

128 A.D.2d 425, 512 N.Y.S.2d 811
(Cite as: 128 A.D.2d 425, 512 N.Y.S.2d 811)

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Supreme Court, Appellate Division, First Department, New York.
Steven J. KUMBLE, Plaintiff-Respondent,
v.
WINDSOR PLAZA CO., et al., Defendants-Appellants,
and
Gail Sheehy, Defendant-Respondent. Action No. 1.
Harold HERMAN, as Trustee, Plaintiff-Appellant,
v.
Gail SHEEHY, Defendant-Respondent. Action No. 2.
Gail SHEEHY, Plaintiff-Respondent,
v.
Harold HERMAN, as Trustee, Defendant-Respondent. Action No. 3.
March 12, 1987.

After prevailing in damage action, the Supreme Court, New York County, Wright, J., entered judgment awarding tenant attorney fees, and landlord appealed. The Supreme Court, Appellate Division, held that tenant was entitled to an award of counsel fees from her landlord after prevailing in damage action, but since landlord demonstrably objected to specific amount claimed and services performed in papers it submitted in opposition, trial court should not have relied on attorney's affidavits alone in settling amount of award, but should have held an adversarial hearing for purpose of determining reasonable value of those services.

Affirmed as modified and remanded.

West Headnotes

[1] Costs 102 207

102 Costs
102IX Taxation
102k207 k. Evidence as to Items. [Most Cited](#)

Cases

Costs 102 208

102 Costs
102IX Taxation
102k208 k. Duties and Proceedings of Taxing Officer. [Most Cited Cases](#)
Tenant was entitled to an award of counsel fees from her landlord after prevailing in damage action, but since landlord demonstrably objected to specific amount claimed and services performed in papers it submitted in opposition, trial court should not have relied on attorney's affidavits alone in settling amount of award, but should have held an adversarial hearing for purpose of determining reasonable value of those services. [McKinney's Real Property Law § 234](#).

[2] Costs 102 208

102 Costs
102IX Taxation
102k208 k. Duties and Proceedings of Taxing Officer. [Most Cited Cases](#)
Consent by landlord's counsel to suggestion of trial court that, in light of just completed grueling nine-day trial with tenant, proof as to value of attorney's fees could be taken by affidavit rather than by testimony did not give rise to a waiver of right to contest amount claimed and services performed in an adversarial hearing.
**811 E.G. Williams, New York City, for Steven J. Kumble.

J.R. Metz, New York City, for Windsor Plaza Co., et al., and Harold Herman.

J.K. O'Neill, P. Murphy, R.F. Martin, L. Lynch, New York City, for Gail Sheehy.

Before SULLIVAN, J.P., and CARRO, MILONAS

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and ELLERIN, JJ.

MEMORANDUM DECISION.

Judgment, Supreme Court, New York County (Bruce McM. Wright, J.), entered May 19, 1986, which *inter alia* awarded plaintiff Steven J. Kumble \$15,000 damages and apportioned liability among Harold Herman, as trustee, and Windsor Plaza**812 Co. in the amount of 75%, A.J. Clarke Management Corp. in the amount of 20% and Gail Sheehy in the amount of 5%; directed immediate repairs of Sheehy's terrace; declared Sheehy's right to use the terrace; dismissed Harold Herman's action against Sheehy; and awarded Sheehy \$95,065.15 in attorney's fees; unanimously modified, on the law, to reverse the award of \$95,065.15 in attorney's fees and to remand the matter to the trial court for a hearing to determine the *426 reasonable value of Sheehy's attorney's fees, and otherwise affirmed, without costs.

[1] We agree with the trial court that defendant Gail Sheehy is entitled to an award of counsel fees from her landlord after prevailing in this action. ([Real Property Law § 234.](#)) However, we find that the trial court was unwarranted in relying on attorney's affidavits alone in settling the amount of the award. The landlord demonstrably objected to the specific amount claimed and the services performed in the papers it submitted in opposition at Trial Term. As such, questions of fact arise which require an adversarial hearing at which the reasonable value of the services may be determined. ([Weinberg v. Weinberg](#), 95 A.D.2d 828, 829, 464 N.Y.S.2d 20; [Feierstein v. Moser](#), 124 Misc.2d 369, 477 N.Y.S.2d 545.)

[2] Sheehy's contention that the landlord "waived" its right to a hearing in a "binding" agreement made during an informal colloquy before the trial judge is misplaced. It appears that at that bench conference the court suggested that, in light of the just com-

pleted grueling nine day trial, proof as to the value of attorney's fees be taken by affidavits rather than by testimony. That the landlord's counsel consented to that accommodation does not give rise to a waiver of a right to contest the amount claimed and the services performed. Given the extent of the nature of counsel's objections, affidavits alone will not suffice, and the reasonable amount of the fee must be proved in an adversarial hearing. (*E.g.*, *Weinberg, supra.*)

We have examined the other points raised on this appeal and find them to be without merit.

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