

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

SEABOARD STAMFORD :
INVESTOR ASSOC., INC., :
Plaintiff, :
 :
-vs- : Civil No. 3:03cv1110 (PCD)
 :
THINKDIRECTMARKETING, INC.:
F/K/A DIGITAL ASSET :
MANAGEMENT, INC. :
Defendant. :

RULING ON PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT

Plaintiff moves for default judgment. For the reasons stated herein, Plaintiff’s motion is **granted** in part and **denied** in part.

I. Background

In June, 2003, Plaintiff filed a complaint seeking damages based on Defendant’s alleged breach of lease regarding property owned by Plaintiff [Doc. No. 1]. Pursuant to a lease, Defendant agreed to pay Plaintiff monthly rental installments during the term of the lease, which terminated on November 30, 2006 [Compl. ¶¶ 8, 9]. On January 27, 2003, Plaintiff notified Defendant that it was in breach of the lease for failure to pay the monthly rental payments for December, 2002 and January, 2003 [Compl. ¶ 11]. Plaintiff gave Defendant until March 1, 2003 to cure its breach [Compl. ¶ 11]. Defendant failed to cure, and on March 4, 2003 Plaintiff terminated the lease [Compl. ¶¶ 12, 13]. On April 28, 2003, Defendant vacated the property, and to date has not cured its breach [Compl. ¶¶ 16, 17].

On September 11, 2003, Plaintiff’s motion for default for failure to plead was granted, and default was entered against Defendant [Doc. No. 6]. The endorsement

entering default clearly stated that “dismissal will enter” pursuant to FED. R. CIV. P. 41(a) if Plaintiff did not file a motion for default judgment within 30 days [Doc. No. 6]. On October 14, 2003, Defendant filed its belated answer [Doc. No. 8]. On October 17, 2003, the Court entered an Order of Dismissal because Plaintiff failed to file a motion for default judgment within 30 days of the entry of default [Doc. No. 9]. The case was closed, and Plaintiff promptly filed a motion for relief from the Order dismissing the case [Doc. No. 10]. The Court construed such as a motion to reopen, granted the motion and vacated the Order of Dismissal, and clearly stated that “the default entered on September 11, 2003, 2003 will stand as not vacated by the filing of an answer by the appearing Defendant” [Doc. No. 12]. On November 18, 2003, Plaintiff moved for default judgment [Doc. No. 13]. Defendant has not opposed Plaintiff’s motion.¹

II. Standard

“While a party’s default is deemed to constitute a concession of all well pleaded allegations of liability, it is not considered an admission of damages.” *Greyhound Exhibitgroup v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir. 1992), *cert. denied* 506 U.S. 1080, 122 L. Ed. 2d 357, 113 S. Ct. 1049 (1993) (citation omitted). When determining damages, a district court “may conduct such hearings or order such references as it deems necessary.” FED. R. CIV. P. 55(b)(2). However, a hearing is not necessary so “long as [the district court] ensure[s] that there [is] a basis for the damages

¹ On December 8, 2003, Defendant’s motion to vacate default for failure to answer was denied without prejudice for failure to comply with the service/filing requirements of this Court’s Supplemental Order [Doc. No. 17]. The docket does not indicate that Defendant filed a certificate of service reflecting that it has renewed this motion in compliance with the Supplemental Order. Moreover, as noted above, Defendant has not filed an opposition to Plaintiff’s motion for default judgment.

specified in the default judgment.” *Transatlantic Marine Claims Agency v. Ace Shipping Corp.*, 109 F.3d 105, 111 (2d Cir. 1997). “Damages, which are neither susceptible of mathematical computation nor liquidated as of the default, usually must be established by the plaintiff in an evidentiary proceeding in which the defendant has the opportunity to contest the amount.” *Greyhound Exhibitgroup*, 973 F.2d at 158.

III. Discussion

Plaintiff seeks \$355,427.95, which includes \$326,926.80 based on Defendant’s arrears and the contract provision permitting Plaintiff to seek 36 months of rent in the event of default, \$4,435.00 for attorney’s fees, \$868.04 for costs, and \$23,198.11 for prejudgment interest. Pl. Mot. for Def. J. at 2.

A. Attorneys’ Fees and Costs

Article 46 of the parties Lease provides that

In any action or proceeding which Landlord or Tenant may be required to prosecute to enforce its respective rights hereunder, the unsuccessful party in such action or proceeding agrees to pay all costs incurred by the prevailing party therein, including reasonable attorneys’ fees.

Plaintiff submits an affidavit, time records, and cost records to support its application for costs [Doc. No. 14 and 15].

In determining reasonable attorneys’ fees, courts typically begin with the lodestar method. *See Societa Bario E Derivati, S.p.A. v. Kaystone Chem., Inc.*, No.

5:90cv599(EBB), 1998 WL 182563, at *11 (D. Conn. Apr. 15, 1998) (“strong

presumption that the lodestar figure represents a reasonable fee”); *see also Kaplan v.*

Gruder, No. CV960334308S, 2000 WL 767679, at *1 (Conn. Super. Ct. May 25, 2000).

The lodestar method uses the number of hours reasonably expended in the litigation (excluding excessive, redundant, or otherwise unreasonable hours) multiplied by the reasonable market rates for the services rendered. *Blanchard v. Bergeron*, 489 U.S. 87, 94, 103 L. Ed. 2d 67, 109 S. Ct. 939 (1989).

1. Hourly Rate

Prior to reaching the question of hours, Plaintiff must establish that the hourly rate sought is reasonable. Fee applicants must “produce satisfactory evidence — in addition to the attorneys’ own affidavits — that the requested rates are in line with those prevailing in the community for similar lawyers of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895-96 n.11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984). The award may be based in part on knowledge of hourly rates charged in a community and is not limited to the submitted evidence. *Miele v. N.Y. State Teamsters Conf. Pension & Ret. Fund*, 831 F.2d 407, 409 (2d Cir. 1987).

Stephanie A. McLaughlin, an Associate, billed at a rate of \$175 per hour and \$195 per hour. There is no substantiation of the hourly rates requested. Although Plaintiff contends that its billing rates are reasonable, it has not met its burden of producing sufficient supporting evidence. The claimed hourly rates are too high and do not reflect the prevailing market rates in Connecticut for the services actually and necessarily rendered. Rates therefore will be assigned based on knowledge of rates charged by counsel in this District. *See Smart SMR of N.Y., Inc., v. Zoning Comm’n of Stratford*, 9 F. Supp. 2d 143, 150 (D. Conn. 1998); *Evans v. Conn.*, 967 F. Supp. 673, 691-92 (D. Conn. 1997); *see also Bizzoco v. Chinitz*, 193 Conn. 304, 310, 476 A.2d 572 (1984)

(“courts may rely on their general knowledge of what has occurred at the proceedings before them to supply evidence in support of an award of attorney’s fee”).

Accordingly, McLaughlin’s hourly rate is reduced to \$150 per hour.

2. Number of Hours

Plaintiff’s attorney represents that she has spent 24.2 hours on this case.

Defendant does not argue that the hours are unreasonable, and a review of the time records does not indicate that the hours are unreasonable.

Accordingly, Plaintiff is credited for 24.2 hours.

3. Calculation of Attorneys’ Fees: Hourly Rate Times Hours

Multiplying Plaintiff’s hourly rate of \$150 per hour times 24.2 hours, the amount of attorneys’ fees is **\$3630.00**.

4. Costs

Plaintiff seeks \$868.04 in costs, including court fees and Marshall fees.

Defendant does not argue that such costs are unreasonable, and a review of the records submitted by Plaintiff does not indicate that the costs are unreasonable. Accordingly, Plaintiff is credited **\$868.04** in costs.

5. Calculation of Attorneys’ Fees Plus Costs

Adding the amount of attorneys’ fees \$3630.00 plus costs of \$868.04, the amount of attorneys’ fees plus costs is **\$4498.04**.

B. Damages for Breach of Contract

Plaintiff seeks \$326,926.80 based on Defendant's arrears and the contract provision permitting it to seek 36 months rent in the event of default, plus \$23,198.11 prejudgment interest.

Article 27 of the Lease provides that

. . . [i]n the event of the termination of this Lease, Landlord may, at Landlord's option, recover from Tenant as and for liquidated damages with respect thereto, an amount equal to the Rent reserved hereunder for the unexpired portion of the Term, except that such sum shall in no event exceed a sum equal to thirty-six (36) months of Rent.

In its motion to vacate default, which was denied for failure to comply with the Court's Supplemental Order, Defendant argued that "the precise calculation of damages cannot be determined at this point in time, as the leased premises [have] not been subleased or leased to a third party" [Doc. No. 16].

"[I]n an action for damages for breach of a lease, the injured party is under a duty to mitigate his or her damages." *Rokalor, Inc. v. Connecticut Eating Enterprises, Inc.*, 18 Conn. App. 384, 390 (1989) (citing *Danpar Associates v. Somersville Mills Sales Room, Inc.*, 182 Conn. 444, 446 (1980)). The record is bereft of any evidence that Plaintiff has acted to mitigate damages. The only clear damages Plaintiff has suffered arise from Defendant's failure to pay rent from December 1, 2002 (when the breach started) through April 28, 2003 (when Defendant vacated the property).

Accordingly, Defendant is liable for its unpaid rent between December 1, 2002 and April 28, 2003. The lease modification sets rent during this period at \$6358.33 per

month. Lease Mod. Agr. ¶ 3. Defendant is liable for five months rent for the time it occupied the premises but did not pay rent, for a total of **\$31,791.65**.²

IV. Conclusion

For the reasons stated herein, Plaintiff's motion for default judgment [Doc. No. 13] is **granted** in part and **denied** in part. Plaintiff is awarded **\$4498.04** for attorneys' fees and costs and **\$31,791.65** in damages for arrears in unpaid rent, for a total of **\$36,289.69**.

SO ORDERED.

Dated at New Haven, Connecticut, December ____, 2003.

Peter C. Dorsey
United States District Judge

² Plaintiff also requests prejudgment interest, and calculates this amount based on its requested \$326,926.80 for breach of lease. It is unclear how Plaintiff calculated the interest, and should Plaintiff wish to seek prejudgment interest on the amount actually awarded, it may file a motion and make its calculations clear.