

Pacific Premier Bank v HNI, LLC

2023 NY Slip Op 30484(U)

February 14, 2023

Supreme Court, New York County

Docket Number: Index No. 657096/2019

Judge: Margaret Chan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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PACIFIC PREMIER BANK,

Plaintiff,

- v -

HNI, LLC, HNI CJ, LLC, SEENU KASTURI, TASEER
BADAR, ALVIN RUCKER, SEESTAR QSR, LLC, ZT QSR
FUND, L.P., ALTUS MANAGEMENT, LLC, and CHARLES
BOYD

Defendants.
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INDEX NO. 657096/2019

MOTION DATE 08/22/2022

MOTION SEQ. NO. 011

**DECISION + ORDER ON
MOTION**

HON. MARGARET CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315

were read on this motion to/for

CONFIRM/DISAPPROVE AWARD/REPORT

This action arises out of the default by defendants HNI, LLC and HNI CJ, LLC (the Borrowers) under two promissory notes. Now present before the court is plaintiff's motion pursuant to CPLR 4403 for an order to confirm a special referee's report and recommendation. Seenu Kasturi and Seestar QSR, LLC (the Kasturi defendants) cross-move for an order rejecting the report.

Background

On May 13, 2020, the court granted plaintiff's motion for summary judgment in lieu of complaint pursuant to CPLR 3213 against the Borrowers in connection with their default under two promissory notes for principal amounts of \$8,875,000 and \$2,400,000 (NYSCEF # 87 – Order of Hon. O. Peter Sherwood (ret.) dated May 13, 2020; NYSCEF #'s 5-6 – the Notes). The court referred the matter to a special referee to hear and report on the issue of the amount of reasonable costs and attorneys' fees plaintiff may recover against the Borrowers (the May 13 Order).

The Kasturi defendants signed guaranties accompanying the Notes (NYSCEF # 312 – the Kasturi Guaranties). Defendants ZT QSR Fund, L.P., Altus Management, LLC, Taseer A. Badar, Charles Boyd, and Alvin Rucker (collectively, the dismissed defendants) also signed guaranties, but they settled with plaintiff, who received \$6,000,000 (NYSCEF # 11 – the dismissed defendants' Guaranty; NYSCEF # 245 – Plaintiff's Settlement Letter; NYSCEF # 262 – Stipulation).

In the May 13 Order, the court denied plaintiff's motion for summary judgment in lieu of complaint against the Kasturi defendants, noting that plaintiff remained free to later move for summary judgment. Plaintiff did just that, which this court granted as to liability (NYSCEF # 274 – Order dated September 20, 2021). The court also referred the parties to a special referee to hear and report as to the costs and reasonable attorneys' fees due under the Kasturi guaranties as well as the principal amount and interest owed (the September 20 Order). The two orders of reference were subsequently consolidated (NYSCEF # 282 - Order dated November 8, 2021).

Special Referee Jeremy R. Feinberg (the Referee) was assigned to the case on October 25, 2021. The parties initially requested the Referee to assist them with settling the matter, agreeing that the Referee could still preside over the referred matters if settlement were not successful (NYSCEF # 304 – Referee Report and Recommendation at 2). Plaintiff and the Kasturi defendants did not settle, and the hearing commenced on November 29, 2021 (*id.*).

The Referee reports that at the hearing, plaintiff called three witnesses: (i) Alan M. Feld, lead attorney in the underlying dispute for plaintiff's counsel Sheppard, Mullin, Richter & Hampton, (ii) Jonathan Grossman, an officer at plaintiff, and (iii) Bradley Knapp, a lawyer at Locke Lord LLP, local counsel to plaintiff in Louisiana serving to support judgment satisfaction (*id.*). The parties also submitted post-hearing briefs on March 11, 2022, as well as an email submission from the Borrowers (*id.* at 3).

Ultimately, the Referee recommended that plaintiff be entitled to \$866,035.06 in legal fees incurred by Sheppard Mullin and \$49,065.05 from Locke Lord as well as costs to each firm of, respectively, \$92,883.56 and \$675.65 (NYSCEF # 304 at 35-36). The Referee also calculated the amount due to plaintiff on the Notes to be, at minimum, \$5,280,065.87 as of November 29, 2021, and subject to increases based on days passed since then (*id.* at 22-23). The Referee included in the total attorneys' fees owed such amounts charged on behalf of plaintiff for parallel litigation in California with plaintiff's franchisor CKE (not party to the present action) involving plaintiff's attempt to protect the collateral restaurant equipment and furniture underlying the Notes and which efforts netted approximately \$1.4 million (*id.* at 9).

In support of its motion to confirm, plaintiff contends that the Referee's 37-page report is extensively comprehensive and fully consistent with the record before him, including his assessment that plaintiff's witnesses were credible (NYSCEF # 292 – MOL at 7).

In opposition to plaintiff's motion, and in support of their cross-motion to reject the Referee's findings, the Kasturi defendants argue that the attorneys' fees are excessive and should be capped at an award in the range of \$100,000 to \$200,000 (NYSCEF # 314 – Opp at 11). The Kasturi defendants assert that this was a straightforward action to enforce the Notes and related guaranties that did not

involve any novel or complex questions of law nor extensive discovery (*id.* at 1). They dispute the reasonableness of the Referee's recommendation to accept most of the nearly 2,000 hours billed (*id.* at 1). They assert the case "could have been competently handled for less than one-tenth of the fees sought" (*id.* at 2).

The Kasturi defendants also posit that the Referee erred as a matter of law by including fees incurred in connection with the California litigation (*id.*). Finally, they contend that plaintiff misallocated nearly \$1,000,000 out of the \$6,000,000 settlement payment from the dismissed defendants, putting such funds to attorneys' fees rather than to the principal, leading to a miscalculation of the amount currently due and owing (*id.*).

In reply, plaintiff argues that the Referee conducted a robust hearing providing evidence of case complexity and detailed accounts as to the work performed by the attorneys on each invoice (NYSCEF # 315 – Reply at 4). Plaintiff notes that any necessary reductions had been made – Sheppard Mullin wrote off time and applied an across-the-board discount to plaintiff, and the Referee further reduced such fees by 25% and Locke Lord's fees by 40% (*id.*).

As to the fees incurred in the California action, plaintiff argues they are properly owed via the Kasturi Guaranties by reference to equipment loan and security agreements associated with the Notes (*id.* at 10-11, quoting NYSCEF # 313 – the Security Agreements). Plaintiff further posits that the Referee made a credibility determination about the intertwined nature of the California litigation with this action which this court should not disturb (NYSCEF # 315 at 11-12). Plaintiff also denies that it misallocated settlement proceeds to attorneys' fees rather than to principal, indicating that its application was expressly authorized by the Security Agreements (*id.* at 12).

Discussion

CPLR 4403 permits a court to confirm or reject a referee's report, in whole or in part. "It is the function of a referee to determine the issues presented, as well as to resolve conflicting testimony and matters of credibility. Generally, courts will not disturb the findings of a referee so long as the determination is substantiated by the record. The recommendations of a special referee are entitled to great weight because, as the trier of fact, [the referee] has an opportunity to see and hear the witnesses and to observe their demeanor" (*Poster v Poster*, 4 AD3d 145, 145 [1st Dept 2004]).

An award of attorney's fees under a contract "may only be enforced to the extent that the amount is reasonable and warranted for the services actually rendered. . . . In determining reasonable compensation for an attorney, the court must consider such factors as the time, effort, and skill required; the difficulty of the questions presented; counsel's experience, ability, and reputation; the fee customarily charged in the locality; and the contingency or certainty of compensation (*McCormick 110, LLC v Gordon*, 200 AD3d 672 [2d Dept 2021]).

Plaintiff's motion to confirm is granted and the Kasturi defendants' cross-motion is denied. The Referee properly determined the reasonableness of the attorneys' fees charged in considering, with an amply supported record, the reasonableness of the hourly rates, the hours worked, the staffing, the complexity of the matter, and the relative success on the merits (NYSCEF # 304 at 26-34). Of particular note is that plaintiff's attorneys were able to resist defendants' various maneuvers and ultimately secure: (i) initial judgment against the Borrowers, (ii) the approximate \$1.4 million in proceeds out of the California action, (iii) the \$6,000,000 settlement from the dismissed defendants, and (iv) judgment against the Kasturi defendants (*see e.g. Sempra Energy Trading Corp. v PG & E Texas VGM, L.P.*, 284 AD2d 253, 254 [1st Dept 2001] [affirming judgment of special referee of \$400,000 in attorneys' fees, finding amounts were not excessive in view of the circumstance that the action, resulting in damages \$654,325, had been vigorously litigated for several years]).

The Referee also acknowledged the work by Locke Lord to investigate and seek remedies respecting Kasturi's assets in Louisiana and accounted for the relative success in Locke Lord's work with a thirty percent reduction (NYSCEF # 304 at 3, 13, 35). Overall, the Referee's findings are appropriate (*see e.g. Sachs v Adeli*, 121 AD3d 490 [1st Dept 2014] [affirming trial court's confirmation of referee's report and recommendation and attendant \$838,874 attorneys' fees, noting defendant's vigorous litigation]).

This is particularly the case as the Referee took into account that Sheppard Mullin applied a ten percent discount to its billings and that plaintiff paid all legal bills that had been sent to it (NYSCEF # 304 at 27). The Referee also reasonably applied percentage reductions given plaintiffs' attorneys' use of block-billing (*see e.g. Cmty. Counseling & Mediation Servs. v Chera*, 115 AD3d 589, 590 [1st Dept 2014] [applying a 10% reduction to attorneys' fees for hours that were block-billed]).

That the Kasturi defendants point to other courts facing different circumstances and deviating from a referee's recommendation or otherwise cutting fees more sharply than the Referee did here is unavailing (NYSCEF # 314 at 5-7; *see Poster*, 4 AD3d at 145 ["recommendations of a special referee are entitled to great weight]). Also unavailing are the Kasturi defendants' general critiques of plaintiff's counsels' staffing (NYSCEF # 314 at 4-7). The Referee, with an ample record, indicated he took into account the invoices in their entirety, cognizant of the ten percent discount Sheppard Mullin applied (NYSCEF # 304 at 30). The Referee also recognized certain of the Kasturi defendants' specific concerns by applying two types of deduction to attorney Feld's billings (*id.* at 29-31). That the Report does not expressly discuss the particular August 2020 fees incurred on behalf of plaintiff in reply to summary judgment which the Kasturi defendants contest is of no moment given the broad discounts and reductions here.

The Kasturi defendants' argument against application of fees generated in the California litigation lacks merit, even with interpreting the guaranties in the strictest manner. The Referee correctly concluded that the language of the parties'

contracts entitles plaintiff to attorneys' fees from the California litigation (NYSCEF # 304 at 32). Specifically, Section 9 (A) (10) provides that a proceeding, including self-help and repossession, against the collateral securing the Notes is deemed an event of default, and Section 9 (B) (2) provides that upon an event of default, plaintiff is entitled to reasonable attorneys' fees in connection with collection or enforcement of the Borrowers' obligations, which fees would constitute additional obligations of the Borrowers. And the Kasturi Guaranties provide liability for "any and all amounts . . . of any kind or type whatsoever . . . due to Lender" (NYSCEF # 312, § 1). The Referee gave weight to plaintiff's witness' assessment about the necessity of the California litigation to protect the collateral that ended up netting over a million dollars in proceeds (NYSCEF # 304 at 32-33), which credibility determination is entitled to great weight (*Woods v Garcia*, 147 AD3d 665 [1st Dept 2017]).

The Kasturi defendants fail to address these provisions identified by the Referee as well as plaintiff in its post-hearing brief (NYSCEF # 303 at 2). The Kasturi defendants' re-direction to other provisions of the various agreements which do not address parallel litigation with non-parties is unavailing in the face of the unmistakably clear contractual language identified above (NYSCEF # 288 – Kasturi defendants' Post-Hearing Brief at 2-4; NYSCEF # 314 at 7-10 [both addressing language covering enforcement of the guaranties and proceedings between the parties]).

The Kasturi defendants' reliance on *27 W. 72nd St. Note Buyer LLC v Terzi* does not require a different result because here it is unmistakably clear that the California litigation attorneys' fees are properly owed as identified above (194 AD3d 630, 633 [1st Dept 2021], *lv to appeal denied* 37 NY3d 913). Conversely, there was no determination in *Terzi* that connected the separate foreclosure actions discussed therein with the applicable guarantor's agreement to cover the underlying borrower's obligations.

Plaintiff's allocation of funds from the \$6,000,000 settlement payment to attorneys' fees rather than to principal is also unavailing as a basis to disturb the Referee's findings. The Referee correctly pointed to language directing plaintiff first to apply proceeds from its exercise of its rights under Section 9 (B) of the Security Agreements to pay costs and expenses, including attorneys' fees (NYSCEF # 304 at 22, quoting NYSCEF # 313, § 9 [C]).

The Referee indicated that plaintiff raised the appropriateness of joint and several liability among the Kasturi defendants and the Borrowers as to attorneys' fees, which question the Referee correctly concluded was not before him (NYSCEF # 304 at 36). Furthermore, the parties did not brief the issue of joint and several liability on the present motion, which is not now before this court.

Pursuant to the reference in the May 2020 Decision and Order, the Referee did calculate amounts attributable to the Borrowers to be \$353,230.89 in legal fees through May 2020 (which date this court deems appropriate) and \$4,047.13 in costs

(id. at 36-37). The parties do not now contest these determinations, which the court accepts.

Conclusion

Accordingly, it is

ORDERED that plaintiff Pacific Premier Bank’s motion to confirm is granted and the cross-motion of Seenu Kasturi and Seestar QSR, LLC is denied, and the report and recommendation of Special Referee Jeremy R. Feinberg is confirmed; and it is further

ORDERED that plaintiff shall settle a judgment in accordance with § 202.48 of the Uniform Rules of Trial Courts, on notice to defendants, with regard to the total amounts owed to plaintiff, in accordance with this decision, by defendants (i) HNI, LLC, (ii) HNI CJ, LLC, (iii) Seenu Kasturi, and (iv) Seestar QSR, LLC.



02/14/2023
DATE

MARGARET CHAN, 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