

CF HY LLC v Hudson Yards LLC
2014 NY Slip Op 32480(U)
September 24, 2014
Supreme Court, New York County
Docket Number: 601579/2008
Judge: Shirley Werner Kornreich
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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CF HY LLC,

Index No: 601579/2008

Plaintiff,

DECISION & ORDER

-against-

HUDSON YARDS LLC, BARUCH SINGER, MOSHE
ROSNER; MOSHE JUNGER; THE CRIMINAL COURT
OF THE CITY OF NEW YORK, THE CITY OF NEW
YORK ENVIRONMENTAL CONTROL BOARD,
MANHATTEN COLLISION #7092246, STEVE'S
DETAILING, KING DAVID AUTO REPAIR, XJR AUTO
SERVICE, INC., ADS/KJR AUTO SERVICE, INC.,
WESTSIDE FOOD GROUP CORP, MOHAMMED
ELBRODY, MOHAMMED ELBRODY ADS COLLISION
INC., JACOB BOHBOT, JOSEPH ABUTEL, and
FORTRESS PARTNERS FUND LP,

Defendants.
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SHIRLEY WERNER KORNREICH, J.:

Plaintiff CF HY LLC moves to recover from defendant Baruch Singer (Singer) the attorneys' fees, costs, and expenses (collectively, Fees) plaintiff incurred subsequent to entry of the judgment of foreclosure and sale entered on June 1, 2011 (Judgment), plus interest at the default rate, in the amount of \$2,123,933.74 as of May 2, 2014, together with \$651.12 per diem interest until the entry of judgment for the Fees. The court assumes familiarity with its prior decisions, the Loan Documents,¹ the Judgment, and the procedural history of this case. Plaintiff's motion is granted to the extent of fixing the Fees of the law firm, Sills Cummins & Gross, PC (Sills Cummins) and Cushman Wakefield, and the balance of the motion is referred to a Special Referee.

¹ "Loan Documents" is a defined term. See affirmation of Mitchell Haddad, NYSEFS Doc No.629, fn 3.

There is no dispute that plaintiff is entitled to recover Fees under the Loan Documents and Singer's guarantees. However, Singer contends that the amount plaintiff seeks to recover is unreasonable. It is well established that the court has discretion to determine reasonableness of the fees. *Matter of Potts*, 123 Misc 346 (Surr Ct Columbia Co 1924), aff'd 213 AD 59 (4th Dept 1925), aff'd 241 NY 593 (1925). In making the determination, the court considers the reasonableness of the time spent, the difficulty of the case, the nature of services rendered, the amount involved in the litigation, the professional standing of counsel seeking payment, and the result achieved. *Id.*

In support of the motion, Sills Cummins submitted bills showing the amount of time it spent, its billing rates, and its disbursements, properly redacted to protect work product and attorney-client privilege. *Soiefer v Soiefer*, 17 AD3d 268, 269 (1st Dept 2005). Singer argues that the redacted bills made it impossible to review them for reasonableness, but this court disagrees. The court has conducted an *in-camera* review and finds that the Sills Cummins records were properly redacted to protect work product and attorney-client privilege.

The amount of time spent by Sills Cummins was reasonable in relation to the complexity and length of the litigation, Singer's litigious tactics, and the final result achieved. Ultimately, a judgment of foreclosure and sale and a deficiency judgment based on the fair market value of the property at the time of the foreclosure sale, as determined by plaintiff's expert, Cushman Wakefield, were attained. Defendant failed to raise any factual issue that would require an evidentiary hearing with respect to Sills Cummins' or Cushman Wakefield's Fees. *Paganuzzi v Primrose Mgmt. Co.*, 268 AD2d 213, 351-52 (1st Dept 2000). Defendant's expert witness, Mr. Toothman, alleges in conclusory fashion that there are double entries and block billing (i.e.,

single time entries for multiple services in a day). Mr. Toothman's affidavit lacks specificity and does not raise particularized challenges that require, yet another, evidentiary hearing as to Sills Cummins' charges. Moreover, so-called block billing -- multiple services in a day with one time entry -- is standard procedure. The billing rates of Sills Cummins' attorneys are well within the standard range in New York City.² The court notes that almost all of the Fees sought by Sills Cummins have been paid by plaintiff. The amount of time billed was warranted in light of Singer's litigious tactics. In addition, the bill of Cushman Wakefield, plaintiff's expert, who filed reports and testified at the fair market value hearing also is reasonable. The expert did an excellent and thorough analysis that was instrumental in resolving the fair market value determination.

This case was not a simple, "straightforward" foreclosure action. Mr. Toothman correctly notes that "[f]oreclosure is supposed to be a streamlined and efficient process" (Toothman Aff, Doc 638³) and that the "[r]elevant proceedings began with entry of the Foreclosure Judgment and lasted almost three years thereafter on the relatively straightforward issue of setting the deficiency and entering the judgment" (Toothman Aff, Doc 638). However, the court well remembers that this case was heavily litigated by Singer, requiring an extraordinary amount of court and attorney time to determine the fair market value of the property on the date of the foreclosure sale, an issue that should have been simple to resolve. It was Singer who complicated matters, changing counsel mid-stream, presenting a new expert on the eve of the hearing, filing numerous motions and appeals, and insisting that the purchaser who bought the property was in

² Mr. Toothman disputes this, but he is not admitted in New York.

³ References to "Doc" followed by a number refer to the New York State Electronic Filing System numbers.

collusion with plaintiff, a fact that Singer ultimately failed to prove.⁴ It was Singer who alleged that the failure to afford him a hearing on fair market value would be a denial of his constitutional rights. It was Singer who sought reargument after the fair market value hearing on the frivolous ground that years after the foreclosure sale (and after the nadir of the financial crisis) a nearby property was sold for a higher price. Mr. Singer has been fighting this case tooth and nail at every turn since 2008 and continues to do so.

Tellingly, Singer does not present an affidavit by an attorney with knowledge of the history of this extremely protracted litigation. All that is submitted is the affidavit of Mr. Toothman, who was not involved at any prior stage. Mr. Toothman ignores Singer's highly aggressive and ultimately futile procedural roadblocks to the entry of the deficiency judgment against him, including a 12-day fair market value hearing, 15 motions and 2 appeals which ultimately resulted in plaintiff's 100% recovery and a \$25.7 million deficiency judgment. The court notes that Singer chose to pursue this procedural path knowing that the Loan Documents obligated him to pay plaintiff's Fees to enforce its rights.

The reasonableness of the Fees of Hahn & Hessen, the firm plaintiff hired to look for assets that could be used to satisfy the deficiency judgment, is referred to a Special Referee. The court does not question the wisdom or reasonableness of hiring Hahn & Hessen to look for Singer's assets. The financial statements that Singer produced only upon court order (Doc 115), although he was obligated to produce them under one of his guarantees, gave the impression that he lacked assets to satisfy the deficiency judgment. Hence, it was reasonable for plaintiff to hire

⁴ In contrast, plaintiff waived its right to recover pre-Judgment attorney fees and millions of dollars recoverable under the Loan Documents in an attempt to expedite the case, which, sadly, it did not.

counsel to investigate for hidden assets. The court does not agree that it was wasteful to begin the investigation before the deficiency judgment was entered simply because Singer paid it quickly, after he learned that Hahn & Hessen had found the assets he had failed to disclose on the statements. However, whether the amount charged, approximately \$500,000, was reasonable, together with the interest due thereon should be determined at a hearing.

In addition, the default rate of interest on the Sills' Cummins and Cushman Wakefield bills cannot be determined on this record. The affidavit of Jeffrey Slahor does not separate the amount of interest owed on the Sills Cummins and Cushman Wakefield bills, from the amount owed on the Hahn & Hessen bills. Thus, the interest owed on the Cushman Wakefield and Sills Cummins bills is referred to the Special Referee.

Accordingly it is

ORDERED that motion of plaintiff CF HY LLC is granted on liability; and it is further

ORDERED that defendant Baruch Singer shall pay to CF HY LLC, \$1,416,223.97, and the Clerk is directed to enter a supplemental judgment in that amount in favor of plaintiff; and it is further

ORDERED that the following issues are referred to a Special Referee to hear and report with recommendations or, if the parties agree to hear and determine: 1) the reasonable amount of Fees for services rendered by Hahn & Hessen, together with interest thereon at the default rate as defined in the Loan Documents and the per diem interest accruing thereon from the date of the report; 2) the amount of interest at the default rate under the Loan Documents for the Fees of Sills Cummins & Gross in the amount of \$1,259,579.33 through May 2, 2014, and the per diem interest accruing thereon from May 2, 2014; and 3) the amount of interest at the default rate

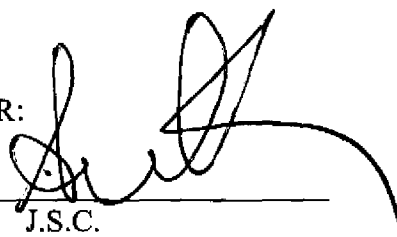
under the Loan Documents for the Fees of Cushman Wakefield in the amount of \$156,644.64 through May 2, 2014 and the per diem interest accruing thereon from May 2, 2014; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Reference Part (Room 119) to arrange a date for the reference to a Special Referee and the Clerk shall notify all parties of the date of the hearing before the Special Referee; and it is further

ORDERED that the amounts recovered by plaintiff pursuant to this order are without prejudice to its right to make application for further fees to be paid by Baruch Singer for fees incurred in enforcing its rights under the Loan Documents, including fees for the reference to the Special Referee ordered herein.

Dated: September 24, 2014

ENTER:



J.S.C.