

Chadbourne & Parke LLP v AB Recur Finans

2005 NY Slip Op 30051(U)

December 21, 2005

Supreme Court, New York County

Docket Number: 0116768/6768

Judge: Harold B. Beeler

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HAROLD BEELER
J.S.C.

PART 9

Index Number : 116768/2003
CHADBOURNE & PARKE LLP

INDEX NO. 116768/03

vs
AB RECUR FINANS

MOTION DATE

Sequence Number : 006

MOTION SEQ. NO. 006

CONFIRM/REJECT REFEREE REPORT

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

is granted

and the cross-motion denied.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

NOT FOR JUDGMENT
This document is not to be filed by the County Clerk
without entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

Dated: 12/21/05

HAROLD BEELER
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

At IAS Part 9 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 71 Thomas Street, New York, New York on the 21st of December, 2005.

PRESENT: HON. HAROLD B. BEELER,
Justice

CHADBOURNE & PARKE LLP,
Petitioner,

-against-

AB RECURS FINANS and KILPATRICK
STOCKTON LLP,

INDEX NUMBER 116768/03
Motion Sequence 006
DECISION & JUDGMENT

UNFILED JUDGMENT
This case has not been entered by the County Clerk
of Essex County and cannot be served hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B) Respondent

Petitioner moves to confirm the special referee's report. Respondent opposes and cross-move to reject the special referee's report.

Petitioner law firm was hired in 1990 by the predecessor-in-interest of AB Recurs Finans ("ABRF") to recover on a loan of more than \$4,700,000. Petitioner brought an initial action resulting in a judgment of \$2,488,780 in ABRF's behalf, but no payment was ever made. The professional relationship ended in 1998 and petitioner was succeeded by Kilpatrick Stockton LLP which brought another action that yielded an eventual settlement of \$1.25 million for ABRF. Petitioner asserted an attorneys' lien against this recovery by petition dated September 22, 2003. Respondents answered with three counterclaims for malpractice.

On October 14, 2004, this Court decided that petitioner was not entitled to a charging lien on the proceeds of the second litigation, but may collect from ABRF on a *quantum meruit* basis with a special referee to compute the amount. On appeal, the Appellate Division, First

Department unanimously affirmed this decision on May 3, 2005. After holding a conference and hearing with the parties and receiving submissions, the special referee issued a report on August 22, 2005 recommending that ABRF pay petitioner \$267,698.73 in fees and disbursements.

The special referee's report provides a clear examination of the facts at issue. It concluded that petitioner's efforts for ABRF "involved substantial time and skill, . . . were beneficial to the respondents . . . and the ultimate result favored ABRF." It points to testimony of "discontent" between ABRF and petitioner, but found that there was insufficient evidence of alleged errors that would justify denial of fees.

Respondents' opposition to the special referee's report attempts to refute the reasoning of this Court's underlying decision that petitioner was not discharged for cause, a finding affirmed by the Appellate Division. There is no reason for this Court to revisit the issue now.

Prejudgment interest is not discretionary as defendants argue. *Ogletree, Deakins, Nash, Smoak & Stewart, P.C. v. Albany Steel*, 243 A.D.2d 877, 879 (3d Dep't 1997) ("Plaintiff's *quantum meruit* action is essentially an action at law, inasmuch as it seeks money damages in the nature of a breach of contract, 'notwithstanding that the rationale underlying such causes of action is fairness and equitable principles in a general rather than legal sense' (*Hudson View II Assocs. v. Gooden*, 222 AD2d 163, 168 [1st Dep't 1996])"). CPLR § 5001 requires that interest shall be computed from "the earliest ascertainable date the cause of action existed." The Court finds that August 7, 2002, the date Chadbourne sent a bill to ABRF for the value of its services for professional time spent (Special Referee Hearing Ex. C), is the earliest ascertainable date. *See Ogletree*, 243 A.D.2d at 880.

WHEREFORE, it is hereby

ORDERED, that petitioner's motion to confirm the report of the special referee dated August 22, 2005 is granted and respondents' cross-motion to reject it is denied; and it is further

ORDERED, that the Clerk is directed to enter judgment in favor of petitioner CHADBOURNE & PARKE LLP and against defendant AB RECURS FINANS in the sum of \$267,698.73, with interest as prayed for allowable by law from August 7, 2002 until the date of entry of judgment, as calculated by the Clerk and thereafter at the statutory rate, together with costs and disbursements as taxed by the Clerk.

This constitutes the decision and judgment of the Court.

DATE: December 21, 2005

ENTER:



HAROLD B. BEELER, J.S.C.

**HAROLD BEELER
J.S.C.**

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be entered based hereon. To obtain entry, counsel or interested representatives must appear in person at the Judgment Clerk's Desk (Room 141B).