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QUEENS COUNTY

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ANNA CULLEY IA Part 27
Justice

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PNC BANK, N.A., AS SUCCESSOR BY MERGER TO NATIONAL CITY BANK,

Plaintiff,

-against-

MIKHAL AMINOVA; ALBERT AMINOV; INFINITE SUNSHINE 2015-1; ELIZABETH ABRAMOVA; CREDIT CORP SOLUTIONS INC.; "JOHN DOE" AND "JANE DOE" said names being fictitious, it being the intention of Plaintiff to designate any and all occupants of premises being foreclosed herein,

Defendants.

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DECISION /ORDER AFTER HEARING

Index No.: 721021 /2021

Hearing Date: February 25, 2025

By way of background, this court by a Decision & Order dated January 6, 2025, awarded defendants Mikhal Aminova and Albert Aminov (collectively "defendants") reasonable attorneys' fees and expenses pursuant to Real Property Law (RPL) § 282, and the matter was set down for a hearing to determine the amount of attorneys' fees and expenses to be awarded.

RPL § 282 permits a prevailing defendant in a foreclosure action "the reasonable attorneys' fees and/or expenses incurred by the mortgagor as the result of the failure of the mortgagee to perform any covenant or agreement on its part to be performed under the mortgage or in the successful defense of any action or proceeding commenced by the mortgagee against the mortgagor arising out of the contract."

As a general rule, the reasonableness of counsel's hourly rate is determined by comparing the rate to that customarily charged for similar services by counsel with like experience and skill. (See Gutierrez v Direct Mktg. Credit Servs., 267 AD2d 427, 428 [2d Dept 1999]; Getty Petroleum Corp. v G.M. Triple S. Corp., 187 AD2d 483, 483-484 [2d Dept 1992]; Matter of Rahmey v Blum, 95 AD2d 294 [2d Dept 1983].) Although an award of counsel fees is within the discretion of the court, such award must be based upon a showing of "the hours reasonably expended . . . and the prevailing

hourly rate for similar legal work in the community." (Gutierrez v Direct Mktg. Credit Servs., 267 AD2d at 428.) Factors that a trial court may take into account in determining the amount of a counsel fee award "include the time, effort and skill required; the difficulty of the questions presented; the responsibility involved; counsel's experience, ability and reputation; the fee customarily charged in the locality; and the contingency or certainty of compensation." (Hinman v Jay's Vil. Chevrolet, 239 AD2d 748, 749 [3d Dept 1997] [internal quotation marks and citation omitted]; accord Imrie v Ratto, 187 AD3d at 1351; see Matter of Lippes v State Univ. of N.Y. at Buffalo, 213 AD3d 1316, 1317 [4th Dept 2023].)

At the hearing Serge Petroff, Esq., who is a managing partner of Petroff Amshen, LLP, testified and offered several items into evidence including the retainer agreement and documents related to the hours expended in their representation of defendants. Mr. Petroff's testimony established the hourly rate charged, the hours expended and the reasonableness of the hourly rate charged based upon the complexity of the matter; education and experience of the handling attorneys; and the fees customarily charged in this area of the law in this local. Plaintiff called no witness and did not offer any evidence in opposition.

Defendants' counsel seeks the sum of $74,027.50 which includes subsequent representation of defendants at the Appellate Division on emergency orders to show causes brought by plaintiff after the court issued its' Order dated January 6, 2025, which had set this matter down for a hearing to determine reasonable attorney fees. Also, counsel for defendant testified that the amount of $74,027.50 included the preparation of an appellate brief in response to an appeal filed by plaintiff, travel time for himself and co-counsel and the hours expended for testifying and appearing before this court for the hearing on attorney fees and expenses.

The court will award attorney fees up and until the entry of judgment that, *inter alia*, cancels and discharges the mortgage in the matter, which occurred on February 11, 2025 and was recorded on February 18, 2025. (See, e.g., *Deutsche Bank v. Gordon*, 197 AD3d 770 [2d Dept 2020]). Defendants' counsel is not entitled to attorney fees for preparation of the appellate brief, or travel time or hours billed by counsels for appearing at the hearing.

According to the testimony at the hearing, the sum of $6,875.00 ($4,400.00 and $2,475.00) [1] is sought for the preparation of the appellate brief. The sum of $2,925.00 ($1,687.50 and $1,237.50)[2] is sought for travel time for defendants' counsel, and the sum of $3,900.00 ($2,250.00 and $1,650.00)[3]is sought for the hours expended by counsel to appear and testify at the hearing on attorney fees. These amounts total $13,700.00.

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[1] Hearing transcript, page 23, 24.

[2] Hearing transcript, page 24.

[3] Hearing Transcript, page 24.

Based upon the testimony and evidence submitted, this court finds that defendants have established their entitlement to an award of reasonable attorney fees in the sum of $60,327.50.00. Accordingly, it is

ORDERED that reasonable attorneys's fees are hereby awarded to defendants' counsel, payable to Petroff Amshen, LLP in the total amount of $60,327.50.00. Defendants' counsel shall submit a proposed judgment on notice.

Counsel is directed to retrieve all hearing exhibits from courtroom 68, without undue delay.

This constitutes the decision and order of the Court.

ANNA CULLEY, J.S.C.

Dated: June 25, 2025

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