

<b>Wilmington Trust, N.A. v Elmwood NYT Owner, LLC</b>
2022 NY Slip Op 31994(U)
June 24, 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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INDEX NO.	<u>850176/2020</u>
MOTION DATE	<u>N/A</u>
MOTION SEQ. NO.	<u>015</u>

**DECISION + ORDER ON  
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 015) 195, 196, 197, 198, 199, 206, 208, 210

were read on this motion to/for

ATTORNEY - FEES

Upon the foregoing documents, it is

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

[NYSCEF] 108), seeks a total of \$87,744.92 for attorneys' fees and expenses incurred for the work it performed for the months of October 2021 through January 2022.

(NYSCEF 196, Robson aff ¶ 15.) Redacted copies of Hunton's October 2021 through January 2022 Invoices are attached to Robson's affirmation, which detail the tasks performed, who performed those tasks, and hours spent. (See NYSCEF 198, Invoices.) Robson's affirmation also identifies and provides the firm bios of the attorneys and staff who worked on this matter. (See NYSCEF 196, Robson aff ¶¶ 4-11; NYSCEF 197, Firm Bios.) This motion is unopposed.

In October 2021, Hunton expended 27.5 hours of time, with attorneys' fees totaling \$15,672.50, plus \$15.42 in expenses. In November 2021 and December 2021, Hunton expended 72.5 hours of time, with attorneys' fees totaling \$46,430.00 plus \$14.50 in expenses for legal research. In January 2022, Hunton expended 38.7 hours of time, with attorneys' fees totaling \$25,612.50. (See NYSCEF 196, 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: \$675.00/hour for all attorneys, no matter their title, and \$250.00/hour for all staff. (NYSCEF 196, Robson aff ¶ 11.)

Between October 2021 and January 2022, the attorneys and staff

“provided legal services not only in this action, but also in related litigations pending in various courts, . . . negotiated various agreements for the Receiver, including a complex construction agreement, and has advised the Receiver in negotiations with tenant lease guarantors. Hunton has also provided substantial legal services in negotiating and drafting amendments to leases with several tenants, as well as drafting new leases for certain other tenants. Hunton has negotiated and drafted a settlement agreement with the Board of the Condominium. Hunton also regularly reviews and provides input to the Receiver's monthly reports to the Court. In addition, Hunton routinely prepares motion papers as necessary for the Court's approval of certain acts by the Receiver.”

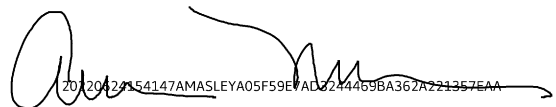
(*Id.* ¶ 3.) Based on the work that was necessary in Hunton's representation of the Receiver, the court finds that the approximately 138.7 hours expended by Hunton over four months is reasonable. The representation of the Receiver, as detailed above, required the negotiation and drafting of several agreements, including a construction agreement, tenant leases, and settlement amendments. The court also finds that the remaining relevant factors have been satisfied.

While the court acknowledges once again Hunton's need for confidentiality, the court cannot approve the attorneys' fees if the redactions entirely obscure the work performed. For example, the entry dated December 3, 2021 by timekeeper Chanse

McLeod for 5.6 hours, in the amount of \$3,780.00, states “Continue preparation of and.” (See, e.g., NYSCEF 198, Invoices at 17<sup>1</sup>.) The rest of the description, after the word “and” is redacted. This tells the court little to nothing and the court is left to infer only that this work may be in connection to a lease mentioned in the entry dated December 2, 2021 by timekeeper McLeod and what is stated in Robson’s affirmation. (NYSCEF 196, Robson aff ¶ 8 [“My partner Chansé McLeod, a commercial real estate attorney with more than 30 years of experience, oversaw the drafting of a lease for a new tenant at the Property. Mr. McLeod has extensive experience in office, industrial and retail lease transactions.”].) The court cautions against over-redactions.

Accordingly, it is

ORDERED that Hunton’s request for interim fees is approved in the amount of \$87,744.92.



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6/24/2022

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

<sup>1</sup> Pages refer to NYSCEF generated pagination.