Memorandum of Judgment

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

John Ovnik, Kimberlee Ovnik, and
Chicago Music Works, Inc.
d/b/a Deaf Dog Music

v.

Vadim Goshko, *et.al.*

1713116103

Doc# 1713116103 Fee $56.00

KAREN A.YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 05/11/2017 03:52 PM PG: 1 OF 10

Case No. 13 L 12989

NOTICE OF JUDGMENT LIEN

On July 6, 2016, a judgment in the amount of $19,125.00 (the "*Judgment*") was entered in the Circuit Court of Cook County, Illinois (the "*Court*") in favor of Kimberlee Ovnik ("*Ovnik*"), and against Vadim Goshko ("*Goshko*"). Additionally, on October 5, 2016, a judgment for attorneys' fees, costs, and interest was awarded by the Court in favor of Ovnik and against Goshko in the amount of $25,200.00 (the "*Fees Judgment*"). Certified copies of the Judgment and the Fees Judgment, totaling $44,325.00, are attached hereto.

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JOHN OVNIK, KIMBERLEE OVNIK and CHICAGO MUSIC WORKS, INC. d/b/a Deaf Dog Music,	)	
Plaintiffs,	)	No. 13 L 12989
vs.	)	Honorable Patrick J. Sherlock
GALINA PODOLSKEY and VADIM GOSHKO,	)	
Defendants.	)	

ORDER

This order addresses Plaintiff's Petition for Fees, Costs and Interest.

1. In this case, the three plaintiff tenants sought return of two security deposits of $6,375, totaling $13,132.50, which they paid to defendants to secure three residential leases. Defendants did not return the security deposits at the end of plaintiffs' tenancy. Plaintiffs filed this suit to obtain return of the deposits and for statutory penalties, interest and attorney fees under the Chicago Residential Landlord Tenant Ordinance. Defendants counterclaimed for damage to the property.

2. The claims for security deposits made by plaintiffs John Ovnik and Chicago Music Works, Inc. were arbitrated together with defendants' counterclaim. The two arbitrating plaintiffs requested an award in the amount of the two security deposits, statutory penalties under RLTO in twice the amount of the security deposits, interest and

reasonable attorney fees. (Plaintiffs' Statement of the Case pursuant to Circuit Court Rule 25.8 at 7) Plaintiffs presented a fee petition to the arbitrator. At the hearing, they requested attorney fees in the amount of $24,000. On July 20, 2015, the arbitrator awarded Chicago Music Works, Inc. the sum of $21,187.86 and found against defendants on their counterclaim. The arbitrator did not make any award to John Ovnik. None of the parties rejected the award. On September 9, 2015, the Court entered judgment on the award.

3. The claim of Kimberlee Ovnik ("Ovnik") continued before this Court. On July 6, 2016, the Court entered summary judgment in favor of Ovnik in the amount of $19,125 and granted her leave to file her petition for attorney fees and interest on the security deposit.

4. Ovnik's petition for attorney fees and interest states that the attorney fees to date exceed $55,000. Ovnik concedes that the work covered by the attorney fee petition in large part involves issues that were pertinent to all three plaintiffs. The petition does not mention the fee proceedings in the arbitration. The petition and accompanying affidavit of counsel explain that Ovnik is not seeking attorney fees for work in amending the complaint to include Chicago Music Works or for enforcing the judgment against Chicago Music Works. The petition asks for a total of $47,585 in fees, $619.90 in costs and $995.10 in interest.[1]

5. Defendants object to the petition on numerous grounds involving the reasonableness of the fees and adequacy of the time records. Another objection is based on the other plaintiffs' petitioned for attorney fees in the arbitration proceeding for the same

work that is included in Ovnik's pending petition. Defendants contend that the issue of $24,000 of the fees has already been adjudicated and that Ovnik is accordingly estopped from obtaining those fees.

6. A party will be collaterally estopped from re-litigating an issue where (1) the issue decided in the first lawsuit is identical with the one presented in the current lawsuit, (2) there was a final determination on the merits in the first lawsuit, and (3) the party against whom estoppel is asserted was a party, or in privity with a party, in the first lawsuit. *Herzog v. Lexington Township,* 167 Ill.2d 288, 295 (1995). Arbitration awards generally have the same collateral estoppel and *res judicata* effect as court judgments. *Pepper Construction Company v. Palmolive Tower Condominium, LLC,* 2015 IL App (1st) 142754 at ¶ 73. In this case, there was both an arbitration award and a court judgment.

7. A portion—some $24,000—of the total attorney fees being sought by Kimberlee Ovnik's current petition was at issue in the arbitration. There was a final determination on the merits in the arbitration and the arbitrator's award was reduced to judgment. Kimberlee Ovnik was in privity with a party in the arbitration—her husband, John Ovnik. *GE Frankona Reinsurance Company v. Legion Indemnity Company,* 273 Ill.App.3d 969, 978 (1st Dist. 2007) (husband and wife are in privity when both of their claims are based on the same contractual right).

8. The Court accepts that Kimberlee Ovnik can seek attorney fees for work that covered issues common to all three plaintiffs and defendants' unsuccessful

[1] The interest breakdown includes an entry for "Post Judgment Interest from 7/14/13 to 8/3/16." This is clearly a typographical error that should have read "***Pre*** Judgment Interest."

counterclaim. She is, however, collaterally estopped from claiming the $24,000 in fees that was presented in the arbitration proceeding.

9. The Court has carefully reviewed Ovnik's fee petition, supporting affidavit of counsel and the time sheets. It finds that counsel's hourly rates are fair and reasonable, that the time entries are sufficiently specific, and that the amount of time allotted to the various tasks is reasonable. The Court further notes that the relatively large amount of fees given the amount in controversy was largely caused by the manner in which the defendants litigated the case. As an example, defendants filed five motions to dismiss and three motions to reconsider the Court's prior rulings.

10. The Court accordingly finds that Kimberlee Ovnik is entitled to recover the following:

Attorney and paralegal fees	$47,585.00
	(24,000.00)
Costs	619.90
Interest to 08/03/16	995.10
	$25,200.00

The Court declines to enter any interest which may have accrued after August 3, 2016 (the date of Ovnik's fee petition) because Ovnik did not provide the Court with the daily amount of interest accruing after that date.

* * *

WHEREFORE, by reason of the foregoing, it is hereby ordered:

A. Plaintiff's Petition for Fees, Costs and Interest is granted in part and denied in part.

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B. Judgment for attorney fees, costs and interest is hereby entered in favor of the plaintiff, Kimberlee Ovnik, and against the defendants, Galina Podolskey a/k/a Galina Podolskiy and Vadin Goshko, jointly and severally, in the amount of $25,200.00. $8001 $301

ENTER:

Judge Patrick J. Sherlock
OCT 6 5 2016
Circuit Court - 1942

Honorable Patrick J. Sherlock
Judge Presiding

I hereby certify that the document to which this certification is affixed is a true copy.
Date MAY 10 2017
Dorothy Brown
Clerk of the Circuit Court
of Cook County, IL

L.B.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JOHN OVNIK, KIMBERLEE OVNIK and CHICAGO MUSIC WORKS, INC. d/b/a Deaf Dog Music,	)	
Plaintiffs,	)	No. 13 L 2989
vs.	)	Honorable Patrick J. Sherlock
GALINA PODOLSKEY and VADIM GOSHKO,	)	
Defendants.	)	

ORDER

This order addresses Plaintiff's Motion for Summary Judgment.

1. The facts and history of this long-litigated security deposit case have been set forth in prior orders and need not be repeated here. The three plaintiff-tenants sought return of various security deposit payments made to the defendant landlords, as well as interest on the security deposits as required by the Chicago Residential Tenant and Landlord Ordinance (RLTO).

2. Certain of the plaintiffs' claims have been resolved by arbitration pursuant to Rule 25 of the Circuit Court of Cook County. Those claims were the claims for security deposit payments and interest allegedly made by the plaintiffs Chicago Music Works, Inc. and John Ovik, as well as the claims of the defendants in their counterclaim that plaintiffs have damaged the premises. On July 16, 2015, the arbitrator heard evidence on thee

claims. On July 20, 2015, he awarded Chicago Music Works, Inc. the sum of $21,187.86 on its security deposit and interest claims. He also found in favor of plaintiffs and against defendants on the counterclaim. None of the parties rejected the award. On September 9, 2015, this Court entered judgment on the award and made a finding of finality pursuant to Illinois Supreme Court Rule 304(a).

3. The claim of the remaining plaintiff, Kimberlee Ovnik, for the portion of the security deposit she paid, together with interest thereon for the years 2012 and 2013 as mandated by RLTO, was not arbitrated. Kimberlee Ovnik (hereafter "plaintiff") has now moved for summary judgment in her favor on those claims. She seeks return of her security deposit payment of $6,375.00, which was made on May 20, 2009.

4. The parties do not dispute that defendants did not return plaintiff's security deposit.

5. In response to the motion for summary judgment, defendants argue that plaintiff's claim is barred by the theories of *res judicata* or collateral estoppel by reason of the arbitration award. Defendants have made these arguments before. The Court has rejected them. (See Order of 12/15/14). Nothing has changed to require a change of the Court's opinion. Defendants also have presented evidence to support their claims that plaintiffs damaged the property. That issue, however, was heard by the arbitrator, who rejected defendants' claims.

6. The only remaining issue is the amount of the summary judgment to be entered in favor of Kimberlee. Her motion for summary judgment requests $19,145.56 plus attorney fees and accruing interest.

7. RLTO provides that when a landlord fails to return a security deposit, the tenant's damages are the amount of the deposit plus an additional sum equal to two times the amount of the deposit. RLTO 5-12-080(f)(1). In this case, that amounts to the $6,375.00, plus double the deposit ($12,750) for a total of $19,125.00. Plaintiff's motion for summary judgment requests $19,145.56. Plaintiff does not explain where the extra $20.56 comes from. Plaintiff's motion also requests continuing interest on the security deposit and an award of attorney fees and costs as a general matter, without computing those figures or presenting evidence in support. The requests for interest and attorney fees are authorized by RLTO 5-12-080(f) and 5-12-180.

8. Summary judgment is proper when the pleadings, depositions, admissions on file and affidavits, if any, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). The Court finds there is no genuine issue of material fact as to (a) plaintiff's payment of the security deposit, (b) the amount of the security deposit, (c) the defendants' failure to return the security deposit, and (d) the defendants' failure to pay interest on the security deposit. The Court further finds that the defendants' defenses to the claim for security deposit were already litigated in the arbitration proceedings, which found against defendants on their claims.

WHEREFORE, by reason of the foregoing, it is hereby ordered:

A. Plaintiff's Motion for Summary Judgment brought by Kimberlee Ovnik is granted.

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B. Summary Judgment is hereby entered in favor of the plaintiff, Kimberlee Ovnik, and against the defendants, Galina Podolskey a/k/a Galina Podolskiy and Vadim Goshko, jointly and severally, in the amount of $19,125.00. 4301

C. The plaintiff Kimberlee Ovnik is also entitled to recover her reasonable attorney fees, and interest on the security deposit, as provided in the Chicago Residential Landlord and Tenant Ordinance.

D. The plaintiff Kimberlee Ovnik is granted 28 days, to and including August 3, 2016, to file her petition for attorney fees and interest. 423 1

E. The defendants are granted 28 days thereafter, to and including August 31, 2016, to file their objections, if any, to the amount of the interest and attorney fees requested by the plaintiff. 4231

F. Plaintiff's petition is set for ruling on Sept 14, 2016 @ 10:15 6293

ENTER:

Judge Patrick J. Sherlock

JUL - 6 2016

Honorable Patrick J. Sherlock Circuit Court – 1942
Judge Presiding