

Wilmington Trust, N.A. v Elmwood NYT Owner, LLC

2023 NY Slip Op 33812(U)

October 18, 2023

Supreme Court, New York County

Docket Number: Index No. 850176/2020

Judge: Andrea Masley

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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 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, WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, ON BEHALF OF THE REGISTERED HOLDERS OF CD2017-CD3 MORTGAGE TRUST, and COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2017-CD3,

INDEX NO. 850176/2020

MOTION DATE _____

MOTION SEQ. NO. 023

DECISION + ORDER ON MOTION

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. I THROUGH JOHN DOE NO. XXX,

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 023) 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334

were read on this motion to/for ATTORNEY - FEES.

In motion seq. no. 023, Hunton Andrews Kurth (HAK), attorney of the Receiver, moves for interim fees and expenses from June 2022 through January 2023 in the amount of \$334,999.98. There is no opposition to this motion. In support of its motion,

HAK submits the affirmation of partner Patrick Robson, Esq. (NYSCEF 321), firm bios (NYSCEF 322), and time records for June 2022 through January 2023 (NYSCEF 323-330).

Robson is a partner on HAK's corporate and securities litigation team and leads HAK's real estate litigation practice in New York. (NYSCEF 40, Robson Aff ¶ 8.) His hourly rate is \$1,130¹ per hour. (*Id.* ¶ 22.) Anthony Bonan, a partner on the firm's real estate team, "oversaw the drafting of subordination, non-disturbance, and attornment agreement and escrow agreements related to the Property." (*Id.* ¶ 10.) His hourly rate is \$960. (*Id.* ¶ 22.) Partner "Chanse McLeod is a commercial real estate attorney with more than 30 years of experience." (*Id.* ¶ 11.) His hourly rate is \$1,155 per hour. (*Id.* ¶ 22.) M. Brett Burns is a partner on HAK's labor and employment team who provided legal advice pertaining to the ADA lawsuit pending in federal court. (*Id.* ¶ 13.) His rate is \$960. (*Id.* ¶ 22.) Rebecca Hoffman is an associate in the firm's real estate group with an hourly rate of \$735². (*Id.* ¶¶ 12, 22.) Juliene Drei Munar and Richard Cortez, Jr are associates with the firm's labor and employment group, also provided legal assistance in connection with the ADA lawsuit at hourly rates of \$715 and \$555, respectively. (*Id.* ¶¶ 14, 15, 22.) Joseph Saltarelli, counsel in the firm's litigation group, advised the Receiver in connection with the guaranty action at an hourly rate of \$995. (*Id.* ¶¶ 16, 22.) Kathleen Perkins, Colton Tully-Doyle, and Jennifer Bloom are associates who assisted in the guaranty and holdover actions. (*Id.* ¶¶ 17, 18, 20.) Their hourly rates

¹ In January 2023, Robson's hourly rate was raised to \$1,200. (*Id.* ¶ 22.)

² In January 2023, Hoffman's hourly rate was raised to \$790. (*Id.* ¶ 22.)

are \$735³, \$605⁴, and \$770, respectively. (*Id.* ¶ 22.) “Mitchell McCloy is an associate in the firm’s litigation group. Mr. McCloy assisted with preparing various memoranda of law filed on behalf of the Receiver.” (*Id.* ¶19.) His hourly rate was \$555 in 2022 and raised to \$645 in January 2023. (*Id.* ¶ 22.) The support staff that worked on the matter, Bradford Mulder (managing clerk) and Raymond Galbraith (paralegal), charged \$435 and \$400⁵, respectively.

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. (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 who 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].)

The court finds that the rates charged by Robson and the other attorneys and support staff who worked on this matter are usual and customary for commercial law firms in New York City. The court also finds that generally, the hours charged for the

³ In January 2023, Perkin’s hourly rate was raised to \$865. (*Id.* ¶ 22.)

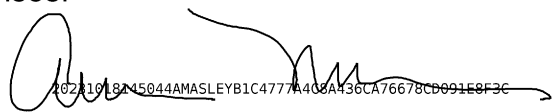
⁴ In January 2023, Tully-Doyle’s hourly rate was raised to \$695. (*Id.* ¶ 22.)

⁵ In January 2023, these hourly rates were raised to \$500 and \$420.

various tasks are reasonable. HAK, among other things, has represented the Receiver in a holdover proceeding, a proceeding involving an alleged breach of a guaranty and an ADA action. However, the court finds that the time spent drafting, revising, discussing, and circulating the interim fee applications in June, July, August, and November 2022 is unreasonable and deducts \$7,500 from the total amount requested. The court also finds the amount of time reviewing and revising the Receiver's monthly report in June and July 2022 unreasonable and deducts \$800. The court also finds the time spent by the managing clerk to update, finalize, efile, download and distribute the Notice of Entry of the decision granting the Receiver's motion to vacate the preliminary injunction and the time spent receiving, reviewing, and distributing the transcript of oral argument of the motion to vacate the preliminary injunction and review of Part 48 Procedures unreasonable and deducts \$250. Finally, the court finds the amount of time expended on Perkin's pro hac OSC unreasonable and deducts \$1,000.

Accordingly, it is

ORDERED that the motion is granted, in part, and Hunton Andrews Kurth is awarded \$325,449.98 in attorneys' fees and expenses.



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10/18/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE