

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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KARINE GEVORKYAN, ARTHUR :
BOGORAZ, INNA MOLDAVER AND SAM :
MOLDAVER, :
Plaintiffs, :
 :
 :
-against- :
IRA JUDELSON, :
 :
Defendant. :
-----X

13 Civ. 8383 (RMB)

DECISION & ORDER

Having reviewed the record herein, and (i) Defendant’s letter, dated October 16, 2015, seeking costs and attorney’s fees, (ii) Plaintiffs’ opposition to Defendant’s request, dated October 16, 2015, and (iii) Defendant’s reply, dated October 19, 2015, the Court finds and directs as follows:

1. Under Federal Rule of Civil Procedure 54, a motion for attorney’s fees must be filed no later than 14 days after the entry of judgment. F.R.C.P. 54(d)(2)(B). This rule “was designed to ‘minimize the need for piecemeal litigation’ by ‘enabling the district court to make its ruling on a fee request in time for any appellate review.’”¹ Loss Prevention

¹ A notice of appeal in this case was filed by Plaintiffs on October 15, 2015. Ordinarily, “[t]he filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” Soley v. Wasserman, No. 08-CV-9262 KMW FM, 2014 WL 4798901, at *2 (S.D.N.Y. Sept. 25, 2014) (citing Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982)). However, the Second Circuit “ha[s] consistently held that ‘[w]henver a district court has federal jurisdiction over the case, it retains ancillary jurisdiction after dismissal to adjudicate collateral matters such as attorney’s fees.’” Tancredi v. Metro. Life Ins. Co., 378 F.3d 220, 225 (2d Cir. 2004) (quoting In re Austrian & German Bank Holocaust Litig., 317 F.3d 91, 98 (2d Cir. 2003)); see also Giuffre Hyundai, Ltd. v. Hyundai Motor Am., 574 F. App’x 30, 31 (2d Cir. 2014).

Works, LLC v. Mar. Networks, Inc., No. 10 CIV. 7616 DLC, 2011 WL 5838445, at *4 (S.D.N.Y. Nov. 21, 2011) (quoting Weyant v. Okst, 198 F.3d 311, 314 (2d Cir.1999)).

Because Defendant's letter seeking attorney's fees was filed on October 16, 2014 – 16 days after the Court's entry of judgment on September 30, 2014 – the motion is denied as untimely. See, e.g., Marchisotto v. City of New York, No. 05CIV.2699RLE, 2009 WL 2229695, at *5 (S.D.N.Y. July 27, 2009).

2. Assuming, arguendo, that Defendant's letter seeking attorney's fees were timely, the Court would likely deny Defendant's request on the merits. For one thing, there is no basis for awarding attorney's fees in this relatively straightforward breach of contract case. "Under New York law, 'generally, attorney's fees are not recoverable as damages in an action for breach of contract . . . unless expressly agreed to by the parties.'" McGraw-Hill Companies, Inc. v. Vanguard Index Trust, 139 F. Supp. 2d 544, 556 (S.D.N.Y.) (quoting Equitable Lumber Corp. v. IPA Land Development Corp., 38 N.Y.2d 516, 519 (N.Y. 1976)). "When an obligation to reimburse another party for its litigation expenses arises by contract, the terms of that agreement 'must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed.'" Goshawk Dedicated Ltd. v. Bank of New York, No. 06 CIV. 13758 (MHD), 2010 WL 1029547, at *6 (S.D.N.Y. Mar. 15, 2010) (quoting Hooper Associates, Ltd. v. AGS Computers, Inc., 74 N.Y.2d 487, 491-92 (N.Y. 1989)). Here, the language of the disputed Bail Bond Application "is not an unmistakably clear statement that such damages were intended," Bridgestone/Firestone, Inc. v. Recovery Credit Servs., Inc., 98 F.3d 13, 21 (2d Cir. 1996), and, therefore, Defendant is not entitled to attorney's fees. See Coastal Power Int'l, Ltd. v. Transcon. Capital Corp., 10 F.Supp.2d 345, 371

(S.D.N.Y.1998) (Absent “language clearly evidencing an intention that the loser in a suit for breach of the [contract] was intended to pay the winner's attorneys’ fees,” those fees are not indemnified.). Second, when seeking attorney’s fees, “the initial burden is on the requesting party to submit evidence supporting the number of hours worked and the hourly rate claimed.” Ceglia v. Zuckerberg, No. 10-CV-00569A F, 2012 WL 503810, at *5 (W.D.N.Y. Feb. 14, 2012). This evidence includes providing “contemporaneous billing records setting forth the date and amount of time when services were rendered, along with the name of the attorney and/or paralegals, and a description of the services performed.” See Barrella v. Vill. of Freeport, 56 F. Supp. 3d 169, 174 (E.D.N.Y. 2014). Having failed to provide any “contemporaneous billing records” or other evidence supporting the number of hours worked and the hourly rate claimed, Defendant has not satisfied his initial burden in seeking attorney’s fees. See, e.g., Vangas v. Montefiore Med. Ctr., No. 11 CIV. 6722 ER, 2014 WL 5786720, at *7 (S.D.N.Y. Nov. 5, 2014).

3. In addition to attorney’s fees, Defendant’s letter also requests reimbursement of costs in the amount of \$1,725.00. Under FRCP 54, “[u]nless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney’s fees – should be allowed to the prevailing party.”² FRCP 54(d)(1). Rule 54(d)(1) codifies a “venerable presumption that prevailing parties are entitled to costs.” Amash v. Home Depot U.S.A., Inc., No. 1:12-CV-837, 2015 WL 4642944, at *2 (N.D.N.Y. Aug. 4, 2015) (citing Marx v. Gen.

² “In order to be a prevailing party . . . a party must secure a judgment on the merits or a settlement agreement that is enforced through a consent decree.” New York State Fed’n of Taxi Drivers, Inc. v. Westchester Cnty. Taxi & Limousine Comm’n, 272 F.3d 154, 158 (2d Cir. 2001) (citing Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep’t of Health & Human Res., 121 S. Ct. 1835, 1839-40 (2001)). Here, the Court’s September 30, 2015 findings of fact and conclusions of law entering judgment in favor of Defendant on Plaintiffs’ breach of contract, unjust enrichment, and conversion claims was a final and valid judgment on the merits.

Revenue Corp., 133 S.Ct. 1166, 1172 (2013)). Procedurally, a party seeking to recover costs must file a notice of taxation of costs and the Clerk of Court will allow such items as are properly taxable. See HLT Existing Franchise Holding LLC v. Worcester Hospitality Grp. LLC, No. 12 CIV. 8295 PAE, 2015 WL 4879137, at *1 (S.D.N.Y. Aug. 14, 2015). There is no evidence that Defendant has filed this required notice with the Clerk of the Court.

Dated: New York, New York
October 20, 2015

Handwritten signature of Richard M. Berman in black ink, consisting of the letters 'RMB' in a stylized, cursive font.

RICHARD M. BERMAN, U.S.D.J.