

Flushing Savings Bank F.S.B. v P.J. Bricks, LLC
2012 NY Slip Op 32305(U)
September 4, 2012
Supreme Court, New York County
Docket Number: 810087/11
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHÉ
Justice

PART 10

Index Number: 810087/2011
FLUSHING SAVINGS BANK
VS.
P.J. BRICKS, LLC
SEQUENCE NUMBER 003
JUDGMENT OF FORECLOSURE & SALE

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 003

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that the motion is

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).

MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.

*Separate Order of
Judgment of Foreclosure & Sale
Signed*

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

Dated: Sept 4, 2012

J.P., J.S.C.
HON. JUDITH J. GISCHÉ

1. CHECK ONE: ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10**

-----X
Flushing Savings Bank F.S.B.,

Plaintiff (s),

-against-

P.J. Bricks, LLC, New York State
Department of Taxation and Finance,
New York City Department of Finance,
Paul Urban, Board of Managers of the
New York Industrial Condominium,
Baron Upholsterer's, Inc.,

Defendant (s).
-----X

DECISION/ORDER

Index No.: 810087-11

Seq. No.: 003

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):

Papers

Numbered

Flushing n/m (judgment of foreclosure and sale) w/ERV affirm, Valente Oath and
Report (sep back), exhibits, proof of service 1, 2
P.J. Bricks opp w/MJB affirm 3
Flushing reply w/ERV affirm 4

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

GISCHE J.:

This is a mortgage foreclosure action. The court appointed Francis L. Valente, Jr., Esq. ("Referee") as Referee to ascertain and compute the amount due to the bank for principal and interest. Referee Valente has filed his oath and report stating that the sum of \$3,847,516.74, plus interest from March 15, 2012, but exclusive of legal fees is the amount due to the plaintiff/bank. Plaintiff now moves for confirmation of the Referee's report, entry of a judgment against the defendants in the sum reported.

Plaintiff also seeks an award of legal fees in the sum of \$23,182.75, representing the amounts they have incurred in the prosecution of this action (\$21,607.75), plus the cost of bringing this motion and anticipated fees to be incurred in preparing for and attending the sale of the mortgaged property. The only defendants who have answered or moved with respect to the complaint are P.J. Bricks, Paul Urban and Baron Upholsterer's Inc. The NYS Department of Taxation and Finance, the NYC Department of Finance and Board of Managers of the New York Industrial Condominium have also appeared.

Although there is proof of service on all appearing parties, the only defendant opposing this motion is P.J. Bricks. P.J. Bricks does not oppose confirmation of the Referee's report nor challenge the sums reported as due. Therefore, plaintiff's motion for confirmation of the Report and entry of a Judgment in plaintiff's favor for the sum of \$3,847,516.74, together with interest at the rate set forth in the note and mortgage and the sums advanced, from the date specified in said report, plus costs and disbursement and other sums identified in the report is granted.

The sole dispute on this motion is the issue of legal fees. Although not challenging plaintiff's right to recover legal fees, and apparently agreeing that the mortgage entitles the plaintiff to recover its reasonable legal fee in prosecuting this action, P.J. Bricks argues that the plaintiff has not sufficiently documented its entitlement to the legal fees. The claimed deficiency in the papers submitted is the absence of any statement identifying the full names of the attorneys who worked on the case (only initials are used), there is no identification as to whether the attorney is a partner or associate with the firm, and the educational background and professional experience of the attorneys who billed their time is not provided. P.J. Bricks also claims

there is no statement by the attorney describing the level of complexity of this case and correlating that statement to the amount billed.

In his affirmation in support of plaintiff's motion for legal fees, Attorney Vallely states that the firm agreed to prosecute this matter for an hourly fee of \$225 per hour and that paralegals were billed at \$100 per hour. An attorney whose regular hourly rate is less than \$225 an hour was billed at his or her lower rate. Attorney Valley estimates it took two (2) hours to prepare this motion and it will take five (5) hours to complete the remaining work attendant to the sale of the property.

Exhibit "G" to the proposed Judgement and Foreclosure of Sale is a Time and Expense Detail Report ("timesheets") prepared by the firm. The timesheets show that no attorney billed more than \$225 per hour. There are a number of entries at the lower rates of \$200 and \$100 per hour. Each entry contains a narrative of the work performed, the date posted, the billable time spent, the cost of the task and the initials of the individual performing the work. A sampling of the narrative entries include preparation of the summons and complaint, motion practice, drafting the order appointing a receiver, and then drafting another order appointing a replacement receiver when the first receiver could not serve, court appearances, communication with the Receiver, preparation of a motion for summary judgment, review of pay off figures, and preparation of documents in connection with the Referee's oath and report.

An award of attorney's fees should bear a reasonable relation to the time and effort expended by plaintiff's counsel in the foreclosure action taking into account such factors as the customary fee charged for similar services (Manufacturers & Traders Trust Co. v. Dougherty, 11 A.D.3d 1019 [4th Dept 2004]). The court should also take

into consideration the relationship of the fees sought vis a vis the judgment amount awarded (see, Kenneth Pregno Agency, Ltd. v. Letterese, 112 AD2d 1032 [2nd Dept 1985]).

The attorney affirmation and documentation provided in connection with plaintiff's motion for legal fees meets each of these requirements. P.J. Bricks makes no claim that the \$225 hourly fee is too high. Importantly, P.J. Bricks does not demand a hearing on legal fees, rather defendant only asks that they be rejected wholesale. Even if defendant had requested a legal fees hearing, that relief would be denied because, for the reasons that follows, P.J. Bricks has not made a threshold shown that a hearing is necessary.

In weighing legal fees, a "court may consider its own knowledge and experience concerning reasonable and proper fees [and] may form an independent judgment from the facts and the evidence before it as to the nature and extent of the services rendered, make an appraisal of such services, and determine the reasonable value there of" (Jordan v. Freeman, 40 A.D.2d 656, 657 [1st Dept. 1972]). "The relevant factors in the determination of the value of legal services are the nature and extent of the services, the actual time spent, the necessity therefor, the nature of the issues involved, the professional standing of counsel, and the results achieved" (542 East 14th Street LLC v. Lee, 66 A.D.3d 18, 24 [1st Dept 2009] citing Jordan v. Freeman, supra at 656).

The sum of \$225 per hour, whether for a freshman associate or seasoned partner, is well within the acceptable range of hourly rates for practitioners in New York County, this type of work and this size law firm. P.J. Bricks does not claim that the

billing is inflated or that any of the work claimed to have been performed was not done. Reviewing the time sheet entries, the court finds they are consistent with the entries appearing in SCROLL, the court's computerized online database.

Thus, aside from challenging the legal fees for the sake of challenging them, P.J. Bricks does not claim they are unreasonable nor has it shown what proof it would present at a hearing, were one ordered, or what issues defendant would pursue. Therefore the request to disallow the legal fees sought by plaintiff is denied. The motion for entry of a Judgment of Foreclosure and Sale, inclusive of an award for attorneys fees in the amount of \$23, 182.75, which includes the cost of this motion and anticipated expense of completing this action, is granted in all respects. The Judgment of Foreclosure and Sale has been separately signed and is of even date.

Any relief requested but not specifically addressed is hereby denied

This constitutes the decision and order of the court.

Dated: New York, New York
 September 4, 2012

So Ordered:



Hon. Judith J. Gische, JSC