

Realya Crown Hgts., LLC v M Rental Brooklyn LLC

2025 NY Slip Op 33299(U)

September 3, 2025

Supreme Court, New York County

Docket Number: Index No. 651643/2020

Judge: Joel M. Cohen

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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 03M

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REALYA CROWN HEIGHTS, LLC,	INDEX NO.	<u>651643/2020</u>
Petitioner,	MOTION DATE	<u>04/25/2025,</u> <u>07/08/2025</u>
- v -	MOTION SEQ. NO.	<u>004 005</u>
M RENTAL BROOKLYN LLC, RAFI MANOR, M1 DEVELOPMENT LLC		
Respondents.	DECISION + ORDER ON MOTION	

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 131, 132, 133, 134, 135, 136, 137, 138, 139, 140
 were read on this motion to CONFIRM ARBITRATION AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 142, 143, 144
 were read on this motion to RESTORE ACTION.

Petitioner Realya Crown Heights LLC (“Realya” or “Petitioner”) moves for an Order restoring this action to the active calendar (Mot. Seq. 005) and for an Order confirming the March 9, 2021 Arbitration Award entered in the arbitration between Realya and Respondents M Rental Brooklyn, LLC (“M Rental”), M1 Development LLC (“M1”), and Rafi Manor (“Manor,” and together with M1 and M Rental, “Respondents”) and for certain attorney’s fees incurred in this action (Mot. Seq. 004). No parties oppose either motion (though the Court has considered Respondents’ arguments previously filed related to Realya’s attorney’s fees request, NYSCEF 51–56). For the following reasons, Realya’s motions are granted in part.

BACKGROUND

As relevant here, M1 and Manor commenced this action seeking a permanent stay of arbitration, which was denied by this Court in September 2020 and the Petition was dismissed

(NYSCEF 38). Realya's cross-motion was granted in part as to the attorney's fees requested (*see id.*), and the caption was thereafter amended to realign the parties in the remaining attorney's fees application (*see* NYSCEF 80).

On February 22, 2021, the Arbitrator granted summary judgment in favor of Realya and jointly and severally against Respondents for the principal sum of \$1,622,098.63, plus interest at 17%, and attorneys' fees and costs (*see* NYSCEF 134). The Arbitrator further granted Realya's Motion directing Respondents, jointly and severally, to post a bond of \$1,800,000 to secure collection of a final award (*id.*). No bond was posted by the March 8, 2021 deadline or at any time thereafter (NYSCEF 133 ["Flanders Affirm."] ¶ 17). Following additional submissions on attorneys' fees and costs, the Arbitrator issued a Final Award, *inter alia*, incorporating the February 22, 2021 Order into the Final Award and directing Respondents to reimburse Realya \$78,554.75 for attorneys' fees (*see* NYSCEF 134 ["Final Award"]).

After Realya moved in this Court to confirm the Final Award on March 19, 2021, Manor and M1 filed for bankruptcy in the United States Bankruptcy Court, Eastern District of New York (*see* NYSCEF 122-125). In light of the automatic bankruptcy stay, the Court denied the motion to confirm the Final Award as moot, without prejudice to refile the motion, with updated briefing, if the case is remanded (NYSCEF 128).

On August 23, 2024, the Bankruptcy Court dismissed the bankruptcy actions commenced by M1 and Manor (*see* NYSCEF 143 ["Barry Affirm"] ¶5; NYSCEF 144 [Bankruptcy Court Order]). The August 23, 2024 Order provides that in light of the dismissals, "this Court may no longer exercise federal subject matter jurisdiction over the Realya Adversary¹. Accordingly, the

¹ Defined therein as *Realya Crown Heights LLC v. M1 Development LLC, et al.*, Adv. No. 21-01164-nhl (removed from state court (*In the Matter of Confirmation of Arbitration Award*

Realya Adversary is remanded to the New York Supreme Court.” (NYSCEF 144). On June 11, 2025, Realya filed a *Notice to County Clerk of U.S. Bankruptcy Court Order Remanding Case Back to State Court* (NYSCEF 141).

DISCUSSION

In light of the above, Realya’s motion to restore this action to active status is granted.

Upon restoration, the unopposed motion to confirm the arbitration award is also granted. CPLR 7510 states that the court “shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511” (*Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 1, 3 [1st Dept 2009]). Realya timely moved to confirm the Final Award in 2021, and Respondents have not opposed the petition or otherwise sought to vacate or modify the Award. Accordingly, the Final Award is hereby confirmed.

Realya’s request for attorney’s fees relating to (i) the initial proceedings in this action, (ii) defending the bankruptcy action, and (iii) bringing this renewed application is granted in part. Absent a contractual agreement to the contrary, the general rule under New York law is that each party is responsible for its own attorneys’ fees and costs of litigation (*see Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 492 [1989]; *AG 380, LLC v ComMet 380, Inc.*, 10 NY3d 507, 515 [2008]). A contractual agreement allowing a prevailing party to collect legal expenses relating to the action from the non-prevailing party must be explicit (*see Hooper*, 74 NY2d at 492; *Sage Sys., Inc. v Liss*, 39 NY3d 27, 31 [2022]). Furthermore, “[a]n award of attorneys’ fees pursuant to such a contractual provision may only be enforced to the extent that the amount is

between Realya Crown Heights LLC against MI Development LLC, Index. No. 651643/2020 (N.Y. Supreme Ct.) (the “Realya Adversary”).

reasonable and warranted for the services actually rendered” (*Kamco Supply Corp. v Annex Contr. Inc.*, 261 AD2d 363, 365 [2d Dept 1999]). “The determination of what constitutes a reasonable attorney’s fee is a matter within the sound discretion of the Supreme Court” (*Lancer Indem. Co. v JKH Realty Group, LLC*, 127 AD3d 1035, 1035-36 [2d Dept 2015]). “The attorney bears the burden of establishing the reasonable value of the services rendered, based upon a showing of the hours reasonably expended and the prevailing hourly rate for similar legal work in the community” (*id.* at 1036).

First, Realya requests an award of attorneys’ fees against Manor and M1 in the amount of \$64,907.10 and costs of \$1,058.92 in connection with the stay-related activity earlier in this proceeding. This Court previously held that Realya is entitled to its attorneys’ fees and costs incurred in defending its rights pursuant to Article 15 of the Loan Documents (NYSCEF 38; NYSCEF 40 [“Sept 9, 2020 Tr”] 38:20-39:8). Realya thereafter filed its application, which was opposed by the Respondents (*see* NYSCEF 41-60).

Article 15 of the Loan Documents provides in relevant part that “[a]ny party shall have the right to seek injunctive relief from any court of competent jurisdiction in any case where such relief is available. The prevailing party in such injunctive action shall be awarded its costs, including reasonable attorneys’ fees, from the non-prevailing party” (NYSCEF 4 Art. 15).

Having reviewed the submissions, the Court exercises its discretion to deduct \$10,000 from the proposed fee amount. First, the Court finds that incurring approximately \$20,000 in fees to oppose Respondents’ three-page letter requesting a stay pending appeal (*see* NYSCEF 56) is excessive, and thus will reduce this amount by 50 percent. Second, the Court will also deduct the fees (\$10,162.75) incurred in filing an unauthorized brief that was not considered by the

Court (Sept 9, 2020 Tr at 3:19-24). The remainder of the application, including the costs of \$1,058.92, is granted. Therefore, the \$64,907.10 sought is reduced to \$44,744.35.

The Court also finds that Realya's application for an additional \$21,547.35 in attorney's fees for "fees on fees" must be excluded (*see* NYSCEF 58-60). Such amounts are not recoverable by a "prevailing party" unless the governing contract is "unmistakably clear" that fees on fees were contemplated (*see 546-552 W. 146th St. LLC v Arfa*, 99 AD3d 117, 122 [1st Dept 2012]). Here, Article 15 only provides that the "prevailing party in such injunctive action" is entitled to attorney's fees and costs and nothing in that Article makes it "unmistakably clear" that fees on fees were contemplated. While Realya appears to rely on the Corporate Undertaking as support for fees on fees (*see* NYSCEF 57 at 10 ["the Corporate undertaking provides that Realya is entitled to "costs and expenses, including reasonable fees and out-of-pocket expenses of attorney and expert witnesses, incurred by [Realya] in enforcing its rights under this Undertaking."]; NYSCEF 4, Corporate Undertaking]), this Court's grant of attorney's fees was based on Article 15, not the Corporate Undertaking (*see* NYSCEF 40, Sept 9, 2020 Tr. at 38:20-39:8). Realya's reliance on cases involves a right to attorneys' fees created by statute is unavailing (*see Senfeld v I.S.T.A. Holding Co., Inc.*, 235 AD2d 345 [1st Dept 1997]).

Second, Realya requests an award of attorneys' fees and costs in favor of Realya and against all Respondents, jointly and severally, under Article 15 of the Loan Documents and the Corporate Guaranty in the amount of \$201,371.05 incurred in defending against the bankruptcy proceedings. The bankruptcy action was a separate proceeding from the injunctive relief sought in this Court. Furthermore, the Corporate Guaranty provides that Realya is entitled to "costs and expenses, including reasonable fees and out-of-pocket expenses of attorney and expert witnesses, incurred by [Realya] in enforcing its rights *under this Undertaking*" (NYSCEF 4, Corporate

Undertaking [emphasis added]). Even assuming this request for fees is properly brought in this Court rather than in the Bankruptcy Court, Realya provides no basis for finding that defending against the Bankruptcy proceedings would be included in the attorney's fees provision of the Corporate Guaranty. Therefore, this request is denied.²

Accordingly, it is

ORDERED that Realya's Motion to Restore this Action (Mot. Seq. 005) is **GRANTED**; it is further

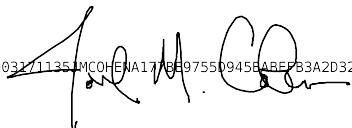
ORDERED that Realya's Motion to confirm the Arbitration Award and for Attorney's Fees (Mot. Seq. 004) is **GRANTED IN PART** insofar as the Arbitration Award, rendered in favor of Petitioner, is confirmed; the request for attorney's fees is granted in part, and Respondents shall reimburse Realya \$44,744.35 in attorney's fees and \$1,058.92 in costs as outlined herein; it is further

ORDERED that Petitioner's counsel shall serve a copy of this order with notice of entry on Respondents within five (5) days from the date of this Order; and it is further

ORDERED that Petitioner shall file a proposed judgment, including the attorney's fees and costs granted herein, within fourteen (14) days of the date of this Order. Respondents have seven (7) days thereafter to file any objections to the form of the proposed judgment. Petitioner shall notify the Court via letter filing on NYSCEF and by email as to whether there have been any objections to their proposed judgment.

² To the extent Realya is also seeking compensation for fees and costs incurred in connection with confirming the award and/or seeking relief between the issuance of the Final Award and the judgment that was not covered by Realya's first request, this is denied. Any fees incurred in seeking to confirm the arbitration award fall outside the ambit of Article 15 (limited to "prevailing party in such injunctive action").

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

9/3/2025
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: