

<b>Cadlerock, LLC v Renner</b>
2014 NY Slip Op 30997(U)
April 16, 2014
Supreme Court, New York County
Docket Number: 105570/08
Judge: Jeffrey K. Oing
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**JEFFREY K. OING**  
J.S.C.

**PRESENT:** \_\_\_\_\_  
Justice

**PART** 48

Index Number : 105570/2008  
CADLEROCK  
VS.  
RENNER, JAN Z.  
SEQUENCE NUMBER : 005  
CONFIRM/REJECT REFEREE REPORT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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 this motion is

*Not decided in accordance w/ the accompanying memorandum decision/order of this court.*

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

**FILED**  
APR 17 2014  
NEW YORK  
COUNTY CLERKS OFFICE

Dated: 4/16/14

  
\_\_\_\_\_  
**JEFFREY K. OING**, J.S.C.  
J.S.C.

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 48

-----x  
CADLEROCK, LLC,

Plaintiff,

- against -

JAN Z. RENNER,

Defendant.

**FILED**

Index No.: 105570/08

Mtn Seq. Nos. 005 & 006

DECISION AND ORDER

-----x  
APR 17 2014

JEFFREY K. OING, J.: NEW YORK  
COUNTY CLERK'S OFFICE

In motion seq. no. 005, plaintiff Cadlerock LLC moves for order confirming the report and recommendation of Hon. Ira Gammerman, J.H.O., so-ordered on September 3, 2013, which reported and recommended that this Court "add to the amount of the judgment the amount claimed both with respect to the work done up to the present time and the work done in connection with the collection of the fee ...[totaling] \$67,249.14" (7/31/13 Hearing Transcript, p. 3, Giordano Affirm., Ex. A). Plaintiff also seeks the entry of judgment of in the amount of \$94,501.51 based on a decision and order of the Appellate Division, First Department, dated April 9, 2013, which granted plaintiff's cross motion for summary judgment.

In motion seq. no. 006, defendant Jan Z. Renner moves for an order directing an inquest be held to determine the amount due to plaintiff as damages. Plaintiff cross-moves, pursuant to 22 NYCRR § 130-1.1, for the imposition of sanctions, costs and attorneys' fees.

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Both motions are consolidated for disposition.

Familiarity with the underlying facts and procedural history is presumed. The motion to confirm the report of JHO Gammerman with respect to plaintiff's attorneys' fees is granted. Defendant presents no persuasive basis to reject JHO Gammerman's recommendation based on his review of the documents, and, in any event, defendant failed to move to reject the report within the fifteen day time period prescribed by the CPLR. Accordingly, any objection to JHO Gammerman's determination is deemed waived.

That branch of plaintiff's motion for entry of judgment in the amount of \$94,501.51 is opposed by defendant's motion for an inquest. Plaintiff argues that summary judgment should be awarded because defendant's counsel purportedly failed to dispute the amount owed during the pendency of the proceedings, and that the Appellate Division, First Department already decided the issue because it held that "the cross motion [for summary judgment is] granted, [and] the matter remanded for a determination of attorneys' fees and expenses." (105 AD3d 475 [1st Dept 2013]). Plaintiff's arguments are unavailing.

To begin, defendant disputes the amount claimed, and plaintiff fails to provide a clear basis for its own calculation. Indeed, the amount now claimed by plaintiff, \$94,501.51, differs from the amount sought in the complaint, \$87,632.86. In that regard, the affidavit of Jaime Waltermire, on which plaintiff

relies to establish the amount owed, fails to set forth in any detail his basis for calculating the amount owed or to differentiate between principal and interest owed. Further, the Appellate Division, First Department previously held in a decision dated April 6, 2010 that, "the statute of limitations bars plaintiff from seeking to recover the amount of the installment payments, including any interest, that defendant defaulted on before April 18, 2002, when this action was commenced" (72 AD3d 454, 454).

Next, while plaintiff is correct that the Appellate Division, First Department, granted summary judgment in its favor, the First Department did not provide a basis to calculate the amount of said judgment, or direct entry of a specific amount (e.g., the amount demanded in the complaint). Even accepting plaintiff's argument that the First Department "remanded for the sole purpose of determining the amount of costs and reasonable attorneys' fees recoverable pursuant to the Note" (Giardano Reply Affirm., ¶ 9), a calculation as to the actual amount due on the Note must be made because no such amount is facially evident. As such, an inquest determining the amount actually owed by defendant is appropriate.

Accordingly, it is

ORDERED that branch of plaintiff's motion to confirm the Report of Special Referee (mtn seq. no. 005) which set the amount

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Mtn Seq. Nos. 005 & 006

of collection costs, including attorneys' fees, at \$67,249.14 is granted, and the Report and Recommendation is hereby confirmed, and that branch seeking entry of judgment in the amount of \$94,501.51 is denied; and it is further;

ORDERED that the Clerk is respectfully directed to enter judgment against defendant in the amount of \$67,249.14; and it is further

ORDERED that defendant's motion for an inquest (mtn seq. no. 006) is granted, and the Clerk of the Special Referee/JHO is respectfully directed to place this matter on the appropriate calendar for the inquest herein directed; and it is further

ORDERED that plaintiff's crossmotion for sanctions and costs is denied.

This constitutes the decision and order of the Court.

Dated: 4/16/14

  
\_\_\_\_\_  
HON. JEFFREY K. OING, J.S.C.

**FILED**  
APR 17 2014  
NEW YORK  
COUNTY CLERKS OFFICE