

**Melody Bus. Fin., LLC v Falcone**

2023 NY Slip Op 30910(U)

March 24, 2023

Supreme Court, New York County

Docket Number: Index No. 651155/2020

Judge: Melissa A. 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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MELODY BUSINESS FINANCE, LLC,

INDEX NO. 651155/2020

Plaintiff,

- v -

PHILIP A. FALCONE, LISA M. FALCONE, EIGHTH STREET LLC, CROXTON 2 LLC, FIRST STREET LLC, LA BRAVA FARM LLC, VXA, LLC, WILD ORCHARD FARM LLC, HARBINGER CAPITAL PARTNERS GP, L.L.C., HARBINGER CAPITAL PARTNERS SPECIAL SITUATIONS GP, L.L.C., CREDIT DISTRESSED BLUE LINE GP, L.L.C., GLOBAL OPPORTUNITIES BREAKAWAY MM, L.L.C., THREE-HUNDREDTH STREET LLC,

DECISION AFTER INQUEST

Defendant.

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In Motion Sequence 2 ("MS 2"), plaintiff Melody Business Finance, LLC ("Melody") moved for summary judgment on its breach of contract, replevin, and declaratory judgment claims against the defendants. The court granted MS 2 in favor of plaintiff on the issue of liability and put the case over for an inquest to determine damages (MS 2 Decision [NYSCEF Doc. No. 187]; 4/16/21 Tr. [NYSCEF Doc. No. 214]). The court also granted Melody's declaratory judgment claim (see MS 2 Decision and 4/16/21 Tr. [NYSCEF Doc. Nos. 187, 214]). This decision addresses Melody's damages following inquests on July 25, 2022 and continued on September 15, 2022 as well as Melody's December 2022 submissions containing Melody's updated damage calculations.

For the reasons discussed below, the court awards Melody a total of \$69,895,168.22, representing: (a) an award for the updated total amounts due under all the loans and notes

(\$68,450,472.43); (b) an award for the reasonable enforcement-related expenses incurred (\$1,444,695.79).<sup>1</sup>

**I. Amounts Due Under the Loans and Notes**

This case involved several loans: (a) the Eighth Street Loan Note; (b) The 2015 Note; (c) The 2016 Note; and (d) The 2017 Note. In opposition to this inquest, Defendants do not challenge the amounts owed under the loans and notes, but they do oppose aspects of Melody's request for its enforcement-related expenses (*see* discussion, *infra*). The amounts due under each of these agreements are discussed in detail below.

**a. The Eighth Street Loan Note**

Melody has demonstrated entitlement to the \$46,509,373.70 due under the Eighth Street Loan Note (the "ESLN").

Melody establishes that the Eighth Street Loan Agreement governs the ESLN's payment terms. The Agreement provides for the monthly calculation of interest that accrues at the rate of LIBOR plus 12% beginning on the Conversion Date, October 1, 2016 (Epstein Aff. [NYSCEF Doc. No. 270], ¶ 40; PX-004 at A-8). It also establishes that the interest rate increases by 5% in the event of default and that "interest accrued at the non-default rate monthly from October 1, 2016 until October 2, 2017, when Melody began to apply the default interest rate due to the borrowers' failure to make timely interest payments" (*id.* at ¶¶ 40, 44; PX-004 at § 2.04). Melody also demonstrates that interest continued to accrue at that default rate until May 13, 2021, when Melody

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<sup>1</sup> Melody initially sought more than \$5.2 million for its enforcement-related expenses and updated that amount to more than \$6 million as of December 2022, but it has also applied the proceeds of certain collateral sales to its balance of attorneys' fees and other expenses, bringing its current request for enforcement-related expenses down to \$2,241,223.09.

and defendants entered into the Limited Forbearance Agreement (the “LFA”) (*id.*, ¶¶ 39-40, 50; PX-017 at G25–G73).<sup>2</sup>

Melody also submits exhibits that demonstrate calculations for principal and interest due, payments and other credits applied to the balances, monthly loan notices, and calculations for the remaining balances due (*id.*, ¶ 43; PX-017 at M5). These submissions establish that \$39,320,729.01 remains outstanding in unpaid principal, and \$7,188,644.68 remains outstanding for unpaid interest (*id.* at ¶ 51; PX-017 at M90, P90).

Accordingly, the court awards Melody a total of \$46,509,373.70, representing the unpaid principal (\$39,320,729.01) and unpaid interest (\$7,188,644.68) due under the ESLN.

b. The 2015 Note

Melody has also demonstrated its entitlement to the \$17,325,361.86 due under the 2015 Note. Melody demonstrates that the 2015 Note’s payment terms are set forth in the note itself (PX-003); that interest initially accrued at the “Contract Rate”, that equals no less than 12% (PX-003, §§ 1[e], 1[p]-1[r]); that in an event of a default, past due interest, principal and any other sums due under the 2015 Note would bear interest at the Contract Rate plus 5% (PX -003, § 8[a]); that interest is due and payable quarterly beginning September 30, 2015; and that an \$8,750 additional administrative fee is also due on each “Payment Date” (PX-003, §§ 2[b]; Epstein Aff. [NYSCEF Doc. No. 270], ¶¶ 52, 56-57). Melody also demonstrates that the Contract Rate increased by 0.5% per month if a borrower failed to make a mandatory pre-payment by a specified date, and that these

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<sup>2</sup> The LFA affected the loans’ interest calculations and was entered into in response to Melody’s motion for contempt [MS 04]. The LFA required Melody to withdraw its contempt motion and also required the defendants to forego appealing the court’s prior granting of summary judgment on liability to Melody. Under the LFA, the parties also agreed that the defendants would provide Melody with collateral, such as fine art and jewelry, authorized Melody to market and sell certain real property owned by the Borrowers and to apply any proceeds to receive from those sales to the loan balances and permitted Melody to renew its contempt motion if defendants failed to deliver the collateral left in their possession (LFA [NYSCEF Doc. No. 245], § 3).

0.5% increases would continue until the pre-payment was made, capping at a 3.5% increase (*id.*, ¶ 52; PX-003, § 1[a]). Melody also provides documentation that it applied the payments and credits it received to the outstanding cash interest and administrative fee principal balances (*id.* at ¶¶ 57-58; PX-014 at L37, L40, L41, L43, L44, L46; PX-287; PX-501 at L50-52; PX-218 at B7; PX-221; PX-222; PX-223).

Accordingly, the court awards Melody \$17,325,361.86, representing the final unpaid principal balance (\$10,721,581.97), the unpaid interest balance (\$6,516,279.89), and the unpaid administrative fee balance (\$87,500) due to it under the 2015 Note.

c. The 2016 Note

Melody is also entitled to the \$1,309,713.88 due under the 2016 Note.

Melody demonstrates that the 2016 Note was originally for \$2,500,000 and that its payment terms were set forth in the note itself (PX-008); that interest initially accrued at a “Contract Rate” equaling no less than 12% (PX-008, §§ 1[d], 1[l], 1[m]); that interest and principal were due upon the note’s maturity date, that was extended by amendment to September 3, 2018 (PX-008, § 1.1); and that interest accrued on all amounts due at a default interest rate of no less than 17% in the event of a default (Epstein Aff. [NYSCEF Doc. No. 270], ¶¶ 66-67; PX-008, § 8[a]). Melody also demonstrates that interest accrued at the Contract Rate upon entering the note, and that interest on the note continued accruing and capitalizing at a minimum of 17% from September 3, 2018, until May 13, 2021, when the parties’ entered into the LFA (Epstein Aff., ¶ 68). Melody also submitted documentation that summarizes information contained in quarterly interest statements for the entire period that interest accrued on the 2016 Note (*id.* at ¶ 70; PX-015), and further demonstrates that it applied payments to the 2016 Note’s outstanding interest and principal due. Specifically, Melody establishes that it received payments towards principal and interest in October 2017, and

in October 2019 in connection with the sale of collateral, but that it has not received any payments against the note from the borrowers since 2017 (Epstein Aff., ¶¶ 68, 71-73; PX-228, PX-229, PX-015 at L5, N5, L11, N11, L12, N12).

Accordingly, the court awards Melody \$1,309,713.88, representing the total due to it under the 2016 Note (Epstein Aff., ¶¶ 66-73; PX-015 at M28).

d. The 2017 Note

Melody also establishes its entitlement to the \$3,306,022.99 due under the 2017 Note.

Melody's submissions demonstrate that the 2017 Note was originally for \$4,400,000 and that its payment terms were provided for in the note itself (PX-011); that interest was payable monthly and initially accrued at a "Contract Rate" equal to no less than 15% upon entering into the note (PX-011, §§ 1[i], 1[u], 1[v], 2[b]); that an event of default resulted in default interest accruing on all amounts due at a rate of 20% (PX-011, § 7[a]); and that due to the borrowers' failure to pay, interest began accruing at the default rate from November 8, 2017 to May 13, 2021 (PX-143; PX-016 at H16, H64; Epstein Aff., ¶¶ 74, 76-77, 79-81).

Melody submits quarterly interest statements for the entire period that interest accrued on the note (Epstein Aff., ¶ 77). Those quarterly statements, and other documents, show that Melody applied payments it received to outstanding interest and principal (*id.* at ¶ 79). Melody also submits documents summarizing the information contained in those quarterly interest statements for the entire period that interest accrued on the 2017 Note (PX-016). Melody also demonstrates that it applied payments it received to the note's outstanding interest and principal balances, including those received from the collateral sales, and that it has not received any other payments against the note from the borrowers since 2018 (PX-016 at N30; PX-141; PX-016 at L42, L43, N43, Epstein Aff., ¶¶ 79-81).

Accordingly, the court awards Melody \$3,306,022.99, representing the unpaid principal (\$2,481,088.84) and unpaid interest (\$824,934.15) due under the 2017 Note.

**II. Amounts Due Under the 2013 G&S Agreement, the 2015, 2016 and 2017 Guaranties**

Melody also establishes that the amounts due under the guaranties are the same as those due under the loans and notes in subsections (a) through (d) above (*see* discussion, *supra*).

Mr. Falcone personally guaranteed repayment of the ESLN pursuant to the 2013 G&S Agreement, that required him to pay Melody the full amount due if Eighth Street LLC and Croxton 2 LLC failed to do so.<sup>3</sup> Mr. and Mrs. Falcone unconditionally guaranteed Three-Hundredth Street LLC's repayment obligations under the 2015, 2016, and 2017 Notes in separate guaranty agreements, and they are responsible for paying the amounts due under the four guarantees in the same amounts as those due under the various corresponding notes, as set forth above (Guaranty Agreements [NYSCEF Doc. Nos. 229-232]; Epstein Aff., ¶ 83).

Melody demonstrates that it is owed \$46,509,373.70 under the 2013 G&S Agreement, that guarantees repayment of the ESLN (Epstein Aff. [NYSCEF Doc. No. 270], ¶ 83). Melody also establishes the amounts due under the 2015, 2016, and 2017 Guaranties, that guarantee repayment of the 2015, 2016 and 2017 Notes, respectively (*id.*). Specifically, Melody demonstrates that it is owed: \$17,325,361.86 under the 2015 Guaranty, the same amount due under the 2015 Note; \$1,309,713.88 under the 2016 Guaranty, the same amount due under the 2016 Note; and \$3,306,022.99 under 2017 Guaranty, the same amount due under the 2017 Note (*id.*).

<sup>3</sup> Under the 2013 G&S Agreement Mr. Falcone served as a Personal Guarantor and his wife, Mrs. Falcone, served as a Limited Guarantor (Guarantee and Security Agreement [NYSCEF Doc. No. 229] at 5). As a limited guarantor, Mrs. Falcone guaranteed the loan by pledging her equity interests in various entities, as well as all proceeds from those interests. Both Mr. and Mrs. Falcone jointly and severally, unconditionally, absolutely and irrevocably guaranteed the three subsequent loans (2015-2017 Guaranty Agreements [NYSCEF Doc. Nos. 230-232], ¶ 1).

### III. Amounts Due for Melody's Enforcement-Related Expenses

Under the applicable agreements, Melody is also entitled to enforcement-related expenses that it incurred in relation to the notes and loans at issue. The notes and loans documents all obligate defendants to reimburse Melody for enforcement-related expenses, including its reasonable attorneys' fees (*see* PX-001, § 10[a][ii], [a][iv] [providing for indemnification of "any and all reasonable out-of-pocket expenses, including . . . reasonable fees and expenses of counsel"]); PX-004, § 9.05 [providing for payment of Melody's attorney's fees]; PX-003, § 18[e]; PX-008, § 18[e]; PX-011, § 13[e]; PX-013, § 7; PX-012, § 10).

Originally, at the beginning of this inquest, Melody sought a total award of enforcement-related expenses in the amount of \$5,283,804.03 (Epstein Aff., ¶ 87). In its updated submissions, Melody asserts that its enforcement-related expenses grew to north of \$6 million. However, Melody also states that it sold certain collateral and applied the proceeds to reduce these enforcement-related expenses. Thus, Melody now seeks only an award in the amount of \$2,241,223.09 for its enforcement-related expenses, including attorneys' fees (Updated PX-502 [NYSCEF Doc. No. 299] at 2; Epstein Aff. [NYSCEF Doc. No. 298], ¶ 12 [asserting that "Melody . . . is seeking" a total of \$2,241,223.09 for enforcement expenses]).

Defendants only challenge Melody's enforcement-related expenses and fees concerning:

- (a) contingency fees Melody's counsel earned in connection with certain third-party proceedings;
- (b) perceived discrepancies in the expense calculation regarding Melody's motion for summary judgment;
- (c) certain legal fees (as reflected by 3 invoices) that Melody incurred by hiring outside counsel;
- (d) specific time entries relating to a "pre-production project" and a "collateral crossover project"; and
- (e) various entries for weekly team strategy meetings (*see generally* Opp. [NYSCEF Doc. No. 284]).

While Melody is entitled to its reasonable enforcement-related expenses under the agreements, including attorneys' fees, Melody is not entitled to the full amount it seeks.

a. *The Disputed Contingency Fees*

Melody claims it is entitled to recover \$690,000 in contingency fees related to enforcement proceedings to recover collateral that defendants transferred to nonparties Christie's, Inc ("Christie's") and a pawnbroker (the "Pawnbroker") (*see* PX-502; Epstein Aff. [NYSCEF Doc. No 298]). Until June 16, 2021, Melody's counsel billed Melody at a standard hourly rate for legal services it rendered with respect to this litigation and related third-party enforcement proceedings, including matters involving Christie's and the Pawnbroker. As of June 16, 2021, Melody retained its counsel, HSG, to pursue enforcement matters against Christie's and the Pawnbroker using a 30% contingency fee arrangement, and "HSG stopped billing Melody by the hour for work concerning claims against [those nonparties]" (Melody Brief [NYSCEF Doc. No. 293] at 4-5; *see* Contingency Arrangement Letter [NYSCEF Doc. No. 296]). HSG negotiated confidential settlement agreements with Christie's and the Pawnbroker relating to collateral underlying the notes and loans, earning 30% contingency fees. Now, on this application, Melody seeks to recover its enforcement-related expenses incurred in proceedings involving Christie's and other nonparties, using calculations that include both hourly billing entries for some of those services as well as the 30% contingency fee amounts its counsel earned after June 2021.

Defendants challenge \$870,000 in contingency fees that they assert Melody seeks at this inquest. Epstein states that defendants have incorrectly calculated Melody's total contingency fees, that amount to \$690,000, not \$870,000 (*see* Epstein Aff. [NYSCEF Doc. No. 298], ¶ 6 [explaining that the total contingency fees sought is \$690,000]; *see* PX-502). Defendants challenge the award of contingency fees on the basis that they are unsupported, and that the parties'

agreements do not require Melody's reimbursement in connection with separate contingency fee arrangements with its counsel (Opp. [NYSCEF Doc. No. 284] at ¶¶ 3-8). They also assert that the contingency fees are duplicative of ninety (90) billing entries referencing Christie's in Melody's counsel's description of [hourly billed] services, that Melody seeks to recover in addition to the contingency fee amounts sought for the related work (*id.* at ¶¶ 4-10).

Melody replies that the contingency fees are not duplicative of the hourly billing entries (Reply [NYSCEF Doc. No. 293] at 7-10). To that end, Melody notes that 81 (of the 90 total) billing entries for involving Christie's and the Pawnbroker proceedings predate the switch from an hourly billing arrangement to the contingency fee arrangement (*id.* at 9). Melody also claims that the contingency fees are reasonable because its switch from the hourly billing to a contingency fee arrangement was for the purpose of launching new and uncertain claims against Christie's and the Pawnbroker (*id.*). While Melody did initiate a new action against the Pawnbroker to recover collateral, *Melody v BLCE, LLC d/b/a/ New York Loan Company*, Index No. 653937/2021, it is not clear what new proceedings, if any, it pursued against Christie's. Melody's submissions also do not establish that it did not bill for any Pawnbroker-related proceedings before the switch to a contingency fee arrangement in June 2021.

An award of reasonable attorneys' fees is within the sound discretion of the court (*see Diakrousis v Malanga*, 61 AD3d 469 [1st Dept 2009]). While a 30% contingency fee is not unreasonable as a matter of law, Melody has failed to meet its burden of demonstrating *prima facie* that it is entitled to recover these contingency fee amounts. Specifically, Melody's submissions do not establish that the contingency fees it earned after June 2021 are not duplicative of hourly work that Melody performed prior to June 2021. Melody's submissions confirm that its calculations for enforcement-related expenses include both 81 hourly billing entries for work

relating to Christie's or the Pawnbroker, as well as the contingency fees that Melody's counsel earned as a result of those enforcement proceedings after June 2021 (*see* Mem. [NYSCEF Doc. No. 293] at 4-6). On this record, the court cannot determine whether or to what extent the contingency fees duplicate the hourly billing invoices for these nonparty enforcement matters. Thus, Melody has not carried its burden with respect to the contingency fees.

Accordingly, the court reduces the requested award for enforcement-related expenses by \$690,000, the amount of contingency fees that Melody seeks in its updated inquest calculations.

Further, Melody concedes that nine (9) of its billing entries concerning Christie's and the Pawnbroker, totaling \$6,241, "appear to have been improperly coded by the billing attorney to HSG's hourly matter, rather than to the contingency matter," and "[t]o correct that error, Melody agrees to withdraw its claim for attorney's fees as to this \$6,241" (Reply [NYSCEF Doc. No. 293] at 6). Accordingly, based on this concession, the court further reduces Melody's award for enforcement-related expenses by an additional \$6,241, resulting in a total reduction of \$696,241 for the enforcement-related expenses relating to Christie's and the Pawnbroker after the contingency fee arrangement became effective in June 2021.

b. *Purported Discrepancies in Melody's Calculations*

Defendants also take issue with alleged discrepancies between the July 8, 2022 dated Affidavit of Celine Hannett (the "Hannett Affidavit") (Hannett Aff. [NYSCEF Doc. No. 221]) and the September 9, 2022 dated Affirmation of Scott Danner (the "Danner Affirmation") (Danner Affirmation [NYSCEF Doc. No. 271]) filed in connection with the September 2022 inquest (Opp. [NYSCEF Doc. No. 284], ¶¶ 12-15). Defendants argue that there are discrepancies in the amounts regarding legal and administrative fees Melody paid out of pocket versus those paid as recoveries

from collateral dispositions and litigation, and that the unexplained discrepancies make it impossible to reconcile based on the submissions (*id.*).

The different amounts listed are not discrepancies. The Hannett Affidavit was filed in relation to Melody's motion for summary judgment on damages and provides the total legal and administrative fees that Melody incurred as of July 2022 (Hannett Aff. [NYSCEF Doc. No. 221]). The Danner Affirmation was filed in connection with the inquest and contains figures that "represent HSG's fees only and over two months later, by which time Melody had incurred additional legal fees for work by HSG" (Reply [NYSCEF Doc. No. 293] at 16). The alleged discrepancies are due to two things: Melody's proof on its summary judgment motion submitted in July 2022, and its proof at the inquest, submitted in September 2022, after it incurred additional expenses. Additionally, the two figures compare two different calculations, relate to two different time periods, and involve different factors.

Nevertheless, Melody's fact witness, Jason Epstein explained the alleged discrepancies. Epstein explained that he has "overseen revisions to the prior analysis to account for additional fees incurred by Melody, which are summarized in exhibit PX-502," and that "[t]hese revisions account for payments of \$58,007.82 and \$4,355.85 [that] [were] funded from an initial deposit for expenses provided by the borrowers; a \$540,000 contingency fee; as well as legal fees paid and charged to Melody after the date of the prior analysis" (Epstein Aff. [NYSCEF Doc. No. 270], ¶ 87). Epstein also explained Melody incurred \$5,283,804.03 in legal fees to date, as reflected in the PX-502 spreadsheet, and explained the updates relative to Exhibit P that lists the legal fees and expenses incurred in pursuing remedies arising from the defendants' defaults (Ex. P, Legal Fees and Expenses [NYSCEF Doc. No. 239]). Further, the court has already decided that Melody

is not entitled to recover the contingency fees that it seeks in connection with the work it performed for the third-party enforcement matters.

Accordingly, the court declines to reduce Melody's calculations based on these purported discrepancies.

c. *The Pre-Production Project and Collateral Crossover Projects*

Defendants also contest the Pre-Production Project and Collateral Crossover Project entries, arguing that their descriptions do not make clear what work was being performed (Opp. [NYSCEF Doc. No. 284], ¶ 19). Defendants' arguments are unavailing.

PX-167 and PX-168 list Melody's fees from March 2020 through May 2020 relating to the Pre-Production Project. The work performed during this period is set forth in the September 2022 Danner Affirmation and in several invoices to which defendants cite. The surrounding entries provide additional details on the Pre-Production Project relating to preparation for a production in response to a subpoena, and the tasks related to that production.

The surrounding entries also explain the 20.4 hours spent for the Collateral Crossover Project. Those entries, and their respective billing amounts, related to a paralegal's preparation of a detailed spreadsheet that set forth Melody's interest in Mr. Falcone's various assets. The underlying loans permit these fees and costs incurred in connection with these projects because the fees and costs relate to the "administration or enforcement of the Security Documents, including such expenses as are incurred to preserve the value of the Collateral or the validity, perfection, rank or value of any Transaction Lien" and exercise of "its rights or powers under the Security Documents" (PX-001, § 10[a][ii]).

Accordingly, Melody has met its prima facie burden of establishing its entitlement to the amount of enforcement-related expenses and fees it incurred relating to the Pre-Production and Collateral Crossover Projects.

d. Outside Counsel Invoices

Defendants further contest three (3) invoices from Melody's outside counsel, arguing that they do not provide any details about what specific legal services were rendered (Opp. [NYSCEF Doc. No. 284], ¶ 16). Melody seeks a total of \$278,024.97 for these outside counsel invoices.

When evaluating the reasonableness of attorneys' fees, the court examines several 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]). The court may reduce fees that are excessive (*see Solow Management Corp. v Tanger*, 43 AD3d 691 [1st Dept 2007]). The court may also reduce fees where the amount lacks (*Josefsson v Keller*, 141 AD2d 700 [1st Dept 1988]). 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] [25% reduction of fee award "due to the use of block billing, including vague and nonspecific billing entries, and the nature of th[e] lawsuit"]).

The invoices indicate that several tasks were billed in anticipation of events that never materialized (Reply [NYSCEF Doc. No. 293] at 11). Additionally, while these services may have been appropriate under the parties' agreements, Melody's billing entries for these services do not contain sufficient detail or information. Instead, the entries, each for thousands of dollars, only provide scant descriptions of the tasks performed. This ultimately prevents the court from determining their reasonableness. Thus, a 20% reduction to the amount requested for these outside

counsel invoices is appropriate here (*see e.g. 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”).

Accordingly, the court exercises its discretion to reduce Melody’s enforcement-related expenses by 20% (\$55,604.99) of the overall requested amount the outside counsel invoices (\$278,024.97) to account for these deficiencies, and awards Melody \$222,419.97 for these expenses.

e. **Team Meeting Entries**

Defendants also contest 261 billing entries referencing team meetings, claiming that the entries do not clarify whether multiple attorneys are billing for the same services. Defendants claim that some entries, “apparently for the same meeting, apply one time for a participant, while a different time is provided for another participant,” and that, seemingly, the times allocated to the team meetings are being apportioned between related and unrelated matters (Opp. [NYSCEF Doc. No. 284], ¶¶ 20-21).

While using multiple attorneys is not unreasonable in certain cases (*Phillips Nizer Benjamin Krim & Ballon LLP v Chu*, 240 AD2d 231, 232 [1st Dept 1997]), the disputed entries contain vague and unclear descriptions that prevent determination of the nature and reasonableness of the work counsel was performing. Additionally, the entries also fail to clarify adequately which meetings were attended by which participants given the different times listed across several different entries (*see e.g.*, PX-173, PX-177, PX-183, PX-185). In its papers, Melody offers to “seek only those fees associated with the smallest time entry, resulting in a total reduction of

\$1,131.50” for the total amount of enforcement-related expenses (Reply [NYSCEF Doc. No. 293] at 14]).

Given the issues with Melody’s entries for the team meetings, the court finds it more appropriate to reduce Melody’s award for enforcement-related expenses by a further 3% to account for the issues concerning the team meeting entries.

f. **The Limited Forbearance Agreement’s Limitation**

The court rejects Defendants’ argument that the LFA does not contain an agreement that requires them to reimburse Melody for attorneys’ fees in addition to amounts the LFA already specifically provides for (Opp. [NYSCEF Doc. No. 284], ¶ 22). The LFA’s language does not impose any limitation on recovering enforcement-related expenses and attorneys’ fees. Indeed, Section 9 states that the “[LFA] shall not supersede the Notes, the Guaranties or the Pledging Agreements, Loan Documents or any other agreement, all of which will remain in effect” (LFA [NYSCEF Doc. No. 245], ¶ 9). Additionally, the loan and note documents require defendants to reimburse Melody for reasonable enforcement-related expenses, including attorneys’ fees.

**IV. Updated Amounts Due Following the September 2022 Inquest**

After the inquest, the parties submitted several updated documents that accounted for recent recoveries, developments, and dispositions of collateral. These updated figures are reflected in Section I, discussing the amounts due under the loans and notes. However, as noted above, Melody applied the proceeds of certain collateral sales to offset the amount of its enforcement-related expenses.

a. Updated Total Amount Due Under the All Loans and Notes

The amounts due to Melody in damages under the notes have not changed since the September 2022 inquest (Updated Epstein Aff. [NYSCEF Doc. No. 298] at ¶ 13). At the inquest, Melody's alleged damages totaled \$68,450,472.43, representing the \$46,509,373.70 owed under the ESLN, the \$17,325,361.86 owed under 2015 Note, the \$1,309,713.88 owed under the 2016 Note, and the \$3,306,022.99 owed under the 2017 Note (*id.*).

Accordingly, the court awards Melody \$68,450,472.43 representing its total damages under the ESLN, 2015, 2016, and 2017 Notes.

b. Updated Total Amount Due for Enforcement-Related Expenses

As of the September 2022 inquest, Melody asserted that it incurred \$5,283,804.03 in enforcement-related expenses (Reply [NYSCEF Doc. No. 293] at 3 n 2). Melody's updated submissions in December 2022 indicate that Melody's enforcement-related expenses climbed north of \$6 million, but that those expenses have been offset by proceeds it recovered from collateral sales and dispositions (Updated Epstein Affidavit [NYSCEF Doc. No. 298], ¶¶ 5, 8-11). Thus, Melody now seeks to recover only \$2,241,223.09 for its unpaid enforcement-related expenses (*id.* at ¶ 12).

As explained above, the court reduces Melody's award for enforcement-related expenses by \$690,000 for the contingency fees and, as Melody concedes, also reduces the award by \$6,241 for the errant hourly billing entries relating to the post-June 2021 Christie's and Pawnbroker enforcement matters. Reducing the total requested award of \$2,241,223.09 by \$696,241 equals \$1,544,982.09. The court also finds that a 20% reduction of the total amount of outside counsel fees (\$278,024.97) is appropriate, reducing the award from \$1,544,982.09 to \$1,489,377.10 to reflect that \$55,604.99 deduction [20% of \$278,024.97]. The court further reduces the total award

by another 3% to account for the issues concerning the team meeting entries. A 3% reduction of \$1,489,377.10 [\$44,681.313] brings the final award for enforcement-related expenses to \$1,444,695.787.

### **Conclusion and Final Award**

In conclusion, the court awards Melody a total of \$69,895,168.217, representing: (a) An award for the updated total amounts due under all the loans and notes in the amount of \$68,450,472.43; and (b) An award of enforcement-related expenses in the amount of \$1,444,695.787.

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

Accordingly, the court awards plaintiff Melody Business Finance LLC with an address of 777 W. Putnam Avenue, Suite 300, Greenwich, CT 06830, judgment as follows:

On its first and second causes of action for breach of contract and breach of guaranty relating to the **Eighth Street Loan** and **2013 G&S Agreement**, \$46,509,373.70 against defendants Eighth Street LLC, Croxton 2 LLC, Three-Hundredth Street LLC, Philip A. Falcone, jointly and severally, together with post-judgment interest at the statutory rate, as calculated by the Clerk of the Court; and

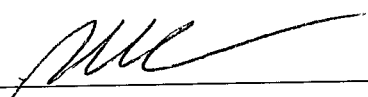
On its first and second causes of action for breach of contract and breach of guaranty relating to the **2015 Loan and 2015 Guaranty Agreement**, \$17,325,361.86 against defendants Eighth Street LLC, Croxton 2 LLC, Three-Hundredth Street LLC, Philip A. Falcone and Lisa M. Falcone, jointly and severally, together with post-judgment interest at the statutory rate, as calculated by the Clerk of the Court; and

On its first and second causes of action for breach of contract and breach of guaranty relating to the **2016 Loan and 2016 Guaranty Agreement**, \$1,309,713.88 against defendants Eighth Street LLC, Croxton 2 LLC, Three-Hundredth Street LLC, Philip A. Falcone and Lisa M. Falcone, jointly and severally, together with post-judgment interest at the statutory rate, as calculated by the Clerk of the Court; and

On its first and second causes of action for breach of contract and breach of guaranty relating to the **2017 Loan and 2017 Guaranty Agreement**, \$3,306,022.99 against defendants Eighth Street LLC, Croxton 2 LLC, Three-Hundredth Street LLC, Philip A. Falcone and Lisa M. Falcone, jointly and severally, together with post-judgment interest at the statutory rate, as calculated by the Clerk of the Court; and

For its reasonable **Enforcement-Related Expenses** under the agreements, \$1,444,695.787 against all defendants, jointly and severally, together with post-judgment interest at the statutory rate, as calculated by the Clerk of the Court.

DATE: 3/24/2023

  
MELISSA A. CRANE, JSC

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify \_\_\_\_\_ )