

<b>Solow Management Corp. v Tanger</b>
2006 NY Slip Op 30042(U)
September 1, 2006
Supreme Court, New York County
Docket Number: 0004044/0441
Judge: Robert D. Lippmann
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: HON. ROBERT D. LIPPMANN  
Justice

PART 21

SOLOW MANAGEMENT CORP.,  
Plaintiff,

INDEX NO. 00 4044/91

MOTION DATE \_\_\_\_\_

- vs -

MOTION SEQ. NO. 012

STEVEN TANGER AND DEBRA TANGER,  
Defendants.

MOTION CAL. NO. 4

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

PAPEES NUMBERED

Notice of Motion/Order to Show Cause - Affidavits - Exhibits

Answering Affidavits and Exhibits

Replying Affidavits

Cross-Motion:  Yes

No

**FILED**  
SEP 12 2006  
NEW YORK COUNTY CLERK'S OFFICE

**UNRECORDED JUDGMENT**  
This judgment has not been recorded by the County Clerk's Office. To obtain entry, counsel or interested representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Upon the foregoing papers, the parties having respectively applied to the Court for a Judgment and Counter Judgment, pursuant to a Memorandum Decision and Order of the Court, dated June 7, 2006, and the parties each having appeared and had opportunity to be heard on July 27, 2006, and the Court having reviewed the submissions and found them inconsistent with either this Court's July 27<sup>th</sup> Order or that of the Appellate Division, dated June 21, 2005, the Court rejects the proposed judgments and, sua sponte, issues the instant order and judgment, which clarifies the June 7, 2006 decision of the Court.

It is undisputed that plaintiff is entitled to attorneys' fees and interests as the prevailing party in the underlying action (*see Solow Mgmt Co v Tanger*, 19 AD3d 225, 227 [1st Dept 2005]; *see also Negron v Goldman*, 11 Misc3d 144 [A], [NY Sup App Term

2006]; *Ash & Miller v Freedman*, 114 AD2d 823, 823 [1<sup>st</sup> Dept 1985]). The entitlement to fees, and therefore interest on fees, accrues from the date plaintiff prevailed in the underlying proceeding. Here, this Court ruled in favor of Solow Management on November 28, 2001 and the First Department determined this to be the relevant date from which to calculate interest.

CPLR 5001(b) provides that “[w]here such damages were incurred at various times, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date.” Plaintiff seeks interest from November 28, 2001, claiming, *inter alia*, this to be the intermediate date from when bills began to accrue and arguing that to rule otherwise would be in contravention of the Appellate Division. The Court disagrees with plaintiff’s analysis of the Appellate Division decision and finds its arguments unavailing (*see e.g., Ross v Congregation B’Nai Abraham Mordechai*, 12 Misc3d 559 [Civ Ct, NY County, 2006]).

Significantly, the Court notes that the intermediate date for the 1738-day period between when Solow Management’s entitlement to attorneys’ fees began to incur and today -- September 1, 2006 -- is not November 28, 2001 as plaintiff alleges, but rather is April 4, 2004, the 869th day. This finding is compliant with the June 21, 2005 Appellate Division order, which must be reviewed in context of the entire decision. In holding that the interest on the attorneys’ fees is to be computed from November 28, 2001, the Appellate Division was modifying this Court’s erroneous ruling that plaintiff was entitled to interest calculated as of the date of each bill. In so holding November 28, 2001 to be the correct date from which to calculate interest, the Appellate Division was not directing

that the interest on all fees run from that date. Instead, the Appellate Division was instructing this Court to use November 28, 2001 as the relevant date in applying CPLR 5001(b).

Based upon the foregoing, it is hereby

ADJUDGED, that plaintiff Solow Management Corp., with offices at 9 West 57<sup>th</sup> Street, New York New York 10019, shall have judgment against defendants Steven Tanger, c/o Tanger Factory Outlets Centers, Inc. 110 East 59<sup>th</sup> Street, 23<sup>rd</sup> Floor, New York New York 10022, and Debra Tanger, residing at 480 Park Avenue, New York, New York 10022, jointly and severally, in the principal amount of \$652,141.94, plus interest thereon at the rate of 11% per anum from April 4, 2004 -- the intermediate date between November 28, 2001 and today, September 1, 2006 -- through the date of entry of judgment in the sum of \$ \_\_\_\_\_, together with costs and disbursements as taxed in the amount of \$ \_\_\_\_\_, making a total judgment of \$ \_\_\_\_\_, and it is further

ORDERED that defendants having noticed an appeal from the Court's order and posted an undertaking on appeal, Plaintiff shall not have immediate execution thereon, and it is further

ORDERED that the instant order be entered forthwith

Dated: September 1, 2006

SEP 01 2006

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).  
SEP 01 2006

NEW YORK COUNTY CLERK'S OFF.  
ENTER: *[Signature]*  
ROBERT D. LIPPMANN  
HON. ROBERT D. LIPPMANN  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE