

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

PALMER AND DAVID PROPERTIES,
Plaintiff,

vs.

No. 19-1058-JTM

A-1 GARAGE DOOR SERVICES,
Defendant.

MEMORANDUM AND ORDER

Plaintiff Palmer and David Properties commenced this civil action in Sedgwick County, Kansas District Court to recover for rent due on a commercial property located in Wichita, Kansas. Lessee and Defendant A-1 Garage Door Services removed the action to this court (Dkt. 1), and moved to dismiss the action after submitting evidence the rent had been paid. (Dkt. 3). Palmer and David filed no response to the motion to dismiss. On June 17, 2019, this court granted A-1's motion for good cause shown and pursuant to D.Kan.R. 7.4, which provides that when a party fails to respond, "the court will consider and decide the motion as an uncontested motion."

Shortly after the court entered judgment, A-1 moved for reasonable attorney fees, citing Section 18 of the lease, which provides that "[i]n case suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be

entitled to all costs incurred in connection with such action, including a reasonable attorney's fee." As before with the motion to dismiss, plaintiff has filed no response to the defendant's motion.

The motion is accordingly granted for good cause shown and under Rule 7.4. The plaintiff's collection action was a "suit ... brought for [a] sum due," and the lessee defendant having obtained dismissal of the action was the "prevailing party." See *Szoboszlay v. Glessner*, 233 Kan. 475, 482, 664 P.2d 1327 (1983). The court has reviewed the time records attached to defendant's motion, and finds that the \$5,194 fee requested by the defendant is reasonable in light of the hours expended, the circumstances of the case, and the amount in controversy.

IT IS ACCORDINGLY ORDERED this day of August, 2019, that the defendant's Motion for Attorney Fees (Dkt. 10) is hereby granted.

J. Thomas Marten

J. Thomas Marten, Judge