

Wilmington Trust, N.A. v Elmwood NYT Owner, LLC
2022 NY Slip Op 31189(U)
April 6, 2022
Supreme Court, New York County
Docket Number: Index No. 850176/2020
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE BENEFIT OF THE HOLDERS OF CD 2016-CD2 MORTGAGE TRUST COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2016-CD2, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE BENEFIT OF THE REGISTERED HOLDERS OF JPMDB COMMERCIAL MORTGAGE SECURITIES TRUST 2017-C5, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2017-C5, DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE, ON BEHALF OF THE REGISTERED HOLDERS OF CITIGROUP COMMERCIAL MORTGAGE TRUST 2017-P7, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2017-P7, and WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, ON BEHALF OF THE REGISTERED HOLDERS OF CD2017-CD3 MORTGAGE TRUST, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2017-CD3,

Plaintiffs,

- v -

ELMWOOD NYT OWNER, LLC, LANDINGS NYT OWNER, LLC, OAKWOOD NYT OWNER, LLC, WALLKILL NYT OWNER, LLC, BOARD OF MANAGERS 229 WEST 43RD STREET CONDOMINIUM, CRIMINAL COURT OF THE CITY OF NEW YORK, GLOBAL SECURITY GROUP INC., and JOHN DOE NO. 1 THROUGH JOHN DOE NO. XXX,

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 143, 144, 145, 146, 147, 148, 149

were read on this motion to/for

MISCELLANEOUS

Upon the foregoing documents, it is

Law firm Hunton Andrews Kurth LLP (Hunton), appointed counsel to the Receiver of 229 West 43rd Street, New York, New York (Property) (NYSCEF Doc. No.

[NYSCEF] 108), seeks a total of \$132,933.65 for attorneys' fees and expenses incurred for the work it performed for the months of July through September 2021. (NYSCEF 144, Robson aff ¶ 14.) Redacted copies of Hunton's July-September 2021 Invoices are attached to Robson's affirmation, which detail the tasks performed, who performed those tasks, and hours spent. (See NYSCEF 146, Invoices.) Robson's affirmation also identifies and provides the firm bios of the attorneys and staff who worked on this matter. (See NYSCEF 140, Robson aff ¶¶ 4-9; NYSCEF 145, Firm Bios.) This motion is unopposed.

In July 2021, Hunton expended 88.8 hours of time, with attorneys' fees totaling \$57,475.00, plus \$155.35 in expenses. In August 2021, Hunton expended 49.3 hours of time, with attorneys' fees totaling \$29,495.00, plus \$884.45 in expenses. In September, Hunton expended 67.6 hours of time, with attorneys' fees totaling \$44,907.50, plus \$16.35 in expenses. (See NYSCEF 146, Invoices.)

Twelve factors are relevant to the inquiry of whether Hunton's requested fees are reasonable for representation in this action:

"(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases."

(*Matter of Freeman*, 34 NY2d 1, 9 [1974].) These factors apply in commercial cases. (Commercial Litigation in New York, 4th ed., 2015, § 53:7 Court-Awarded Attorneys' Fees.) The court also relies on its own knowledge of hourly rates charged by private firms which practice in the Commercial Division, New York County. (See *Miele v New*

York State Teamster Conference Pension & Retirement Fund, 831 F2d 407, 409 [2d Cir 1987].) In the absence of opposition, the court is compelled to even more closely evaluate the attorneys' fees request.

The court finds that the rates charged by Hunton attorneys and staff are usual and customary for New York City law firms, and especially reasonable given that their fees were reduced from their standard hourly rates to a flat fee for all attorneys, no matter title, of \$675.00/hour for all staffs at \$250.00/hour. (NYSCEF 144, Robson aff.

¶10.) Between July and September 2021, the attorneys and staff

“spent time assisting the Receiver with issues related to Local Law 11, negotiating, drafting and review lease amendments for four commercial tenants . . . , negotiating a settlement and ancillary issues with a former tenant who brought a replevin action . . . , drafting motion papers . . . to appoint tax counsel, negotiating an AIA agreement . . . , and assisting with the Receiver's monthly reports to the Court.”

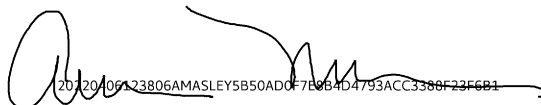
(*Id.* ¶ 3.) Based on the work that was necessary in Hunton's representation of the Receiver, the court finds that the approximately 205.7 hours expended by Hunton over three months is reasonable. The representation of the Receiver, as detailed above, required the negotiation and drafting of several lease and settlement amendments. The court also finds that the remaining relevant factors have been satisfied.

However, with regard to Perkin's time spent on this representation, it is unclear what work was performed as the descriptions of the work recorded by Perkin is almost fully redacted. While the court understands the need for confidentiality, the court cannot approve the work performed by Perkin without as so much as knowing what tasks were performed. (See NYSCEF 146, Invoices at 5.) Perkins performed a total of 2.3 hours of work, and the award will accordingly be reduced by \$1,552.50.

The court previously ordered counsel to review the time spent on basic tasks. (NYSCEF 180, Decision and Order [mot. seq. no. 009].) It is thus unacceptable to the court that it took .9 hours to “respond to Monica Horvath, a court reporter, to obtain June 1 and June 15 hearing transcript as requested by Ms. Bloom.” (See NYSCEF 146, Invoices at 17.) In another instance of unreasonable time spent on basic tasks, a paralegal spent .9 hours “in a telephone conference with part clerk to confirm return date of Order to Show Cause . . . and report back to Ms. Bloom.” (*Id.* at 15.) The award will be further reduced by \$450.00 (\$225.00/hour).

Accordingly, it is

ORDERED that Hunton’s request for interim fees is approved in the amount of \$130,931.15.



4/6/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	
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"/>
					<input type="checkbox"/>
					REFERENCE