

**New York City Economic Dev. Corp. v Corn
Exch., LLC**

2010 NY Slip Op 30244(U)

February 1, 2010

Supreme Court, New York County

Docket Number: 405031/07

Judge: Judith J. Gische

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JUDITH J. GISCHE

PRESENT: _____ J.S.C. _____
Justice

PART 10

Index Number : 405031/2007
ECONOMIC DEVELOPMENT
vs.
CORN EXCHANGE, LLC
SEQUENCE NUMBER : 005
COUNSEL FEES, EXPENSES

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 005

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.

FILED

FEB 03 2010
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 2/1/10

HON. JUDITH J. GISCHE J.S.C.
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

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

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION,

Plaintiff,

-against-

CORN EXCHANGE, LLC,

Defendant.

Decision/Order

Index No.: 405031/07
Seq. No. : 005

Present:
Hon. Judith J. Gische
J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Notice of Motion. TI affirm., exhibit.....	1
JKW affirm. in opp., exhibits.....	2
TI reply affirm.,	3

FILED
FEB 03 2010
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, the decision and order of the court is as follows:

By decision and order dated January 29, 2009 this court granted plaintiff summary judgment. The court expressly stated in the decretal provision of that decision that: " Plaintiff may make a motion for an order awarding it reimbursement from defendant for its reasonable legal fees, costs and disbursements within sixty days of the date of this decision. Any such motion shall include not only factual justification for the amount of the fees sought, but also legal justification for permitting such an award in their favor. Failure to make a motion within the time provided herein shall be deemed an abandonment of this claim."

Defendant thereafter immediately filed for bankruptcy. In a decision made by Hon. James M. Peck on August 6, 2009 from the bench and in open court, the bankruptcy stay was lifted. The order dismissing the bankruptcy case and lifting the stay, however, was not filed by the Bankruptcy Court until August 23, 2009.

Defendant claims that the instant motion should be denied as untimely. While

defendant concedes that by filing the bankruptcy petition the original 60 day time period in this court's order was affected, she nonetheless argues that under the federal statutes plaintiff only had an additional 30 days to file the motion for attorneys fees following the lifting of the stay. She also argues that such 30 day period began to run from August 6, 2009, when the order lifting the stay was made in open court, and not August 23, 2009 when the order was entered. Plaintiff claims that it had 60 days from the time the order lifting the stay was entered in Bankruptcy Court to file the motion in this court for legal fees.

This motion was made on October 9, 2009 when it was served on plaintiff.

The court need not consider the technical arguments raised by each counsel counting the days. Nor are the statutes relied on them truly applicable to the dispute. The time deadline set by this court in its original decision was not a statute of limitations. Nor was it a deadline otherwise required by law. It was a deadline set by this court for the orderly administration of this particular case. The court, therefore, has large discretion to extend the time under appropriate circumstances.

It is clear that plaintiff never intended to abandon any claim for legal fees. The lapse in time between this court's decision and the ultimate making of the motion was largely attributable to defendant's decision file a bankruptcy petition. Once that petition was dismissed, plaintiff acted diligently to file this motion for legal fees. The court, therefore, exercises its discretion. To the extent, if any, that this motion fails to comply with the time parameters set forth in the court's January 29, 2009 decision and order, the court hereby extends such time period and elects to consider the merits of the motion.

A successful party in a litigation may not recover attorneys fees, except where

authorized by the parties' agreement, statutory provision or court rule. Chase Manhattan Bank, NA. v. Each Individual Underwriter, 258 AD2d 1 (1st dept 1999). At bar plaintiff was granted summary judgment to retake certain property pursuant to rights contained in the deed. The deed expressly provides that "any attorney's costs and fees of Grantor in exercising the above right to re-enter and reacquire the premises...shall be paid by the Grantee." Such deed provision gives plaintiff the right to seek an award of legal fees in this action.

Plaintiff is a public corporation which was organized to, *inter alia*, provide assistance in relieving and reducing unemployment, promoting and providing for additional and maximum employment, and bettering and maintaining job opportunities for residents of the City of New York by encouraging industry to locate and remain in the city. Plaintiff has been represented in this action by the Corporation Counsel for the City of New York. Plaintiff's lead attorney, Tina Isselbacher, has provided an affirmation outlining the work she has done on behalf of her client and has attached a log of hours spent and services provided. She has also indicated her professional background.

Plaintiff is seeking to be reimbursed at the rate of \$350 an hour for 363.5 hours of work, for a total fee of \$127,225.00. She states that this rate is consistent with the rate of compensation set by other courts for attorneys in the Law Department of the Corporation Counsel with similar experience. Adams v. New York State Education Department, 630 F. Supp. 333 (SDNY 2009).

On the merits, defendant claims that plaintiff is seeking to bill for fees that were not strictly incurred in connection with reacquiring the property. While in reply Ms. Isselbacher seeks to address defendant's concerns, a fundamental issue on the amount is whether the fees sought are reasonable. In addition, defendant has raised issues about whether all of

the fees "billed" were incurred in connection with the re-acquisition of the property. These issues cannot be decided without a hearing.

Under the circumstances the court refers the issue of the amount of legal fees to be awarded to plaintiff to a Special Referee to hear and report his/her findings back to the court.

Accordingly it is hereby:

ORDERED that the motion by plaintiff for legal fees is granted to the extent that defendant, Corn Exchange, LLC is obligated to pay the reasonable attorney fees incurred by the plaintiff, New York City Economic Development Corporation, in connection with exercising its right to re-enter and reacquire the subject premises, and it is further

ORDERED that the issue of the amount of the reasonable attorney fees incurred by the plaintiff's in connection with exercising its right to re-enter and reacquire the subject premises is hereby referred to a Special Referee to hear and report his/her findings back to the court and it is further

ORDERED that the plaintiff is directed to file a copy of this decision with the clerk for the Office of the Special Referees within 60 days of this decision so that a hearing may be calendared in accordance herewith and it is further

ORDERED that any requested relief not expressly granted herein is denied and that this constitutes the decision and order of the court.

Dated: New York, New York
February 1, 2010

FILED
SO ORDERED: FEB 03 2010
NEW YORK
COUNTY CLERK'S OFFICE
J.G. J.S.C.