

Bronx Broadway Funding, Inc. v Rainford Dev. LLC
2020 NY Slip Op 30717(U)
March 6, 2020
Supreme Court, New York County
Docket Number: 805013/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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INDEX NO. 805013/2018

BRONX BROADWAY FUNDING, INC.,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 004

- v -

RAINFORD DEVELOPMENT LLC, MILTON RAINFORD,
5099 BROADWAY, LLC, GEORGE PSATHAS, BRUNI
ELECTRIC INC., NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, NEW YORK CITY
DEPARTMENT OF FINANCE, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108

were read on this motion to/for DISCHARGE

Upon the foregoing documents, the motion by plaintiff to terminate the receivership of Paul Sklar (the "Receiver"), to confirm his final accounting, and to direct payment to the Receiver and his counsel, Mark L. Lubelsky and Associates ("Counsel for Receiver") is granted.

Background

This commercial foreclosure action relates to a property located at 5099 Broadway in Manhattan. Plaintiff, the mortgage holder, brought an action against defendants for failure to make mortgage payments.

On July 3, 2018, plaintiff brought a motion to appoint a receiver of rents and profits from the mortgaged premises (NYSCEF Doc. No. 23), which was granted on November 11, 2018, and the Receiver was appointed at plaintiff's request (NYSCEF Doc. No. 46).

On February 4, 2019, the Receiver brought an order to show cause to have an attorney appointed for him in this action (NYSCEF Doc. No. 79). On February 13, 2019, the order to show

cause was granted and Counsel for Receiver was authorized as a secondary appointment (NYSCEF Doc. No. 80). Defendants did not oppose.

On October 28, 2019, plaintiff filed this motion to terminate the receivership because the subject mortgage has been satisfied (NYSCEF Doc. No. 94). Plaintiff also sought an order confirming the final accountings of the Receiver and Counsel for Receiver. Plaintiff submitted a statement of expenses from the Receiver totaling \$10,341.11 (NYSCEF Doc. No. 99), and a statement of expenses from Counsel for Receiver totaling \$14,557.83 (NYSCEF Doc. No. 100).

Also on October 28, 2019, defendants filed an opposition to plaintiff's motion. Defendants oppose the total amounts charged by the Receiver and Counsel for Receiver as "overkill" and "excessive" (NYSCEF Doc. No. 101).

On November 1, 2019, Counsel for Receiver filed a cross-motion seeking fees for both himself and the Receiver (NYSCEF Doc. No. 102). Neither plaintiff nor defendants submitted opposition to the cross-motion.

Discussion

Fees for the Receiver

Defendants argue that the "results [of the receiver and his attorney] were not successful, no rents or monies were recovered, and there was no benefit to the client resulting from such services." Defendants also contend that this was not a complex matter and that the amount charged is excessive. As such, they seek a reduction in the amount charged.

Receivers are entitled to the reasonable value of their services, even if no assets come into their hands. (*Sandelman v 21 East 63rd Street Corp.*, 23 AD2d 649 [1st Dept 1965]).

The Receiver affirms that he has been admitted to practice for over 38 years and has engaged in private practice for the past 27 years. He affirms that he has a background in complex litigation and has received various court appointments from Surrogate's Court and Supreme Court including guardianships, conservatorships, and receiverships. According to his time entries, the Receiver spent "in excess of" 26.5 hours on this matter from November 28, 2018 to August 21, 2019 (over eight months). His time logs include detailed entries of, among other things, reviews of documents, correspondences, and court appearances. The Receiver has also provided an itemized list as to his out-of-pocket expenses totaling \$403.61. Of note, although the Receiver affirms that his hourly rate is \$300, the time and expense sheet provided with his affirmation indicates that his hourly rate is \$375 and his billing calculations are done at the hourly rate of \$375. Because the Receiver affirmed that his hourly rate is \$300 (NYSCEF Doc. No. 107), and because the Receiver indicated at oral argument that his hourly rate is \$300, this court will treat the Receiver's hourly rate as \$300, not \$375.

Given his background, expertise, and the detail of the time entries provides, this court finds that the Receiver's hourly rate of \$300, time expenditures, and out-of-pocket expenses are reasonable.

Fees for Counsel for Receiver

Attorney fees are to be determined by "the following factors: time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved" (*Matter of Freeman*, 34 NY2d 1, 9 [1974]).

Defendants contend that the “case at bar... was one small holdover tenant” and that the fees requested are akin to using “an elephant gun to swap a gnat.”

Counsel for Receiver affirms that he is a 1992 graduate of Boston University School of Law, and that he was admitted to practice law in the State of New York in 1993. He affirms that his hourly rate of \$575 is what he “charge[s] to all clients”. According to his time records, he spent a total of 26.8 hours on this matter from February 27, 2019 to July 29, 2019 (approximately five months). His statement of accounts includes, among other things, several appearances before court in the landlord/tenant action case to evict the tenant, document drafts, negotiations, notices, and correspondence. He has also provided an itemized list as to his disbursements totaling \$688.83.

As indicated in an email between Counsel for Receiver and defendants (NYSCEF Doc. No. 106), defendants “do not want to analyze or dispute any particular time entry,” and only question whether the expenditures are reasonable on the “totality of the facts.” Counsel for Receiver had already reduced his total bill by 10% (\$1,541) as a courtesy.

Given his background, expertise, and accounting of the work provided, this court finds that Counsel for Receiver’s hourly rate and time expenditures are reasonable. As such, this court awards Counsel for Receiver his requested amount, less his initial 10% courtesy reduction.

However, both the Receiver and Counsel for Receiver had to make a court appearance on this motion, and the time is not reflected in the papers. Therefore, each is awarded another two hours of time.

Accordingly, it is hereby

ORDERED, that plaintiff’s motion is granted; and it is further

ORDERED, that Paul Sklar, Esq., the Receiver, is to be paid for the 26.5 hours accounted for in his time logs, plus the additional two hours for the court appearance on February 4, 2020, at

the rate of \$300 per hour equaling \$8,550.00, plus expenses in the amount of \$403.61, for a grand total of \$8,953.61; and it is further

ORDERED, that Mark L. Lubelsky & Associates, Counsel for Receiver, is to be paid for the 26.8 hours accounted for in his time logs at the rate of \$575 per hour, less the 10% courtesy reduction, equaling \$13,869.00, plus an additional two hours for the court appearance on February 4, 2020, at his full rate of \$575 equaling \$1,150, plus expenses in the amount of \$688.83, for a grand total of \$15,707.83; and it is further ordered

ORDERED, that within 30 days of this order, plaintiff shall pay the above fees to the Receiver and Counsel for Receiver; and it is further ordered

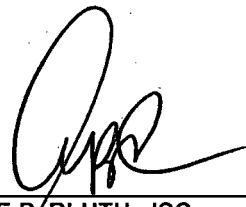
ORDERED, that if the money is being held in escrow, it may be released in accordance with this order; and it is further ordered

ORDERED, that the Receiver turn over control of the mortgaged premises located at 5099 Broadway, New York, New York (New York County Block 2243, Lot 273) to the fee owner or its designee; and it is further

ORDERED, that the Receiver's surety is terminated; and it is further

ORDERED, that Paul Sklar, Esq. is discharged as Receiver and his receivership terminated.

3/6/2020
DATE


ARLENE P. BLUTH, JSC

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE