

Lawson v Patrick Henry Hotel Assoc., L.P.

2007 NY Slip Op 31393(U)

February 26, 2007

Supreme Court, New York County

Docket Number: 0060082/2006

Judge: Richard B. Lowe

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At IAS Part 56 of the Supreme Court of the State of New York, County of New York, held at the Courthouse at 60 Centre Street, New York, New York on February 26th, 2007

PRESENT: Hon. Richard B. Lowe III, Justice.

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CHARLES R. LAWSON, as he is Trustee of Trust 55547-90, Trust 12572-90, and Trust 9932-90,

Index No. 600829-06

Plaintiff,

-against-

PATRICK HENRY HOTEL ASSOCIATES, L.P.,
Defendant.

ORDER

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IAS MOTION
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Plaintiff Charles R. Lawson, as he is Trustee of Trust 55547-90, Trust 12572-90, and Trust 9932-90, moved for summary judgment in lieu of complaint on a promissory note (the "Note"). Defendant Patrick Henry Hotel Associates, L.P., opposed that motion. The motion was submitted to this Court on May 18, 2006. A decision and order was entered on July 25, 2006 by this Court, granting the motion in part and denying the motion in part as follows: the Court ordered that plaintiff be granted partial summary judgment against defendant in the amount of \$2,500,000.00 plus interest since February 1, 2006; that plaintiff's request for a 7.83 percent per annum default rate under the Note be denied; and that the issues of (1) the proper default rate and (2) the amount of costs and expenses, including but not limited to reasonable attorneys' fees, disbursements and court costs due to plaintiff, be referred to a Special Referee to hear and report with recommendations.

After a hearing held before Special Referee Leslie S. Lowenstein on November 9, 2006, the Special Referee filed a report on November 15, 2006 (the "Report"). The Report found (i) that the amount due and owing under the Note by defendant for legal services rendered

on behalf of plaintiff is \$56,977.48 and that the number of hours expended by plaintiff's counsel and the rate for the services rendered were both reasonable; (ii) that the amount due and owing under the Note by defendant for costs and disbursements incurred by plaintiff's counsel is \$2,950.07 and that this amount incurred was reasonable; (iii) that the default rate of interest due under the Note is 7.83 percent per annum; (iv) that the amount of prejudgment interest due and owing under the Note as of October 31, 2006 was \$75,708.51; and (v) that the amount of prejudgment interest due and owing under the Note for the period November 1, 2006 until the date of entry of judgment is \$543.75 per day. The Report recommended (i) that the \$75,708.51 in prejudgment interest plus \$543.75 per day from November 1, 2006 until the date of entry of judgment be added to the principal of the Note of \$2,500,000 already determined by the Court to be due and owing under the Note; (ii) that the defendant pay to the plaintiff at its counsel's office, within thirty (30) days after service upon defendant of this order together with notice of entry, the \$59,927.52 in counsel fees, disbursements and costs, plus the \$2,500,000 principal, plus the \$75,708.51 in prejudgment interest as of October 31, 2006 (totaling altogether the sum of \$2,635,636.03), together with prejudgment interest at the rate of \$543.75 per day from November 1, 2006 until the date of entry of judgment; and (iii) that if defendant fails to timely pay any or all of the foregoing sums, plaintiff shall be permitted to enter a money judgment in its favor for a like sum together with costs, interest and disbursements, without further court order.

Plaintiff, by his attorneys, having moved for an order pursuant to CPLR 4403 confirming the Report in part and rejecting it in part ("Plaintiff's Motion to Confirm in Part and Reject in Part Special Referee Report and Recommendations"), and said motion having been taken on submission by Justice William B. Lowe III, and the Court having issued a decision, dated January 2, 2007, granting in part and denying in part plaintiff's Motion to Confirm in Part and Reject in Part Referee's Report and Recommendations, and confirming the Report in its entirety;

NOW, on the motion of Cooley Godward Kronish LLP, attorneys for plaintiff, it is hereby

ORDERED that the Motion to Confirm in Part and Reject in Part Referee's Report and Recommendations is granted in part and denied in part, and the Report is confirmed in its entirety; and it is further

ORDERED that the amount due and owing under the Note by defendant for legal services rendered on behalf of plaintiff is \$56,977.48; that the amount due and owing under the Note by defendant for costs and disbursements incurred by plaintiff's counsel is \$2,950.07; that the default rate of interest for prejudgment interest due under the Note is 7.83 percent per annum; that the amount of prejudgment interest due and owing under the Note as of October 31, 2006 was \$75,708.51; that the amount of prejudgment interest due and owing under the Note for the period November 1, 2006 until the date of entry of judgment is \$543.75 per day; and it is further


ORDERED that the defendant pay to the plaintiff at its counsel's office, within thirty (30) days after service upon defendant of this order together with notice of entry, the \$59,927.52 in counsel fees, disbursements and costs, plus the \$2,500,000 principal, plus the \$75,708.51 in prejudgment interest as of October 31, 2006 (totaling altogether the sum of \$2,635,636.03), plus prejudgment interest at the rate of \$543.75 per day from November 1, 2006 until the date of payment; and it is further

ORDERED that at any time within thirty (30) days after service upon defendant of this order together with notice of entry, upon submission to the Clerk of an affirmation from plaintiff's counsel that any of the foregoing sums have not been paid, the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$2,635,636.03, together with prejudgment interest at the rate of \$543.75 per day from November 1, 2006 until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate,

together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

Dated: New York, New York

February 26, 2007 ✓



Richard B. Lowe III ✓

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