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| <b>Singer Asset Fin. Co. v FL Assignments Corp.</b>                                                                                                                                                                              |
| 2009 NY Slip Op 32412(U)                                                                                                                                                                                                         |
| October 15, 2009                                                                                                                                                                                                                 |
| Supreme Court, New York County                                                                                                                                                                                                   |
| Docket Number: 100923-08                                                                                                                                                                                                         |
| Judge: Shirley Werner Kornreich                                                                                                                                                                                                  |
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| This opinion is uncorrected and not selected for official<br>publication.                                                                                                                                                        |

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
JUSTICE SHIRLEY WERNER KORNREICH

DECEMENT.

PART 54

Index Number : 100923/2008

SINGER ASSET FINANCE COMPANY

VS.

FL ASSIGNMENTS CORPORATION

SEQUENCE NUMBER : # 004

CONFIRM / REJECT REFEREE REPORT

Justice

INDEX NO. 100923-08

MOTION DATE 4/9/09

MOTION SEQ. NO. #004

MOTION CAL. NO. \_\_\_\_\_

were read on this motion to/for \_\_\_\_\_

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION AND ORDER.**

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).

Dated: 10/15/09

[Signature]  
JUSTICE SHIRLEY WERNER KORNREICH

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 54

-----X  
SINGER ASSET FINANCE COMPANY,

Plaintiff,

Index No. 100923/08

-against-

DECISION and  
ORDER

FL ASSIGNMENTS CORPORATION,

Defendant.

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KORNREICH, SHIRLEY WERNER, J.:

**UNFILE**  
**This judgment has not been entered by the Court and notice of entry cannot be served based on this order. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).**

This is an action to recover for, *inter alia*, breach of a settlement agreement. On August 21, 2008, the Honorable Herman Cahn granted plaintiff Singer Asset Finance Company's (Singer) motion for a default judgment on a turnover proceeding related to a purchase agreement. The court further ordered that the issue of damages be referred to a Special Referee to hear and report. On January 14, 2009, after a hearing, Special Referee Nicholas Doyle recommended a judgment in plaintiff's favor which included damages (\$44,683.12), attorneys' fees (\$4,047) and expenses (\$303), totaling \$49,033.12. On April 21, 2009, the court denied Singer's initial motion to confirm Special Referee Doyle's decision, with leave to renew, upon submission of evidence from the record of the January 14 hearing. Singer again moves to confirm the Special Referee Report, pursuant to Uniform Civil Rule (22 NYCRR) § 202.44. Defendant FL Assignments Corporation (FL Assignments) does not oppose.

*I. Background*

On January 14, 2009, a hearing took place before Special Referee Doyle. During the hearing, Kenneth R. Barnett, plaintiff's senior vice president, and plaintiff's counsel Adam Zoldessy, Esq., testified on behalf of Singer. Mr. Barnett testified that Singer was in the

business of factoring future payment streams and collecting payments from structured settlements. Specifically, he testified that on December 17, 2001, Singer obtained a judgment in the amount of \$27,295.82, with interest, against non-party Felix B. Hernandez. To date, no portion of this judgment has been paid. He further testified that FL Assignments was the obligor of certain periodic payments due Mr. Hernandez pursuant to a structured settlement contract (Settlement Agreement). Pursuant to the Settlement Agreement, FL Assignments still owes Mr. Hernandez two payments: \$37,000, which was due on April 1, 2006; and \$30,000 due on April 1, 2011. Mr. Barnett testified that Singer and Hernandez entered into a purchase agreement, dated July 27, 1999, (Assignment) whereby Mr. Hernandez irrevocably assigned Singer certain periodic payments arising from the Settlement Agreement. Consequently, Singer brought this action against FL Assignments to recover the 2001 judgment it obtained against Mr. Hernandez. Mr. Barnett testified that Singer's entitlement to attorneys' fees arises from paragraph 23 of the Assignment. A copy of the Assignment was provided to Special Referee Doyle at the hearing.

Mr. Zoldessy testified that FL Assignments, as obligor, is bound by the terms outlined in the Assignment. Mr. Zoldessy further testified that he performed 18.3 hours of work on this action, at a rate of \$190 per hour, for a total of \$3,477 in attorneys' fees. He stated that \$190 per hour is the customary rate he charges clients for commercial matters. As proof of the work he performed, Mr. Zoldessy submitted to the Special Referee copies of journal entries representing time sheets he billed. At the hearing, he also asked Special Referee Doyle for three additional hours of work relating to his attendance, travel and preparation for the hearing. With regard to costs, he submitted invoices relating to \$93 in expenses he personally incurred from making copies and sending out some documents via Federal Express as well as \$210 he paid for filing the summons and complaint. In sum, he requested an award of reasonable attorneys' fees and

expenses, pursuant to paragraph 23 of the Assignment.

In a report dated January 14, 2009, Special Referee Doyle found the testimony credible as to the amount of damages and the amount billed by plaintiff's counsel. Thus, he found that plaintiff established entitlement to an award of damages in the amount of \$44,683.12 (\$27,295.82 plus \$17,387.33 interest<sup>1</sup>). He further found plaintiff entitled to \$4,047 in attorneys' fees arising from the 18.3 hours performed plus the additional three requested at the hearing. Finally, he found plaintiff entitled to \$303 in costs for a total award of \$49,033.12.

## II. *Conclusions of Law*

CPLR § 4403 provides that:

Upon the motion of any party or on his own initiative, the judge required to decide the issue may confirm or reject, in whole or in part, . . . the report of a referee to report; may make new findings with or without taking additional testimony; and may order a new trial or hearing.

When questions of fact are submitted to a referee, the referee must determine the issues presented and resolve any conflicting testimony or matters of credibility that exist. *Freedman v Freedman*, 211 AD2d 580 (1st Dept 1995). Generally, courts will not disrupt a referee's findings so long as they are supported by the record. *Id.*; see also *Thomas v Thomas*, 21 AD3d 949 (2d Dept 2005) (referee report should be confirmed whenever findings are substantially supported by the record and the referee has clearly defined the issues and resolved matters of credibility).

Here, Special Referee Doyle found the testimony credible and his report was substantially supported by the record. However, there was an error in calculating the post-judgment interest. Rather than calculating the per diem interest by dividing the per annum

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<sup>1</sup> Special Referee Doyle calculated this 9% interest from December 21, 2001 by adding \$17,196.34 (seven years' interest up until December 21, 2008) to \$190.96 (28 days [using a 360 day year] interest up until January 14, 2009) for a total of \$17,387.33.

interest by 365 days per year, the amount was determined by dividing by 360 days. *See Wireman v Reith*, 220 AD2d 582 (2d Dept.1995) (“[I]nterest should be calculated on a 365 day year.”).

Thus, the appropriate amount of post-judgment interest is \$17,384.78<sup>2</sup>, which when added to the \$27,295.82 judgment properly brings the sum of damages due plaintiff to \$44,680.60. When this sum of damages is added to attorneys’ fees (\$4,047) and costs (\$303), the total amount of judgment in plaintiff’s favor is \$49,030.60. Accordingly, Special Referee Doyle’s Report is confirmed and it is

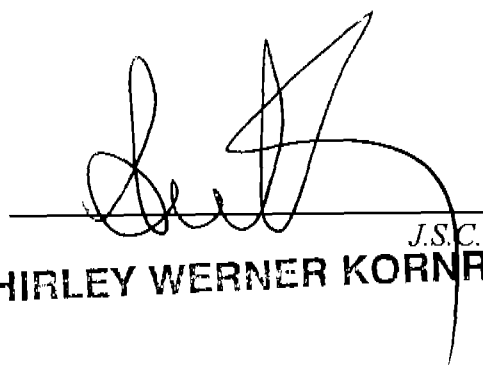
ORDERED and ADJUDGED that plaintiff Singer Asset Finance Company be awarded damages, attorneys’ fees and costs in the amount of \$49,030.60; and it is further

ORDERED that defendant FL Assignments Corporation shall provide written proof of such payment to the Clerk of Part 54 and counsel for Singer Asset Finance Company within thirty (30) days after service of a copy of this order with notice of entry; and it is further

ORDERED that the Clerk enter judgment accordingly.

ENTER:

Dated: October 15, 2009  
New York, NY



JUSTICE SHIRLEY WERNER KORNGREICH

**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).

<sup>2</sup> This interest was calculated by adding \$17,196.34 (seven years’ interest up until December 21, 2008) to \$188.44 (28 days [using a 365 day year] interest up until January 14, 2009) for a total of \$17,384.78.