FIRST DIVISION
June 26, 2017

No. 1-16-1471
2017 IL App (1st) 161471-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALMA PATE, Plaintiff-Appellant and Cross-Appellee, v. PALMER I, LLC, SHAKESPEARE & PALMER APARTMENTS, SHAKESPEARE I, LLC, EMILIA MEGLEI, MICHAEL MEGLEI, JAMES SEARS, and ADRIAN DRAGOMIR, Defendants-Appellees and Cross-Appellants.	)	Appeal from the Circuit Court of Cook County. 14 CH 18363 transferred to M1 Honorable Jerry A. Esrig, Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not abuse its discretion when awarding attorney fees; affirmed.

¶ 2 Following a judgment entered on the pleadings in favor of plaintiff, Alma Pate, in an action under the Chicago Residential Landlord and Tenant Ordinance (Ordinance) (Chicago Municipal Code § 5-12-010 *et seq.*), plaintiff's counsel was awarded $7848.75 in attorney fees

and $362.63 in costs. On appeal, plaintiff contends that the trial court erred when it denied certain fees and improperly compared the size of the judgment with the fees claimed. Defendants cross-appeal, asserting that the trial court committed three calculation errors. We affirm.

¶ 3 On November 13, 2014, plaintiff filed a complaint under the Ordinance individually and as the personal representative of a class of tenants. Plaintiff was a tenant in a multi-unit residential apartment building located at 3318-3326 West Palmer in Chicago and defendants were alleged to be her landlords. The complaint stated that the terms of plaintiff's lease included a monthly rent of $775 and a security deposit of $775.

¶ 4 Count I of the complaint alleged in part that defendants failed to pay plaintiff any interest on her security deposit at the end of each 12-month lease period, which carried a penalty of two months' security deposit, interest, costs, and attorney fees. In a section titled "Class Allegations," plaintiff stated that she brought the claim on behalf of a proposed class that consisted of "tenants of Defendants in Chicago who gave a security deposit to a Defendant and entered into a rental agreement with Defendants such that the last day on which annual interest on the deposit was due to be paid was within two years of the filing of this suit." Count II of the complaint alleged in part that defendants commingled plaintiff's security deposit with other assets in violation of the Ordinance. In a section titled "Class Allegations," plaintiff stated that she brought the claim on behalf of a proposed class that consisted of "tenants of Defendants in Chicago who gave a security deposit to a Defendant and entered into a rental agreement with a Defendant."

¶ 5 On November 21, 2014, plaintiff filed a motion for class certification. On January 8, 2015, defendants filed a demand for a bill of particulars and a motion to strike the class allegations. In the motion to strike, defendants asserted that individual questions of fact predominated and that plaintiff failed to sufficiently plead the existence of numerosity and

establish common questions of fact. Defendants further contended that the class definitions were unascertainable and overbroad. In her response, plaintiff stated in part that the required showing for withstanding a motion to strike class allegations is lower than the required showing for seeking class certification.

¶ 6 Defendants also served plaintiff with requests to admit pursuant to Illinois Supreme Court Rule 216 (eff. July 1, 2014). The requests included admissions that defendants paid plaintiff security deposit interest on various dates, defendants did not commingle plaintiff's security deposit, defendants told plaintiff where her security deposit was kept, and the following statements:

- "Admit that you did not sign a retainer agreement with Alexander Michalakos [plaintiff's counsel] for this action."
- "Admit that you did not request that Alexander Michalakos file this action against Defendants."
- "Admit that you were not aware of this action until after Alexander Michalakos filed it."
- "Admit that you mailed a letter to Alexander Michalakos instructing him to nonsuit this action."
- "Admit that you mailed a letter to Alexander Michalakos instructing him to dismiss this action."
- "Admit that you mailed a letter to Alexander Michalakos stating that you did not want to be involved in this lawsuit."
- "Admit that you did not receive any communication from Alexander Michalakos regarding that letter referenced [above]."

- "Admit that you mailed a letter to Alexander Michalakos stating that you did not wish to sue the Defendants."
- "Admit that Alexander Michalakos did not tell you he was planning to file this action before he did so."
- "Admit that you wish to continue living at the subject matter property."
- "Admit that you do not wish to be a class representative in this action."

¶ 7 On January 28, 2015, plaintiff filed a motion to strike the Rule 216 requests to admit or in the alternative, extend the time to answer them. Plaintiff asserted in part that the requests were suspicious, went to ultimate facts in the case, concerned confidential matters between counsel and client, and sought admissions about documents that were not attached and had not been produced.

¶ 8 In their response to the motion to strike the Rule 216 requests to admit, defendants contended that there was no attorney-client relationship, and pointed to an attached letter that plaintiff's brother prepared for her that informed counsel that she did not want to pursue the case. Defendants also stated that plaintiff took various actions that waived any attorney-client privilege. Additionally, defendants asserted that they acted pursuant to *In re Himmel*, 125 Ill. 2d 531, 542 (1988), when they propounded the Rule 216 requests to admit.

¶ 9 Attached to defendants' response were affidavits from Michael Meglei and Adrian Dragomir. Meglei, an officer and managing member of Shakespeare I LLC and Palmer I LLC, averred as follows. During a conversation in December 2014, plaintiff told Meglei that she did not know why the lawsuit had been filed, did not know anything about it, and would call counsel and instruct him to dismiss the lawsuit. A few weeks later, plaintiff told Meglei that she had not heard from counsel, did not know anything about the case, and had not been informed before it

was filed. Plaintiff again related that she would ask counsel to dismiss the case because she did not want to be involved in it.

¶ 10 Dragomir, who was a property manager at the subject building, stated the following in his affidavit. Plaintiff told Dragomir in December 2014 that she did not know anything about the lawsuit and did not authorize anyone to file a suit on her behalf. In Dragomir's presence, plaintiff left counsel a voicemail message, stating that she had no problems with her landlord and did not want to sue her landlord. She also asked counsel to terminate the lawsuit. A few weeks later, plaintiff reported that counsel had not returned her call or answered her voicemail message. Plaintiff asked Dragomir to photocopy a letter that her brother had written on her behalf that asked counsel to terminate the lawsuit.

¶ 11 Plaintiff's above-referenced letter was attached as an exhibit to Dragomir's affidavit. The letter stated that plaintiff wanted to terminate her legal relationship with counsel because she was no longer interested in pursuing the case against her landlord. The letter also stated that the landlord paid plaintiff's security deposit interest and there was no basis for the suit.

¶ 12 On April 6, 2015, the court entered a written order that addressed plaintiff's motion to strike the Rule 216 requests to admit and defendants' motion to strike the class allegations. The court stated that the majority of the requests to admit were aimed at discovering whether plaintiff actually authorized counsel to bring the suit on her behalf. The court found that an evidentiary hearing was necessary to determine whether plaintiff authorized the filing of the case and that no rulings would be made on any motions until a hearing was held.

¶ 13 On July 6, 2015, following a "limited evidentiary hearing," the court entered an order that provided as follows:

> "It is hereby ordered that for the reasons stated on the court-reported record, the Court finds that [counsel] represents [plaintiff] and that [plaintiff] authorized the filing of this action. Said finding is without prejudice to later inquiry at [plaintiff's] deposition, subject to objection."

The court also ordered that all discovery, including the Rule 216 requests to admit and demand for a bill of particulars, was stayed for briefing on the motion to strike the class allegations. The record does not include a report of proceedings for this date. Plaintiff filed another response to defendants' motion to strike the class allegations on August 7, 2015.

¶ 14 On September 10, 2015, the court entered a written order that struck plaintiff's class allegations. The court found that plaintiff failed to allege facts showing that the numerosity requirement was satisfied or that common issues predominated. The court also stated that it could not determine whether any person was a member of the class without individualized inquiries.

¶ 15 The case was then transferred from the Chancery Division to the First Municipal District. Defendants were ordered to answer the complaint by December 3, 2015, and the parties were ordered to complete discovery by February 19, 2016.

¶ 16 Defendants answered plaintiff's complaint on November 12, 2015. In part, defendants denied the allegations that they never paid interest on plaintiff's security deposit and that they commingled plaintiff's security deposit funds with other assets.

¶ 17 On December 3, 2015, defendants filed a motion to compel and for sanctions related to discovery requests, which the court denied.

¶ 18 On January 29, 2016, defendants filed a motion for judgment on the pleadings, stating that plaintiff was entitled to $1550 plus reasonable attorney fees. Defendants asserted that the

only remaining counts were two individual causes of action for purported commingling and failure to pay interest on plaintiff's security deposit.

¶ 19 On February 10, 2016, plaintiff filed a motion to compel discovery. Defendants responded that discovery was moot because of the motion for judgment on the pleadings. After plaintiff objected to defendants' motion for judgment on the pleadings, defendants were ordered to file an amended answer.

¶ 20 In that amended answer, defendants included a preliminary statement that plaintiff's complaint was defective, but defendants conceded that they violated the strict terms of the Ordinance and did not want to expend more effort in motion practice.

¶ 21 On March 16, 2016, plaintiff responded to the motion for judgment on the pleadings. Plaintiff stated that it was unclear against whom judgment would be entered and what kind of judgment defendants sought.

¶ 22 Plaintiff also filed a fee petition, affidavit, and statement of services. In the fee petition, plaintiff asserted in part that only a very small portion of the case dealt with class action considerations and a large part of the litigation consisted of defendants' attempts to remove plaintiff's counsel by alleging that plaintiff did not want counsel to bring or continue the case.

¶ 23 Included in the fee petition was a nine-page statement of services, which indicated that plaintiff's counsel sought $20,737.33 in attorney fees. The statement of services also noted that counsel charged $350 per hour for court time and $325 per hour for office time. In his affidavit, counsel averred that he charges and receives a range of $300 per hour for office time to $325 per hour for court time. The table below lists selected charges that are relevant to this appeal.

"Date	**Activity**	**Time**
3/25/2014	contact from client; send letter to client including retainer agreement and request for documents	0.20
4/2/2014	consultation with client regarding the case regarding no interest on deposits and other complaints.	0.50
	review of documents including receipts and leases and exhibits re ascertaining relevant facts and causes of action; review retainer	0.40
4/2/14-4/14/15 + various	extensive research regarding proper ownership of the property and who is "landlord" under the RLTO. Palmer I LLC is landlord on lease. Review of Cook County Assessor, Secretary of State (LLC's), treasurer and city building violations. Try to Reconcile discrepancies between addresses shown on the lease and government sites. ***	1.50
	identify and list probable and likely defendants and how they are "landlords." ***	0.30
	research shows business license in 2006 given to Ardealul ***.	0.30
	research business entity ownership.	0.25
	and entity known as Shakespeare and Palmer Apartments appears to be management company research lawsuits vs these potential defendants re service address and ownership and who is "landlord"	0.30
	Dragomir has filed several eviction suits in his name, some along with Meglei search of City code violations shows several violations, evaluate if any actionable	0.10
4/17/2014	call from client, discuss status and additional facts	0.25
6-12-14 and various	prepare drafts of complaint including claims for co-mingling and failure to pay interest	2.00
	discussion with client regarding allegations and verification of facts	0.30
	review and revise draft of Complaint	0.90
	additional revision to include class-action allegations	1.25
	prepare final edited version of complaint	0.45
	draft summonses to each defendant	0.75
11/13/2014	file complaint and summons	0.10
	periodic monitoring of service	0.10
11/21/2014	prepare and file a motion for class certification	1.00
12/8/2014	voice mail message from "Adrian" re problem with Landlord ***.	0.10
12/8/2014	phone discussion with "Adrian Nicholson" ***.	0.25
12/9/2014	make notation that Adrian Nicholson did not show up for his scheduled appointment Memo to file and note the strangeness and what effect it could have on this case	0.25
12/15/2014	verifying with Sheriff service on defendant Michael on November 24 for Palmer I LLC – print proof	0.20
12/16/2014	initial court appearance before Judge Cohen. ***	1.00

12/16/2014	obtain and review copy of judges standing order and make notations regarding same.	0.25
12/27/2014	receive and review appearance and jury demand ***	0.25
1/8/2015	review order of January 5 ***	0.10
1/13/2015	receive and review defendants demand for a bill of particulars filed on January 8 and notice of filing. The bill of particulars seeks details regarding ownership interest, failure to pay interest, co-mingling, info about the lease, and other matters contained in the complaint. Make notes re answering same	0.50
1/13/2015	receive and review defendant's motion to strike class allegations	1.10
1/14/2015	receive and review defendants first set of request to admit facts pursuant to rule 216. These requests seek to have plaintiffs admit that she was paid security deposit each year and that defendants sent her a letter confirming the same each year. Strangely these requests seek for proof that the plaintiff has actually hired me as an attorney and that she instructed me to dismiss this. And also request admissions that the plaintiff wants to continue living there, and that defendants did not commingle. Make notes re responses but really I shouldn't be answering due to attorney-client privilege. I have to move to strike or extend time.	1.00
1/14/2015	preliminary research into the propriety of defendants asking for proof that plaintiff hired the attorney and the extent of attorney-client privilege in that area, and as to Rule 183 Extension of Time should be applicable	0.40
1/28/2015	prepare Plaintiff's Motion to Strike 216 Requests or in the alternative to extend time to answer and file same	1.50
1/28/2015	prepare letter to the court with courtesy copies of Motion as required by Order, and deliver same to chambers	0.40
various	Discussions with client regarding the defendants rule 216 requests and more importantly their challenge to my representation of the plaintiff and our strategy with regard thereto without revealing and disclosing privileged client communications, also regarding any contact between the plaintiff and defendants. Note: the details of my conversations are not indicated here because of attorney-client privilege, however they give rise to potential actions for tortious interference with contract and tortious interference with a prospective business opportunity or other problems if plaintiff were to be improperly influenced. Including articles and *Storm & Associates, Ltd. v. Cuculich*, *** *Anderson v. Anchor Organization for Health Maintenance*, *** *Chicago's Pizza, Inc. v. Chicago Pizza Franchise Limited USA*	1.25

02/02/15	receive and review notification postcard from court setting status date for March 16. Docket same	.10
2/5/2015	court appearance for Judge Colin on planes [*sic*] motion to strike an extended time on the 216s. Briefing schedule set on this motion and defendants motion to strike class allegations. Clerk status set for March 23. Obtained relief not recall being required to answer the request to admit until the motions are heard, dates *** stricken.	1.00
2/24/2015	review defendants memorandum in opposition to the motion to strike the request to admit. [T]his memorandum contains exhibits including a detailed affidavit from defendants Michael Meglei and from Adrian Dragomir as well as a letter allegedly from the plaintiff and argues a waiver of attorney-client privilege	0.90
2/28/2015	review very interesting and potentially very relevant appellate court case which was JUST handed down on February 24, 2015 involving defense counsel *** concerning his lawsuit for tortious interference with contract and prospective business opportunity arising from an [RLTO] case in which he represented the plaintiff. ***	1.10
3/9/2015	prepare plaintiffs response to the motion to strike class allegations. file same	2.00
3/23/2015	receipt and review defendants reply regarding motion to strike the class allegations	0.30
4/7/2015	receive and review Court's written ruling faxed by chambers on Motion to Strike Rule 216 Requests—case set for 4-22 status and evidentiary hearing necessary on Affidavits. Make outline of plan for such a hearing and what it would entail, esp vis a vis attorney client privilege	0.50
various	in response to defendant's continuing allegations that I was not properly retained, and the courts willingness to conduct such an inquiry, even though I have a signed retainer (which also includes consent to be a class-action plaintiff) conduct legal research into attorney-client privilege, the propriety of this proceeding, and how the defendants are on firm ground in making such allegations with their own affidavits and without any proof at all that they did actually pay interest.	0.50
	I should be able to cross examine them on their affidavits and request proof that they paid a security deposit interest, which would corroborate their self-serving affidavits.	0.25
4/21/2015	phone call to judges chambers advising that I am admitted into the hospital with a leg infection and cannot be in court, provide alternate dates.	0.10
4/21/2015	E-mail to attorney Ring that I am admitted in the hospital with a leg infection and cannot be in court tomorrow, provide alternate dates.	0.10
4/27/2015	review and docket order of April 22 setting status for May 11.	0.10

5/11/2015	court appearance before Judge Cohen, discussion of the issue of the inquiry of plaintiffs standing to proceed given the challenge by defendant of whether plaintiff counsel was actually retained or not. Status set for June 10. I offer to provide my Retainer Agreement in camera but court says it has to hear from Plaintiff; so I have to consult with client on this.	1.00
5/12/2015	in response to defendant's improper representation intentions, search for and collect all voicemails from client and phone logs into a special file for proof, as well as scan in preserve retainer agreement and correspondence.	0.75
6/4/2015	prepare motion to voluntarily dismiss, in case that is the only option on the June 10 court date. given the complications, e-mail to defense counsel asking if they have an objection.	0.60
6/10/2015	court appearance before Judge Cohen regarding status on challenge to Plaintiff's representation and the 216 requests, court setting hearing date for testimony of plaintiff and setting parameters for same, set for July 6, 2015. There will be live testimony with inquiry into my representation.	1.25
multiple betw 6/10-7/2	consultations with client and review of matters to be discussed at hearing, her testimony, and answer her questions. Client needs to come to court; explain why; is she intimidated? Is this tortious inference?	0.80
7/2/2015	Counsel preparation for the hearing on July 6; what documents can be offered or demanded (retainer?) (privileged?) review of the Affidavits of Defendants in case they are allowed to testify—it is not clear what exactly the court will allow as the judge appeared flexible in his inquiries, to be determined based on the testimony	1.25
7/6/2015	court appearance in hearing before Judge Cohen on whether counsel was authorized by plaintiff to file the action, it is a representation, and related matters. Testimony of plaintiff and defendants. Ruling by court finding that counsel properly represents plaintiff in the lawsuit was authorized. Further briefing schedule entered for outstanding motions with status set for August 31, 2015.	3.00
8/7/2015	prepare and file response to the motion to strike class allegations. This is an additional response which was ordered by the court.	1.75
8/21/2015	E-mail from defense attorney Clark regarding our response. Serve another copy on him at his requests.	0.10
8/31/2015	court appearance before Judge Cohen, order entered taking matter under advisement and set for ruling on September 21	1.00
9/10/2015	receive and review Orders faxed by Judge Cohen chambers, including transfer order sending case to M1 and order granting Motion to Strike Class Allegations, consider whether to move to reconsider etc	0.45
10/9/2015	receive and review postcard notification from the courts setting this for status in court on November 5. Docket the same	0.10

11/5/2015	court appearance an entry of order setting discovery schedule in requiring defendants to answer by December 3	1.00”

¶ 24 Defendants filed a motion opposing plaintiff’s fee petition, asserting in part that plaintiff’s fee petition made no attempt to comply with the requirements stated in *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978 (1987). Defendants noted that the petition included block billing and multiple entries were not contemporaneous and did not include the date the work took place or how long each task took. Defendants also stated that the petition was excessive, plaintiff’s damages were *de minimis*, and counsel lost the majority of the motions. Defendants further asserted that plaintiff should not receive any fees related to the class action and maintained that almost all of the litigation that occurred in the Chancery Division was related to the class action allegations. According to defendants, plaintiff’s statements to others created significant issues about her fitness as a class representative that had to be resolved.

¶ 25 On April 12, 2016, the court entered a written order that entered judgment in favor of plaintiff and against all defendants for $1550—the maximum plaintiff could collect in statutory damages—plus attorney fees to be determined by the court. The court noted that it had heard oral argument on the fee petition and took the petition under advisement. The record does not include a report of proceedings for this date.

¶ 26 The court ruled on the fee petition on April 26, 2016. Per a transcript of that proceeding, the court stated that a relevant factor was “whether the amount of the recovery is disproportionate to the fees requested and whether the amount of the fees requested is disproportionate to the amount that could have been recovered,” which was balanced against the policy behind the fee-shifting provision in the Ordinance. Another factor was whether defendants’ conduct caused plaintiff to do work out of proportion to the amount in controversy. The court further stated that it had to consider that defendants could have tendered the amount

that was concededly due and cut off further work or at least argued that further work after the amount tendered was unreasonable because that was the maximum to be recovered. Also, the court noted that it did not know whether contemporaneous time records were kept. The court found that counsel provided detailed descriptions for the most part. However, tasks were grouped together, there were not always specific entries by date and task, and entries were sometimes grouped over several days. The court stated that in some cases, it was hard to determine whether the fees were reasonable because not all best practices were followed.

¶ 27 The court also stated that plaintiff was not the prevailing party with respect to the class action allegations and it would not award any fees related to the class action. The court thus eliminated all of the time related to the class action, which included time that may have been related to both the class action and the individual claim. According to the court, plaintiff had the burden to show that the fees were reasonable. The court found that there were a number of tasks that could be related to both the class action and the individual claim and it was impossible to determine whether those tasks would have been done without the class action. The court also found that it was inappropriate to charge different rates for different functions. The court initially used a $300 per hour rate until plaintiff's counsel stated that his lowest rate was $325 per hour.

¶ 28 The court and the parties then turned to specific amounts. After defense counsel maintained that defendants should not be responsible for the full amount of court costs, the court declined to award any costs related to the filing of the class action. Per plaintiff's counsel's request, the court awarded two more hours on the fee petition for court time. Defense counsel also asserted that he had offered plaintiff's counsel $1000 for the fee petition and had asked counsel to provide time records if he wanted more money.

¶ 29 Plaintiff's counsel asked for the court's findings about individual entries in the statement of services. The court found that fees for the following tasks were unreasonable:

- 1.25 hours for "additional revision to include class action allegations";
- 0.75 hours for drafting summonses to each defendant because it was a secretarial task;
- 0.10 hours for filing the complaint because it was a secretarial task;
- 0.10 hours for "periodic monitoring of service" because it was a secretarial task;
- 1 hour for preparing and filing a motion for class certification;
- 0.10 hours for listening to a voicemail message;
- 0.25 hours for making a notation that someone did not show up to an appointment;
- 0.20 hours for verifying service with the Sheriff because that was not an attorney function;
- 0.25 hours for obtaining and reviewing a copy of a judge's standing order; and
- 0.50 hours for receiving and reviewing a demand for a bill of particulars.

On the bill of particulars, the court stated that based on the testimony, the bill of particulars was related to the class action, "as was the Rule 216 request or at least you didn't meet your burden of proof of explaining that it was related to the individual claim or what part of it was related to the individual claim." When plaintiff's counsel stated that these items were related to the attorney representation issue, the court replied that "[t]he attorney representation issue was related to the class action as I understood it," as well as to whether plaintiff was an adequate class representative. The court added, "That's what was argued."

¶ 30 Returning to specific findings, the court also found that fees for the following tasks were unreasonable:

- 1 hour for receiving and reviewing Rule 216 requests to admit because it was related to the class action;
- 0.40 hours for preliminary research;
- 1.50 hours for preparing a motion to strike the Rule 216 requests;
- 0.40 hours for preparing a letter to the court with courtesy copies;
- 1.25 hours for discussing the Rule 216 requests because counsel did not meet his burden to show that it was not related to the class action;
- 0.10 hours for receiving and reviewing a notification postcard because it was secretarial;
- 1 hour for a court appearance for a motion to strike the Rule 216 requests;
- 0.90 hours for reviewing defendants' memorandum in opposition to the motion to strike the Rule 216 requests;
- 1.10 hours for reviewing an appellate case;
- 2 hours for preparing a response to the motion to strike the class allegations;
- 0.30 hours for receiving and reviewing a reply to the motion to strike the class allegations;
- 0.50 hours for receiving and reviewing a ruling on the motion to strike the Rule 216 requests;
- 0.50 hours for legal research into attorney client privilege and defendants' allegations;
- 0.25 hours for task related to cross-examining defendants' affidavits;
- 0.10 hours for calling chambers to advise that counsel could not be in court;
- 0.10 hours for emailing defense counsel;
- 0.10 hours for reviewing and docketing a court order;

- 1 hour for a court appearance related to plaintiff's standing to proceed and whether counsel was retained;
- 0.75 hours for collecting voicemails and phone logs in response to allegations of improper representation; and
- 0.60 hours for preparing a motion to voluntarily dismiss and emailing defense counsel.

Plaintiff's counsel questioned whether some of these items were eliminated because they were related solely to the class action. The court responded that counsel had not met his burden of proof to show what was and was not related to the class action. The court added that counsel "brought a class action which I believe prompted them to do certain things, and I believe these are among the things that prompted them to do it."

¶ 31 Continuing on, the court also found the fees for the following tasks unreasonable:

- 1.25 hours for a court appearance related to the Rule 216 requests;
- 0.80 hours for consultations with client;
- 1.25 hours for preparing for a hearing held on July 6, 2015;
- 3 hours for appearing in a July 6, 2015, hearing on whether counsel was authorized to file the action and related matters;
- 1.75 hours for preparing a filing a motion to strike the class allegations;
- 0.10 hours for an email from defense counsel because it was a secretarial or ministerial function;
- 1 hour for a court appearance;
- 0.45 hours for receiving and reviewing court orders; and
- 0.10 hours for receiving and reviewing a postcard notification because it was a secretarial or ministerial function.

The court also detailed other tasks for which it found fees unreasonable but that are not directly involved in this appeal. At this point, defense counsel contested certain fees that were awarded for a court hearing and a filing. The court concluded that its overall fee award was reasonable "given the work that was done, the amount in controversy and the behavior of the parties." The court initially stated that the fee award was $6645 plus court costs, but plaintiff's counsel noted that the court had added two hours for a total of 24.15 hours. The court also clarified that $325 was the hourly fee to be used to calculate the award.

¶ 32 After the proceeding, the court entered a written order that entered judgment in favor of plaintiff and against defendants for $1550 and awarded attorney fees to plaintiff and plaintiff's counsel for $7848.75, plus $362.63 in costs. The fees were based on 24.15 hours at a rate of $325 per hour.

¶ 33 On appeal, plaintiff contends that the trial court improperly denied fees for 18.95 hours of work related to responding to the Rule 216 requests to admit and the evidentiary hearing. Plaintiff concedes that work that was only related to the class action should not be compensated, but contests how the circuit court characterized entries on counsel's statement of services that related to the Rule 216 requests to admit. Plaintiff argues that the requests to admit were aimed at proving that counsel was not retained and at the individual claims, rather than the class action. According to plaintiff, counsel had to respond to the allegations about his authority to file the lawsuit. Plaintiff further states that nowhere in the record was there any mention of plaintiff's adequacy as a class representative, including in defendants' motion to strike the class allegations. Plaintiff also states that only one of the requests to admit mentions the class action. Additionally, plaintiff asserts that the circuit court created a new and impossible burden of proof by requiring

plaintiff to prove that defendants would not have filed certain motions or pleadings without the class action.

¶ 34 This matter began as a dispute over plaintiff's security deposit. The Ordinance provides that if a landlord violates certain security deposit requirements, the tenant is entitled to damages equal to two times the security deposit plus interest. Chicago Municipal Code § 5-12-080(f)(1) (amended July 28, 2010). Plaintiff received this remedy and counsel sought attorney fees per the Ordinance. See Chicago Municipal Code § 5-12-180 (added November 6, 1991) (allowing attorney fees for "the prevailing plaintiff in any action arising out of a landlord's or tenant's application of the rights or remedies made available in this ordinance").

¶ 35 Only reasonable attorney fees are allowed. *Kaiser*, 164 Ill. App. 3d at 983. Further, the party seeking fees always bears the burden of presenting sufficient evidence from which the trial court can decide whether the fees are reasonable. *Id*. "[T]o justify a fee, more must be presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client, since this type of data, without more, does not provide the court with sufficient information as to their reasonableness." *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 401 Ill. App. 3d 868, 879-80 (2010). Trial courts should consider a variety of factors when assessing whether attorney fees are reasonable, including the skill and standing of the attorney employed, the nature of the case, the novelty and difficulty of the issues involved, the degree of responsibility required, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation. *Plambeck v. Greystone Management & Columbia National Trust Co.*, 281 Ill. App. 3d 260, 273 (1996). The fee petition must specify the services performed, by whom they were performed, the time expended on them, and the hourly rate charged. *Kaiser*, 164 Ill. App. 3d at 984. Also, the petitioner must present

detailed records maintained during the course of the litigation containing facts and computations on which the charges are based. *Id*.

¶ 36 According to plaintiff, her challenge to the fee award presents a question of law subject to *de novo* review because the court erred in applying the law and the facts are uncontroverted. However, plaintiff actually contests the circuit court's assessment of the reasonableness of the attorney fees, which we review for an abuse of discretion. *Harris Trust & Savings Bank v. American National Bank & Trust Co. of Chicago*, 230 Ill. App. 3d 591, 595-96 (1992). This standard is highly deferential to the circuit court. *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 23. "A circuit court abuses its discretion when its ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *Id*.

¶ 37 We note that this case does not raise the question of whether the class action and individual claims were related, so that much of counsel's time was devoted to the litigation as a whole. See *Shadid v. Sims*, 2015 IL App (1st) 141873, ¶ 12. Plaintiff acknowledges that counsel is not entitled to fees for work that was done on the class action. Instead, plaintiff disagrees with the circuit court's findings that certain tasks were related to the class action.

¶ 38 We cannot state for certain whether the requests to admit were related to the class action or individual claims, and so we must affirm the circuit court's judgment. As noted above, the party seeking the fees—here, plaintiff—has the burden to present sufficient evidence from which the trial court can make a decision as to their reasonableness. *Kaiser*, 164 Ill. App. 3d at 983. Plaintiff failed to do so. The entries on counsel's statement of services include counsel's thoughts about various tasks, but do not indicate one way or another whether the requests to admit were related to the class action or individual claim. A transcript of the evidentiary hearing

or at least the court's ruling after the evidentiary hearing might have been helpful. However, the record does not include a report of proceedings, bystander's report, or agreed statement of facts for either proceeding (see Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)), even though there apparently was a court reporter for the court's ruling. An appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and without such a record on appeal, we presume that the order entered by the trial court conformed to the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Thus, we presume that the circuit court correctly determined that based on the evidence, the requests to admit were related to the class action. Further, the circuit court was not imposing a new burden, but instead correctly applied counsel's burden to provide sufficiently detailed records.

¶ 39 Moreover, it was not unreasonable to find that the tasks for the requests to admit were related to the class action. One requirement for assembling a class action lawsuit is that the representative parties will fairly and adequately protect the interest of the class. 735 ILCS 5/2-801 (West 2014). To meet this requirement, the class representative must "have the desire and ability to prosecute the claim vigorously on behalf of itself and the other class members, which requires a sufficient level of knowledge and understanding of the litigation." *Byer Clinic & Chiropractic, Ltd. v. Kapraun*, 2016 IL App (1st) 143733, ¶ 9. Defendants' requests to admit included statements about plaintiff's awareness of the lawsuit and her desire that the lawsuit proceed. While we do not resolve this question, the attorney representation issue in the requests to admit could have been relevant to the question of whether plaintiff was an adequate class representative. As such, the court's finding that the tasks at issue were related to the class action was not an abuse of discretion. We will not disturb the fee award on the basis that the eliminated tasks that plaintiff challenges were related to the individual claim and not the class action.

¶ 40 Plaintiff next contends that the circuit court improperly compared the size of the judgment with the fees claimed. Plaintiff asserts that courts have recognized that awarding full fees is necessary to achieve the intent of statutes with fee-shifting provisions. Plaintiff further argues that in Ordinance cases and other cases under fee-shifting statutes, courts should not consider that the amount in controversy may be small. According to plaintiff, the court's ruling was explicitly influenced by the amount in controversy.

¶ 41 Plaintiff correctly asserts that the fee-shifting provisions of the Ordinance serve an important purpose. The attorney fees provisions of the Ordinance "are meant to give a financial incentive to attorneys to litigate on behalf of those clients who have meritorious cases but who, due to the limited nature of the controversy, would not normally consider litigation as being in their client's financial best interest." *Pitts v. Holt*, 304 Ill. App. 3d 871, 873 (1999). A small recovery should not significantly limit attorney fees because such a limit "would undermine vigorous enforcement of the Ordinance." *Id.* at 874. Other fee-shifting statutes take a similar approach. In a case that reviewed attorney fees under the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (15 U.S.C. § 2310(d) (2000)), the court stated that a fee award does not depend on a recovery of substantial money damages and does not need "to be proportionate to an award of money damages." *Cannon v. William Chevrolet/Geo, Inc.*, 341 Ill. App. 3d 674, 686 (2003). See also *Berlak v. Villa Scalabrini Home for the Aged, Inc.*, 284 Ill. App. 3d 231, 237-38 (1996) (stating that awarding attorney fees under the Nursing Home Care Reform Act of 1979 (205 ILCS 45/3-602 (West 1992)) in direct proportion to the amount of damages recovered "would discourage private enforcement of the Act and thus defeat the [Act's] purpose"). However, we reiterate that in awarding attorney fees under the Ordinance, courts

should consider "whether there is a reasonable connection between the fees charged and the litigation." *Plambeck*, 281 Ill. App. 3d at 273.

¶ 42 Here, the court stated that the amount of the recovery was a factor to consider, but plaintiff has not shown how that affected the fee award. Specifically, the court stated in its ruling that a relevant factor was "whether the amount of the recovery is disproportionate to the fees requested and whether the amount of the fee requested is disproportionate to the amount that could have been recovered." The court also stated that the overall fee was reasonable given "the amount in controversy." Even if the court incorrectly recited an improper factor, plaintiff has now shown how she was substantially prejudiced as a result. See *Estate of Bass ex rel. Bass v. Katten*, 375 Ill. App. 3d 62, 67 (2007) (under the abuse of discretion standard, we must determine whether the circuit court acted arbitrarily without employing conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted). Plaintiff has not shown how the potentially improper factor changed the award. As defendants note, the court went through counsel's statement of services line-by-line and explained why entries were eliminated. The court carefully considered the fee petition and did not abuse its discretion.

¶ 43 We next turn to defendants' cross-appeal. Defendants contend that the court committed three calculation errors when it: (1) should have used a $300 per hour rate because counsel's affidavit stated that he charged that amount; (2) computed a total of 24.15 hours of work when the total should have been 22 hours, as it appeared from the ruling that two entries should have been deleted; and (3) granted 7.3 hours for the preparation of the struck class action complaint.

¶ 44 Plaintiff asserts in her reply brief that defendant waived these objections because they were not raised in the circuit court. Defendants state that plaintiff did not develop her waiver

argument in her reply brief and so her waiver argument is itself waived. We agree with defendants that plaintiff's reply brief violates Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) because it does not include any citations to authority. However, the point remains that defendants forfeited—not waived—their claimed errors about counsel's hourly rate and the total number of hours. See *Gallagher v. Lenart*, 226 Ill. 2d 208, 229-30 (2007) (waiver is the intentional relinquishment of a known right, while forfeiture is the failure to make the timely assertion of the right). Defendants correctly cite to the Illinois Supreme Court Rule that states that in a nonjury case, a party need not file a postjudgment motion to preserve an issue for appeal. See Ill. S. Ct. R. 366(b)(3)(ii) (eff. Feb. 1, 1994). Still, issues that are not raised in the trial court are forfeited. See *Vician v. Vician*, 2016 IL App (2d) 160022, ¶ 42. Here, defendants did not object to the court using an hourly rate of $325 or the total number of hours. Defendants contend they could not have raised these errors before the calculations were made. However, the transcript of the ruling indicates that defendants objected to court costs and entries related to a court hearing and a filing. We see no reason why defendants could not have also raised objections to the hourly rate and the number of total hours allowed, especially when there was such an extensive back-and-forth between the court and the parties as to other entries.

¶ 45 Defendants' third claimed error is that plaintiff's counsel should not have been awarded any fees for the complaint's preparation. Defendants argue that the statement of services showed improper block billing, including an entry that spanned a year. Defendants also assert that when the court struck the class allegations, that left no counts or claims, and so all the time for the complaint should have been rejected.

¶ 46 Defendants raised the block billing problem in their opposition to plaintiff's fee petition. However, the record shows that the court already took plaintiff's block billing into account when

arriving at the fee award. In its ruling, the court stated that entries were sometimes grouped over several days and that tasks were grouped together. The court further stated that it did not know whether contemporaneous records were kept. To further deduct attorney fees because of block billing—which the court was already aware of—would overstep our role. Under the abuse of discretion standard, we may not substitute our judgment for that of the trial court or even determine whether the trial court exercised its discretion wisely. *Morrisroe v. Pantano*, 2016 IL App (1st) 143605, ¶ 48. The circuit court considered the nature of counsel's billing.

¶ 47 We next consider defendants' assertion that all of the time for the complaint should have been rejected because no counts or claims were left after the class allegations were struck. Defendants never opposed fees for the complaint for this reason. At most, defendants stated in their motion opposing the fee petition that plaintiff should not receive any fees related to the class action claims. Defendants also objected in their motion to 1.25 hours for "additional revision [of the complaint] to include class-action allegations" because the class allegations were stricken, and the circuit court later denied fees for this entry. Defendants did not preserve the issue of denying fees for the entire complaint because no counts or claims were left, and so it is forfeited. See *Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 72. Further, the court's ruling indicates that it carefully considered which entries were related to the class action.

¶ 48 Lastly, defendants seem to argue that the circuit court disallowed 6.85 hours from the fee petition but did not deduct that time from the total. Defendants do not point out where that error was made, and in any event, this issue is forfeited because it was not raised below. See *id*.

¶ 49 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 50 Affirmed.