

Bank of Hope v Winia Elecs. Am., Inc.

2024 NY Slip Op 32809(U)

August 9, 2024

Supreme Court, New York County

Docket Number: Index No. 655722/2023

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA A. CRANE

PART 60M

Justice

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BANK OF HOPE

INDEX NO. 655722/2023

Plaintiff,

- v -

WINIA ELECTRONICS AMERICA, INC.,

**DECISION
AFTER INQUEST**

Defendant.

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Background

The court presumes familiarity with the facts underlying this case but provides the following background as relevant to this inquest on interest and attorneys’ fees.

In Motion Sequence No. 001, plaintiff moved, pursuant to CPLR 3213, for summary judgment in lieu of complaint as against defendant for the amount of (a) \$9,625,505.66, plus (b) accrued and unpaid post-maturity interest totaling \$459,284.09, plus (c) interest at the default rate of 13.5% from October 26, 2023 through the date of judgment, plus (d) reasonable attorneys’ fees, costs, and expenses incurred in enforcing its rights and collecting the amounts due. The motion was unopposed.

On 4/9/24, the court granted plaintiff’s motion as to liability and principal amount owed only [\$9,625,505.66]. Specifically, the court held that plaintiff met its *prima facie* burden by attaching the April 11, 2022 dated promissory note (“Promissory Note”) between itself as lender and defendant as borrower, and that it ultimately established that defendant made an unconditional promise to pay the amount of the debt and has failed to do so, in the principal amount of \$9,625,505.66 (Doc 24 [Decision + Order]). However, the court declined to award plaintiff the

OTHER ORDER – NON-MOTION

\$459,284.09 in interest, as it failed to explain how it calculated the amount it sought. The court also declined to award plaintiff any attorneys' fees, as plaintiff failed to provide the court with either the amount of attorneys' fees it was seeking or any substantiation of those fees. As such, the court granted plaintiff's motion as to liability and principal amount owed only and put this case over for an inquest as to interest and attorneys' fees.

This decision addresses plaintiffs' claims for interest and attorneys' fees.

Discussion

On this inquest, plaintiff seeks a total of \$547,926.12, consisting of \$459,284.09 in interest up to October 26, 2023, and \$88,642.03 in attorneys' fees. Plaintiff also seeks additional accrued interest at the default rate of 13.250% since October 26, 2023.

As discussed further below, the court awards plaintiff the full \$459,284.09 in interest up to October 26, 2023, and further interest at the default rate from October 26, 2023 until April 9, 2024 (the date of the decision and order resolving MS 01). However, the court declines to award the full amount in attorneys' fees that plaintiff seeks.

I. Interest

Plaintiff has adequately established its entitlement to \$459,284.09 in past accrued interest, plus additional interest at a per diem rate of \$3,542.72 until April 9, 2024. After April 9, 2024, interest will run at the statutory rate.

Using the Promissory Note, plaintiff previously established that defendant made an unconditional promise to pay interest on the loan "calculated from the date of each advance until repayment of each advance" (Doc 6 [Promissory Note]). Under the Promissory Note, the interest rate is variable, reflecting the Wall Street Journal Prime Rate less 0.25%. Furthermore, the Promissory Note states that upon default, the rate will increase by an additional 5.000% (*id.*).

In support of this inquest, plaintiff now submits the affidavit of Bo Seong Jang (Doc 41 [Bo Seong Jang Aff]), the First Vice President and Special Assets Department Team Leader of the Special Assets Department of Bank of Hope, along with its underlying exhibits (Docs 42-44 [Supporting Exhibits]). The affidavit and exhibits explain the various interest calculations and figures involved.

Specifically, plaintiff first supports its claim for interest on the loan via the Loan Payment History document. This document outlines all loan transactions between plaintiff and defendant from May 4, 2022, the date the Promissory Note was issued, to August 30, 2023 (Doc 43 [Loan Payment History]). Plaintiff further supports the Loan Payment History document with the Interest Calculation Log. This log lists the outstanding principal, interest rate, and interest balance on the day of each transaction since May 4, 2022 (Doc 44 [Interest Calculation Log]). Additionally, plaintiff also substantiates each interest rate listed in the Interest Calculation Log through WSJ US Prime Rate Data, showing all changes in the rate following the day of the Promissory Note (Doc 42 [WSJ US Prime Rate Data]). With the most recent rate being 8.500%, the additional 5.000% from the default results in a rate of 13.500% less 0.250%, corresponding to a default rate of 13.250%.

Accordingly, the court awards plaintiff \$459,284.09 plus interest at a rate of 13.250% or \$3,542.72 per diem from October 26, 2023 through April 9, 2024.

II. Attorneys' Fees

The court declines to award the full \$88,642.03 in attorneys' fees plaintiff seeks on this inquest.

An award of reasonable attorneys' fees is within the discretion of the court (*see Diakrousis v Malanga*, 61 AD3d 469 [1st Dept 2009]). To assess the reasonableness of attorneys' fees, the

court considers 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 requesting party holds the burden of proof in proving the reasonableness of requested fees (*EVUNP Holdings LLC v Frydman*, 154 AD3d 558, 559 [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 requested lacks proof (*Josefsson v Keller*, 141 AD2d 700, 701 [2d Dept 1988]). Thus, a reduction in excessive fees, duplicative fees, and fees that lack proof is within the court’s discretion.

A fee award may also 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”). Specifically, courts may reduce requested fees when the use of block billing makes it “makes it exceedingly difficult for the court to identify whether the amount of time spent on a particular task is reasonable” (*546-552 W. 146th St. LLC v Arfa*, 99 AD3d 117, 123 [1st Dept 2012]).

a. Duplicative and Excessive Work

The time records and entries that plaintiff’s counsel submits on this inquest indicate numerous instances of duplicative and excessive work being performed.

For example, counsel's submissions indicate that, between August 25, 2023 and September 28, 2023, attorney David A. Wender billed clients to "Analyze loan document in connection with remedy enforcement" on seven different occasions (Doc 45 [Invoices], Bill No: 1273320, pgs. 2-3). Additionally, the submitted invoices also indicate that, between October 30, 2023 and November 6, 2023, Attorney David A. Wender also billed clients to "Review and analyze revisions to draft complaint; emails in furtherance of same" on five separate occasions (Doc 45 [Invoices], Bill No: 1273320, pgs. 5-6).

These are two of at least twelve instances of the firm charging for work that is described to have occurred multiple times, indicating excessive billing and duplicative work. As such, a deduction is appropriate here.

b. Block-Billing

Additionally, the time records and entries plaintiff's counsel submits on this inquest also indicate numerous instances of block billing. This ultimately prevents the court from determining the reasonableness of the requested attorneys' fees, as the court cannot differentiate nor specify how much time plaintiff's counsel spent on each task listed.

For instance, on September 29, 2023, attorney Nathaniel T. DeLoatch billed 1.7 hours to "Prepare for and attend meeting with ES team re drafting complaint; correspond with D. Wender re notice of default and demand for payment; analysis of mailing issues and related confirmations" (Doc 45 [Invoices], Bill No: 1273320, pg. 3). Another example can be seen when examining the billing for November 30, 2023. In that instance, attorney Stephanie M. Keating billed 2.0 hours to "Draft and revise affidavit of service for certified mail to Defendant's registered agent; draft and revise Notice of Server of Process of Secretary of State of New York; arrange for certified

mailing to be sent to Defendant's registered agent" without specifying how much time was spent on each individual task (Doc 45 [Invoices], Bill No: 12780311, pg. 3).

In both these instances, there are three different tasks described in one billing entry, without specification as to how much time was spent on each task, making it difficult for the court to determine the reasonableness of the requested fees. Plaintiff's submitted invoices are rife with this style of block billing, with various attorneys charging for multiple tasks in the same entry, without differentiating time spent on each individual task.

As such, a deduction is appropriate here as well.

c. Total Attorneys' Fees Awarded

Ultimately, the invoices plaintiff's counsel submits on this inquest indicate duplicative and excessive work being performed, as well as numerous instances of block-billing. Under the circumstances, the court finds that a 25% reduction of the requested \$88,642.03 is appropriate to account for excessive billing and block billing (*see David Z. Inc. v Timur on Fifth Ave., Inc.*, 7AD3d 257, 258 [1st Dept 2004] [reducing award of attorneys' fees from \$13,793 to \$7,500 after finding the original award "excessive"]). Thus, the court awards plaintiff a total of \$66,481.52.

III. Conclusion

The court previously granted plaintiff's CPLR 3213 motion as to the principal amount owed, \$9,625,505.66. The court now awards plaintiff \$459,284.09 in accrued interest, plus interest at a rate of 13.250% or \$3,542.72 per diem from October 26, 2023 until April 9, 2024. Additionally, as discussed above, the court declines to award plaintiff the full \$88,642.03 it seeks for attorneys' fees on this inquest. Given the various and multiple instances of duplicative, excessive billing, as well as block billing, the court reduces the requested award by 25%, amounting to an award of \$66,481.52 in attorneys' fees. Thus, the court awards plaintiff a total of

\$9,625,505.66 [principal] + \$525,765.61 [interest and attorneys' fees through 10/26/23] = \$10,151,271.30, plus \$3,542.72 per diem from October 26, 2023 to April 9, 2024.

The court has considered plaintiff's remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that the Clerk is directed to enter judgment, in favor of plaintiff, and as against defendant, in the amount of \$10,151,271.30, together with pre-judgment interest at the contractual default rate of \$3,542.72 per diem from October 26, 2023 through April 9, 2024, and thereafter at the statutory rate, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs, and defendant shall have execution therefor; and it is further

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

8/9/2024
DATE


MELISSA A. CRANE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input 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"/>	OTHER
			<input type="checkbox"/>	REFERENCE