

<b>Supply Co., LLC v Hardy Way, LLC</b>
2022 NY Slip Op 33722(U)
October 31, 2022
Supreme Court, New York County
Docket Number: Index No. 652855/2016
Judge: Melissa Crane
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

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SUPPLY COMPANY, LLC,

Plaintiff,

- v -

HARDY WAY, LLC, ICONIX BRAND GROUP, INC.

Defendant.

-----X

INDEX NO. 652855/2016

MOTION DATE N/A

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 140, 141, 143, 144, 145 were read on this motion to/for ATTORNEY - FEES.

This action, *Supply Company, LLC v Hardy Way, LLC*, Index No. 652855/2016 (“Action 1”) and the related action, *Hardy Way, LLC v Kevin Yap*, Index No. 653101/2017 (“Action 2”), both concern Supply Company, LLC’s (“Supply”) and Hardy Way, LLC’s (“Hardy Way”) license agreement for Ed Hardy brand products (“License Agreement”). By an order filed August 10, 2022, the court awarded summary judgment to [Action 1 defendants/counterclaim-plaintiffs] Hardy Way and Iconix Brand Group, Inc. (“Iconix”) (together, “Hardy Way Defendants”) in Action 1, dismissed Supply’s complaint against them, and entered a damages award in favor of Hardy Way on its counterclaim (Action 1 NYSCEF Doc. No. 114).

Additionally, by a separate order filed August 10, 2022, the court granted [Action 2 plaintiff] Hardy Way’s summary judgment motion for breach of guarantee against [Action 2 defendant] Kevin Yap in Action 2, awarded Hardy Way damages for Yap’s breach, and dismissed Yap’s answer, affirmative defenses, and counterclaims (Action 2 NYSCEF Doc. No. 117).

In both actions, the court denied without prejudice the Hardy Way Defendants’ requests for attorneys’ fees due to their failure to provide any substantiation of their fees. By this motion,

Hardy Way renews its motion for attorneys' fees, providing an affirmation of attorneys' fees with accompanying invoices. For the following reasons, Hardy Way's motions for attorneys' fees in both Action 1 and Action 2 are granted in part.

### DISCUSSION

The License Agreement at issue in both actions sets forth unambiguously that "Licensee [Supply] shall be responsible for and shall reimburse Licensor [Hardy Way] for any and all costs incurred by Licensor in seeking to collect any sums due to Licensor hereunder, including **attorneys' . . . fees and expenses**" (Action 1 NYSCEF Doc. No. 128, § 19.1(a) [emphasis added]). Courts regularly enforce these types of agreements for recovery of attorneys' fees (*see e.g., Cornell University v Gordon*, 76 AD3d 452, 452 [1st Dept 2010] [enforcing attorneys' fees provision in settlement stipulation based on defendant's noncompliance with stipulation]; *Colyer v Colyer*, 83 AD3d 559, 560 [1st Dept 2011] [enforcing attorneys' fees provision of separation agreement between the parties]). Here, it cannot be disputed that Defendants incurred the costs in these actions in seeking to collect sums pursuant to the License Agreement.

Supply and Yap oppose Hardy Way's motion for attorneys' fees. They first argue that the Hardy Way Defendants are not entitled to attorneys' fees because the License Agreement and the included attorneys' fees provision applied to only Hardy Way, while most of the fees described in the invoices accompanying the motion were paid by Iconix. The court rejects this argument. It is not disputed by the parties that Iconix is the parent company of Hardy Way and that Iconix is also involved in this litigation (Action 1 NYSCEF Doc. No. 122, p. 1; Action 1 NYSCEF Doc. No. 144, ¶ 1). In any event, as set forth within the reply memorandum and the affidavit of Michael Molz, attached to the reply memorandum, the vast majority of the legal fees and expenses were **incurred** by Hardy Way, even if Iconix ultimately paid those fees and expenses (Action 1

NYSCEF Doc. No. 143, p. 2; Action 1 NYSCEF Doc. No. 144, ¶ 3). Therefore, because Section 19.1(a) of the License Agreement provides for recovery of fees “incurred,” it is irrelevant that the agreement did not explicitly refer to Iconix. Hardy Way is entitled to recover its reasonable attorneys’ fees under the License Agreement.

However, the court finds that the requested amount of attorneys’ fees, \$499,165.60, is unreasonable and should be reduced. In evaluating reasonableness of attorneys’ fees, a court will examine a number of factors, “including the time and labor required, the difficulty of the issues involved, and the skill and effectiveness of counsel . . . reduc[ing] the amount requested to eliminate work that was duplicative or was unnecessarily performed by an attorney, rather than a secretary or paralegal” (*JK Two LLC v Garber*, 171 AD3d 496, 496 [1st Dept 2019]; *S.T.A. Parking Corp. v Lancer Ins. Co.*, 128 AD3d 479, 480 [1st Dept 2015]). A court may reduce fees that are excessive (*see Solow Management Corp. v Tanger*, 43 AD3d 691 [1st Dept 2007]). Additionally, a fee award may be reduced where there is block billing—the practice of lumping multiple charges together in a single billing entry (*see Matter of Silverstein v Goodman*, 113 AD3d 539, 540 [1st Dept 2014]; *RMP Capital Corp. v Victory Jet, LLC*, 139 AD3d 836, 840 [2d Dept 2016] [reducing fee award across the board by 25% “due to the use of block billing, including vague and nonspecific billing entries, and the nature of th[e] lawsuit”]).

Here, the amount billed is excessive considering the lack of complexity and seeming duplication of the legal issues presented in Action 1 and Action 2. Action 1 involved claims of breach of contract, fraud in the inducement, breach of the covenant of good faith and fair dealing, and unjust enrichment related to the License Agreement that Hardy Way executed with Supply (Action 1 NYSCEF Doc. No. 2) as well as a separate counterclaim for breach of contract relating to the same License Agreement (Action 1 NYSCEF Doc. No. 42). Action 2 involved whether Yap

breached his personal guarantee of Supply's obligations under the License Agreement, and Yap reiterated the same fraud allegations from Action 1 as defenses and counterclaims (Action 2 NYSCEF Doc. No. 1). The nature of these actions indicates that the nearly 1,000 hours spent (Action 1 NYSCEF Doc. No. 123, ¶ 21) is excessive.

More importantly, the two cases were effectively mirror images of each other in most respects. Hardy Way claims that it has reduced certain invoices 10% to "guard against any possible duplication of work" (Action 1 NYSCEF Doc. No. 123, ¶ 13), but its self-imposed deduction on only some invoices amounts to only about a 2% **total** reduction in the requested amount of attorneys' fees (*see* NYSCEF Doc. No. 123). Hardy Way's affirmation of attorneys' fees describes that counsel originally maintained separate matter numbers for billing the different actions, but that the law firm's work and invoicing were eventually consolidated into one matter number (521949-00664) (Action 1 NYSCEF Doc. No. 123, ¶ 23). Further, both actions involved substantially identical legal and factual issues. Thus, it is apparent to the court that there was significant duplicative work. Unfortunately, due to the way Hardy Way's counsel maintained the billing files for the Hardy Way Defendants – the files were originally separate but were later consolidated – it is impossible for the court to determine the extent of counsels' duplication of work between work for Action 1 and Action 2. Accordingly, the court finds it appropriate to reduce the entire requested fee award by 15% for duplicated work.

Next, the invoices attached to Hardy Way's motion are rife with block billing. While block billing does not render a fee request *per se* unreasonable (*J. Remora Maintenance LLC v Efromovich*, 103 AD3d 501, 503 [1st Dept 2013]), here, a reduction of the fee request to account for block billing is well within the court's discretion (*RMP Capital Corp. v Victory Jet, LLC*, 139 AD3d 836, 840 [2d Dept 2016]). The invoices include a number of examples of block billing which

make it impossible to determine the reasonability of fees, including, for example, an entry which combines coordination of service with drafting a motion to dismiss, and an entry which combines internal firm meetings with drafting a mediation statement (Action 1 NYSCEF Doc. No. 136, pp. 16, 37). Considering the frequent use of block billing, the court further reduces the requested fee award by 15%.

Accordingly, the court reduces the amount of requested attorneys' fees by a total of 35% for excessive and duplicative work and block billing. Thus, the court awards Hardy Way reasonable attorneys' fees in the amount of \$324,457.64 (the requested total attorneys' fees of \$499,165.60, less 35% [ $\$499,165.60 - \$174,707.96 = \$324,457.64$ ]).

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

**ORDERED** that Defendant Hardy Way's motion for attorneys' fees is granted in part; and it is further

**ORDERED** that the Clerk of the Court is directed to enter judgment in favor of Defendant Hardy Way, LLC against Plaintiff Supply Company, LLC for its reasonable attorneys' fees in the amount of \$324,457.64; and it is further

**ORDERED** that the Clerk of the Court is directed to mark this case as disposed.

10/31/2022  
DATE

  
MELISSA CRANE, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		

APPLICATION:

CHECK IF APPROPRIATE:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE