

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

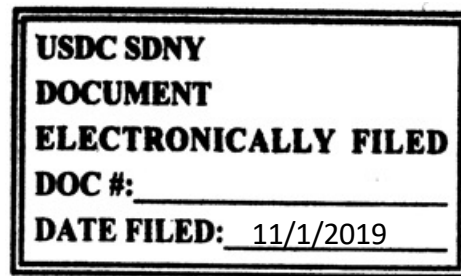
PMJ Capital Corp.,

Plaintiff,

-against-

The Lady Antoinette et al.,

Defendants.



1:16-cv-06242 (AJN) (SDA)

REPORT AND RECOMMENDATION

STEWART D. AARON, United States Magistrate Judge.

TO THE HONORABLE ALISON J. NATHAN, United States District Judge:

Before the Court is the motion of Defendant the New York Athletic Club of the City of New York Inc. ("NYAC") for attorneys' fees incurred by NYAC in this action totaling \$33,509.16. (NYAC Motion, ECF No. 186.)¹ For the reasons set forth below, I recommend that NYAC's motion be GRANTED.

BACKGROUND

The NYAC entered into a Vessel Berthing/Storage Agreement (the "Agreement") for the vessel "THE LADY ANTIONETTE" (the "Vessel") on or about a March 12, 2010 with defendant Frank Bauco ("Bauco"). (Rave Decl. ¶ 19.) Paragraph 19 of the Agreement states, in relevant part, as follows: "In the event Owner [i.e., Bauco] becomes delinquent in sums due NYAC, Owner shall be liable to NYAC for the amounts owed, plus interest at the legal rate, costs and reasonable attorneys' fees including any fees in connection with filing and enforcement of any liens. Owner

¹ In deciding this motion, the Court has considered NYAC's Memorandum of Law (NYAC Mem., ECF No. 188); and the declaration of Donald T. Rave in support of NYAC's motion and the Exhibits appended thereto. (Rave Decl., ECF No. 187.) NYAC's motion for attorneys' fees is unopposed.

hereby grants to the NYAC a lien against the Vessel for all unpaid lawful charges, including but not limited to past and current for berthing, storage, fuel, supplies, labor and services with respect to the Vessel . . .” (Rave Decl. Ex. K, ECF No. 187-11, at 2.)

Bauco failed to make the required payments under the Agreement and NYAC asserted a cross-claim in this action seeking from Bauco amounts due under the Agreement, plus attorneys’ fees. (NYAC Answer, ECF No. 28, at 5-6.)² Among the relief sought by NYAC against Bauco was that the maritime lien NYAC had against Bauco be declared a valid lien. (*See id.* at 5-6.)

In the instant action, Bauco defaulted (*see* Cert. of Default, ECF No. 52) and Judge Nathan on September 29, 2018 granted NYAC’s motion for entry of a default judgment against Bauco in the amount of \$55,016.07, plus prejudgment interest. (9/29/18 Mem. Opinion & Order, ECF No. 158, at 8.) The Clerk of the Court entered a default judgment the same day, awarding to NYAC against Bauco \$55,016.07 in damages, plus prejudgment interest in the amount of \$9,536.62. (Default Judgment, ECF No. 160.)

In addition to granting a default judgment against Bauco, this Court also granted NYAC leave to request attorneys’ fees from Bauco. (9/29/18 Mem. Opinion & Order at 8.) NYAC filed a motion for attorneys’ fees on March 11, 2019,³ and that motion was referred to me on October

² Plaintiff PMJ Capital Corp. (“PMJ”) had commenced this action secure payment of the mortgage given on the Vessel by Bauco and his spouse. (Compl., ECF No. 1.) Because PMJ was seeking to take possession of the Vessel which Bauco kept at NYAC and because NYAC had filed a Notice of Claim of lien with the United States Coast Guard, PMJ named NYAC as a defendant in this action. (NYAC Mem. at 2 n.1.)

³ As reflected on the docket, NYAC initially filed its motion for attorneys’ fees on October 22, 2018, but on November 20, 2018, due to an error in the electronic filing, was directed to re-file the motion on and did so on November 21, 2018. (ECF No. 169.) However, because defendant Antoinette Bauco had filed a petition for bankruptcy on November 8, 2018, Judge Nathan issued an Order dated December 21, 2018 declaring NYAC’s refiled motion to be “void” because the action was automatically stayed by the November 8, 2018 bankruptcy filing. (ECF No. 174.) Judge Nathan granted NYAC leave to refile its motion

29, 2019. (Am. Order of Ref., ECF No. 207.) Bauco has failed to file any papers in opposition to NYAC's motion.

LEGAL STANDARDS

"Under New York law, a contract that provides for an award of reasonable attorneys' fees to the prevailing party in an action to enforce the contract is enforceable if the contractual language is sufficiently clear." *NetJets Aviation, Inc. v. Metro Found. Contractors, LLC*, 537 F.3d 168, 175 (2d Cir. 2008). "The party seeking fees bears the burden of demonstrating that its requested fees are reasonable." *Trs. of the N.Y.C. Dist. Council of Carpenters Pension Fund v. Golden Dev. & Constr. Corp.*, No. 17-CV-1051 (VSB) (JLC), 2017 WL 2876644, at *5 (S.D.N.Y. July 6, 2017) (quoting *1199/SEIU United Healthcare Workers E. v. S. Bronx Mental Health Council Inc.*, No. 13-CV-2608 (JGK), 2014 WL 840965, at *10 (S.D.N.Y. Mar. 4, 2014)). "Although courts may exercise discretion in determining what constitutes reasonable attorneys' fees, 'the lodestar—the product of a reasonable hourly rate and the reasonable number of hours required by the case'—creates a presumptively reasonable fee." *Id.* (quoting *Millea v. Metro-N. R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011)) (additional citations and quotation marks omitted).

To determine the reasonable hourly rate, the Court's analysis is guided by the market rate "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984). Generally, the relevant community is the district in which the district court sits. *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany*, 522 F.3d 182, 190 (2d Cir. 2008). The Court is to evaluate

for attorneys' fees upon the lifting of the automatic stay. (*Id.*) The stay was lifted on February 13, 2019 (ECF No. 179), and NYAC refiled the instant motion for attorneys' fees on March 11, 2019. (ECF No. 186.)

the “evidence proffered by the parties” and may take “judicial notice of the rates awarded in prior cases and the court’s own familiarity with the rates prevailing in the district.” *Farbotko v. Clinton Cty.*, 433 F.3d 204, 209 (2d Cir. 2005).

In making its determination, the Court “examines the particular hours expended by counsel with a view to the value of the work product of the specific expenditures to the client’s case.” *Luciano v. Olsten Corp.*, 109 F.3d 111, 116 (2d Cir. 1997). A court-awarded attorneys’ fee must compensate only for “hours reasonably expended on the litigation,” not for “hours that are excessive, redundant, or otherwise unnecessary.” *Hensley v. Eckerhart*, 461 U.S. 424, 433-34 (1983). If the number of hours recorded by counsel is disproportionate to the work performed, the Court should reduce the stated hours in making its fee award. *See id.* at 433.

DISCUSSION

I find that NYAC is entitled under the Agreement to the reasonable attorneys’ fees it incurred in connection with enforcement of its lien against the Vessel. Thus, I now turn to consideration of the hourly rates charged by NYAC’s counsel. NYAC was represented by Donald T. Rave, Jr., a maritime attorney with over 30 years of experience, and Stacey Tranchina, who also is an experienced maritime attorney. (Rave Decl. ¶¶ 8-9.) The hourly rates charged for their time was \$300 and \$225, respectively. (*Id.* ¶ 16.) These rates are within the reasonable range of rates for comparably experienced attorneys performing similar work. *See, e.g., Carlton Grp., Ltd. v. Par-La-Ville Hotel & Residences Ltd.*, No. 14-CV-10139 (ALC), 2016 WL 3659922, at *3 (S.D.N.Y. June 30, 2016) (“\$450 per hour is reasonable compensation for experienced partners and senior attorneys practicing in the Southern District of New York.” (citations omitted)).

The Court has examined the contemporaneous time records that identify, for each timekeeper, the hours expended on a task (Statements, ECF Nos. 187-1, 187-2, 187-3, 187-4, 187-5, 187-6, 187-7, 187-8, 187-9, 187-10 & 189-12), “with a view to the value of the work product of the specific expenditures to the client’s case.” *See Luciano v. Olsten Corp.*, 109 F.3d 111, 116 (2d Cir. 1997) (internal citations omitted). The Court finds that the hours expended are reasonable.

CONCLUSION

For the foregoing reasons, I recommend that NYAC’s motion for attorneys’ fees be GRANTED, and that NYAC be awarded attorneys’ fees in the amount of \$33,509.16.⁴

DATED: November 1, 2019
New York, New York



STEWART D. AARON
United States Magistrate Judge

* * *

NOTICE OF PROCEDURE FOR FILING OBJECTIONS TO THIS REPORT AND RECOMMENDATION

The parties shall have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. *See also* Fed. R. Civ. P. 6(a), (d) (adding three additional days when service is made under Fed. R. Civ. P. 5(b)(2)(C), (D) or (F)). A party may respond to another party’s objections within fourteen days after being served with a copy.

⁴ In two of its submissions, NYAC states that it is seeking the amount of “\$33,5019.16” in fees (NYAC Mem. at 7; Rave Decl. ¶ 14), but this obviously is a typographical error. The correct amount is set forth in NYAC’s motion, *i.e.*, \$33,509.16 (ECF No. 186).

Fed. R. Civ. P. 72(b)(2). Such objections, and any response to objections, shall be filed with the Clerk of the Court. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b). Any requests for an extension of time for filing objections must be addressed to Judge Nathan.

FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b); *Thomas v. Arn*, 474 U.S. 140 (1985).