

15 W. 43rd St. LLC v Princeton Club of N.Y.

2023 NY Slip Op 30826(U)

March 15, 2023

Supreme Court, New York County

Docket Number: Index No. 850118/2022

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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15 WEST 43RD STREET LLC,	INDEX NO.	<u>850118/2022</u>
Plaintiff,	MOTION DATE	_____
- v -	MOTION SEQ. NO.	<u>005</u>
THE PRINCETON CLUB OF NEW YORK, THE CRIMINAL COURT OF THE CITY OF NEW YORK, NOUVEAU ELEVATOR INDUSTRIES LLC, and A-1 EXPERT INSTALLATION, INC.,	DECISION AND ORDER	
Defendants.		

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 110, 111, 112, 113, 114, 115, 116, 117

were read on this motion to/for JUDGMENT - FORECLOSURE & SALE.

In this foreclosure action, default judgment was entered against defendant The Princeton Club of New York (Borrower). (See NYSCEF Doc. No. [NYSCEF] 91, decision and order at 4 [mot. seq. no. 002].) Plaintiff 15 West 43rd Street LLC (Lender) seeks entry of the Judgment of Foreclosure and Sale and a total of \$237,601.40 in attorneys' fees (\$156,264.50) and costs (\$81,336.90).¹ (NYSCEF 121, Weslock aff ¶ 5 [Feb. 1, 2023].) There is no opposition to Lender's request.

Authority for Lender's Requested Attorneys' Fees and Costs

Lender relies on several agreements to recoup its requested fees and costs. (NYSCEF 111, Weslock aff ¶ 14 [Jan. 3, 2023].)

¹ Weslock's supplemental affirmation provides the amount of attorneys' fees sought not inclusive of charges that have been fully redacted or otherwise removed. (See NYSCEF 121, Weslock aff ¶ 5 [Feb. 1, 2023]; NYSCEF 111, Weslock aff ¶ 16 [Jan. 3, 2023].)

Lender first points to the terms of the Mortgage, Consolidation, Extension and Modification Agreement (MCEMA), the Amended and Restated Promissory Note (APN), and the Note Consolidation and Modification Agreement (NCMA). Lender relies on Section 3.2(b) of the MCEMA, which provides:

“Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Mortgagee and Mortgagee may:

* * *

(b) Proceed to foreclose on this Mortgage In any such proceeding Mortgagee shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including court costs and reasonable attorneys’ fees.”

(NYSCEF 3, MCEMA at 42-43.²) Lender also relies on section 3.2(b) of the Credit Mortgage and Security Agreement (CMSA) which is an identical provision to section 3.2(b) under the MCEMA. (NYSCEF 15, CMSA at 31-32.)

Lender further relies on paragraph 9 of the International Swap Dealer Association Master Agreement (ISDA), which provides, “A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its right under this Agreement or any Credit Support Document” (NYSCEF 7, ISDA at 11.)

“It is well settled in New York that a prevailing party may not recover attorneys’ fees from the losing party except where authorized by statute, agreement or court rule.” (*U.S. Underwriters Ins. Co. v City Club Hotel LLC*, 3 NY3d 592, 597 [2004] [citations

² Pages refer to NYSCEF generated pagination.

omitted].) Here, the documents unambiguously authorize reasonable attorneys' fees and costs incurred prior to or during this foreclosure action.

Reasonable Attorneys' Fees and Costs

"An award of an attorney's fees pursuant to a contractual provision may only be enforced to the extent that the amount is reasonable and warranted for the services actually rendered." (*Citicorp Trust Bank, FSB v Vidaurre*, 155 AD3d 934, 935 [2d Dept 2017] [citation omitted].)

To determine the reasonableness of the requested fee, the court is guided by the following factors: (1) "the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented"; (2) "the lawyer's experience, ability, and reputation"; (3) "the amount involved and benefit resulting to the client from the services"; (4) "the customary fee charged by the Bar for similar services;" (5) "the contingency or certainty of compensation"; (6) "the results obtained"; and (7) "the responsibility involved." (*Matter of Freeman*, 34 NY2d 1, 9 [1974].) These factors apply in commercial cases. (Thomas J. Hall, *Commercial Litigation in New York State Courts* § 67:1 [note: online version] [5th ed, Sept. 2022 update].) 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 support of Lender's application, Danielle Weslock of the law firm McCarter & English LLP (McCarter & English), counsel to Lender, submits an affirmation identifying the attorneys and staff involved in this action. (NYSCEF 121, Weslock aff ¶ 6 [Feb. 1, 2023].) The McCarter & English attorneys and staff that worked on this action are: (1)

Joseph Lubertazzi, Jr., partner; (2) Danielle Weslock, partner; (3) John R. Stoelker, associate; (4) Nicole Corona, partner; (5) Linda Restivo, paralegal; (6) Mabel E. Andrews, paralegal; (7) Robin Jackson, real estate paralegal; (8) Pamela Keyl, research analyst; and (9) Laura Harkins, paralegal. (*Id.*)

The court finds that the rates charged by the McCarter & English attorneys and staff are usual and customary for law firms in the New York metro area (Lubertazzi's rate: \$875/hour; Weslock's rate: \$675/hour;³ Stoelker's rate: \$550/hour; Corona's rate: \$550/hour; Restivo's rate: \$295/hour; Andrews' rate: \$295/hour; Jackson's rate: \$275/hour; Keyl's rate: \$200/hour; and Harkins' rate: \$295/hour.) (NYSCEF 114, invoices.) Lubertazzi's, Weslock's, and Corona's rates are reasonable for commercial litigators with 40 years of experience, 14 years of experience, and 20 years of experience, respectively. (NYSCEF 121, Weslock aff ¶ 6 [Feb. 1, 2023].) Stoelker's rate is reasonable for a commercial litigator with 12 years of experience. (*Id.*) Restivo's rate, Andrews' rate, Jackson's rates, and Harkins' rates are reasonable for paralegals with 20 years of experience, 25 years of experience, 30 years of experience, and 8 years of experience respectively. (*Id.*) Keyl's rate is reasonable for a law librarian with over 35 years of experience. (*Id.*)

This action was initiated in June 2022. The invoices span from December 2021 to December 2022. The relevant provisions of the agreements providing for attorneys' fees and costs authorize pre- and post-proceedings "incident to the realization of its rights hereunder" (See, e.g., NYSCEF 3, MCEMA at 42-43 ["In any such

³ Lubertazzi's Weslock's rates increased after September 30, 2022. (NYSCEF 111, Weslock aff ¶ 18.)

proceeding Mortgagee shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including court costs and reasonable attorneys' fees."].) Between December 2021 and May 2022, the time period prior to the initiation of the action, a majority of the work was performed by Lubertazzi, Stoelker, Weslock, and Jackson. The primary tasks were reviewing loan documents, title searches, communication with insurance agents, letters to borrower, conferring with potential loan purchasers, and drafting the complaint and related documents. However, the invoice for work performed in May 2022 includes charges for travel which cannot be recovered. (NYSCEF 114, Invoices at 26 [Lubertazzi's charge for 3.40 hours which includes travel to and from the "NYC office"].) Thus, the attorneys' fees amount is reduced by \$1,113.00 (1.40 hours for travel at \$795/hour).

The total number of hours expended on this matter is 271.9. (NYSCEF 121, Weslock aff ¶ 5 [Feb. 1, 2023].) A majority of the work was performed by Lubertazzi and Weslock (NYSCEF 111, Weslock aff [Jan. 3, 2023]), performing tasks such as reviewing loan documents, preparing and drafting complaint, application for rent receiver, motion for summary and default judgment, communication with borrower regarding property and insurance issues, communication with plaintiff, and communication with rent receiver. (NYSCEF 121, Weslock aff ¶ 6 [Feb. 1, 2023].) There were several instances of administrative tasks that were performed by partners (see, e.g., NYSCEF 114, invoices at 34) that could have been performed by paralegals. For example, e-filing is an administrative task that could have been performed by the paralegals, and in other instances, paralegals did bill for this task. (See, e.g., *id.* at 36).

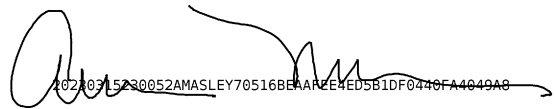
Attorneys' fees are thus reduced by \$1,590 (2.00 hours at \$795/hour). Finally, there is a .40 charge by Edward J. Butler for which no attorney bio, resume, or other information was provided. (NYSCEF 114, invoices at 5.) Thus, attorneys' fees are also reduced by \$252.

Weslock states that the lion's share of expenses is attributed to insurance procured for the property. (NYSCEF 111, Weslock aff ¶ 20 [Jan. 3, 2023].) Weslock further explains that the initial insurance premium was \$20,587.15 and the monthly installments for August through December was \$6,633.49 per month. (*Id.*) Plaintiff also advanced \$16,000 to the rent receiver in November 2022 for "expenses incurred during the receivership because the Mortgaged Property does not generate rental revenue to fund the receivership." (*Id.*) The remaining expenses amount to \$11,582.30. However, as noted above, travel expenses will not be awarded, and the disbursement amount requested is reduced by \$10.50.

The court finds that the remaining relevant factors have been satisfied.

Accordingly, it is

ORDERED that this motion is granted, and plaintiff is awarded \$153,309.50 in attorneys' fees and \$81,326.40 in disbursements for a total of \$234,635.90.



<u>3/15/2023</u> DATE					<u>ANDREA MASLEY, J.S.C.</u>				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER	
	<input checked="" 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 type="checkbox"/>	REFERENCE
850118/2022 15 WEST 43RD STREET LLC vs. THE PRINCETON CLUB OF NEW YORK ET AL							Page 6 of 6		
Motion No. 005									