP. There is simply no justification for billing for such tasks. Again, this is not legal research; rather, it is simply becoming familiar with basic court procedures that an attorney is presumed to know.

July 28 and 29, 2012, counsellor Kessler's hourly rate rose to \$475 per hour, required twenty six (26) hours over these two days to research a response to an order to show cause seeking vacatur of the default judgment, and the drafting of a memorandum of law. On July 31, 2012 that memorandum of law was drafted for the second time, and then revised at least twice on that same day over an additional eleven (11) hours, two of which purportedly required the undivided attention of more senior associate Jason I. Kirschner at \$670.00 per hour. True, as part of this submission an attorney's affirmation was required,

as well as an affidavit by the client and the compilation of some exhibits, and a hand full of emails did occur between various persons, however some of this was presumably accomplished on July 30th when associate counsel Kessler devoted an additional six (6) hours at \$475.00 to this opposition. Ms. Kessler was further assisted in this endeavor by a Mary T. Barbetta, apparently a lay person, for four and a half (4.5) hours at \$285.00 per hour, during which Ms. Barbetta created a table of authorities and reviewed the table of contents for the memorandum of law. Thus, at least fifty-two-and-one-half (52.5) hours of time were singularly devoted to preparing a simple opposition to an order to show cause seeking vacatur of a default judgment. This is a stunningly inordinate amount of time for such a simple task, and there is no basis to award compensation based on this incredible claim.

At the hearing of this motion on December 2nd, 2013 movant's counsel brought to the court's attention on more than one occasion that the representation by Meyer Brown LLP in this matter was "really, it was done as a favor" and "not looking to recover" anything from their clients, but rather as an accommodation for these clients. Consequently, it is apparent that the compensation anticipated by Mayer Brown LLP was that of

good will which is, on many occasions, inestimable.

While the Maryland fee statute and the loadstar analysis upon which movant relies provide for reasonable compensation of tenant's counsel in matters of this nature, the court will not countenance the gross overreaching evidenced under the facts and circumstances of this case in which the client is not even being billed for legal services. To move any court to put its imprimatur of approval on such practices is simply intolerable.

Under these circumstances, this court cannot and will not award any fees.

Accordingly, it is ordered that the motion is denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

New York, New York

E n t e r:

January 14, 2014

FRANK P. NERVO

Judge, Civil Court