

**Colonial Funding Network, Inc. v Long Is.
Hospitality Mgt., Inc.**

2022 NY Slip Op 31420(U)

April 27, 2022

Supreme Court, New York County

Docket Number: Index No. 653591/2016

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY BANNON PART 42

Justice

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INDEX NO. 653591/2016

COLONIAL FUNDING NETWORK, INC.,

MOTION DATE 2-7-22

Plaintiff,

MOTION SEQ. NO. 008

- v -

LONG ISLAND HOSPITALITY MANAGEMENT, INC.
d/b/a SHIPWRECK TAVERN and ANNE FINLEY

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 186, 187, 188, 189, 190, 191, 192, 193, 198, 199, 200, 201, 202, 203, 204, 205, 209, 210, 211, 212, 213, 214, 215, 216, 264, 266, 268

were read on this motion to/for ATTORNEY - FEES.

In this breach of contract action, the parties entered into a Stipulation of Settlement dated September 7, 2016, whereby the defendants agreed to pay the plaintiff \$89,650.00, by monthly installments of \$2,000.00, and agreed that if they defaulted, the plaintiff would be entitled to enter a judgment and proceed with all other "legal remedies available to it." Upon their default, on April 21, 2017, the plaintiff entered judgment against both defendants in the amount of \$94,604.61. The judgment was not satisfied and extensive enforcement efforts and motion practice ensued, as set forth in this court's prior orders. Defendant Anne Finley failed and refused to appear. Ultimately, by an order dated October 27, 2020, the court granted a contempt motion by the plaintiff, found Finley in civil contempt of court and issued warrant of arrest (MOT SEQ 004). While Finley evaded arrest, the defendants eventually satisfied the judgment and the plaintiff filed a Satisfaction of Judgment on November 4, 2021, more than four years after the default judgment was entered.

The plaintiff now moves for an award of attorney's fees and costs incurred in enforcing the judgment (MOT SEQ 008). The plaintiff estimates that the fees and costs incurred as of the filing of the motion, September 10, 2021, exceed \$70,000.00 and also seeks attorney's fees and costs incurred thereafter, including the costs of opposing the defendants' subsequent motion to vacate the findings of

contempt, which is decided separately (MOT SEQ 009). Defendant Finley opposes the plaintiff's motion. Defendant Long Island Hospitality Management, Inc. d/b/a Shipwreck Tavern did not file opposition. The motion is granted. The plaintiff is entitled to attorney's fees and costs incurred through the date of this order. The matter is referred to a Special Referee to determine the appropriate amount.

Contrary to the defendant's contention, the plaintiff is not precluded by the settlement agreement from seeking attorney's fees and costs incurred in enforcing the judgment that arose from the defendants' failure to comply with that agreement. Indeed, the settlement agreement expressly provided that, in the event of a default in payment by the defendants, the plaintiff was entitled to pursue all "legal remedies available to it." This includes attorney's fees and costs incurred by the plaintiff in the protracted enforcement proceedings that followed the entry of judgment which were occasioned by the defendants' recalcitrant, contumacious and contemptuous conduct. Logic dictates that any waiver by the plaintiff of contractual attorney's fees for purposes of the parties' settlement agreement necessarily would not apply to the several subsequent years of enforcement efforts by the plaintiff. In any event, where, as here, there is a finding of contempt, "Judiciary Law § 773 permits recovery of attorney's fees from the offending party by a party aggrieved by the contemptuous conduct." Children's Village v Geenburgh Eleven Teachers' Union Fed. of Teachers, 249 AD2d at 435 (2nd Dept. 1998) [internal citations omitted]; see Gonnard v Guido, 141 AD3d 649 (2nd Dept. 2016); Prudential Securities Credit Corp., LLC v TeeVee Toons, Inc., 35 AD3d 308 (1st Dept. 2006); Zanani v Schwimmer, 36 Misc 3d 144(A) (App Term, 1st Dept. 2012). Furthermore, attorney's fees incurred in prosecuting the contempt are recoverable in addition to the actual underlying damages even where the attorney's fees are greater than those damages. See Jamie v Jamie, 19 AD3d 330 (1st Dept. 2005).

The court has considered the defendant's remaining arguments in opposition to the motion and finds them to be without merit, for the reasons set forth in the plaintiff's papers. Notably, the defendant's opposition does not include any affidavit of Anne Finley but only an affirmation of her recently retained counsel. Further, notwithstanding the filing of the Satisfaction of Judgment, defendant Finley never appeared to present herself to the court to answer for the contempt as required. The warrant of arrest, dated October 27, 2020, and as amended on February 10, 2021, expressly provides that defendant Finley shall appear for a hearing to determine "the nature of [her] contempt and appropriate punishment therefor."

Accordingly, upon the foregoing papers and this court's prior orders, it is

ORDERED that the plaintiff's motion for attorney's fees and costs incurred in enforcing the judgment entered April 21, 2017, is granted, and it is further

ORDERED that a Judicial Hearing Officer (JHO) or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- (1) the issue of the amount of reasonable attorney's fees and costs the plaintiff incurred and may recover from the defendants arising from enforcement of the judgment entered April 21, 2017, through the date of this order, and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that plaintiff shall serve a proposed accounting within 24 days from the date of this order and the defendant shall serve objections to the proposed within 20 days from service of plaintiff's papers and the foregoing papers shall be filed with the Special Referee Clerk prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further


ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts (22 NYCRR 202.44); and it is further

ORDERED that the plaintiff shall serve a copy of this order on the defendants within 10 days by overnight mail service to counsel for the defendants.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

4/27/2022
DATE

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