

**Trusty Capital Inc. v JNJ Elegant Cleaners Inc.**

2015 NY Slip Op 31271(U)

July 21, 2015

Supreme Court, New York County

Docket Number: 651190/2013

Judge: Ellen M. Coin

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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: IAS PART 63  
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TRUSTY CAPITAL INC.,  
  
Plaintiff,

Index No. 651190/2013

-against-

JNJ ELEGANT CLEANERS INC., JAE LIN WHA,  
KYUNG SOON WHA and JAE SUN WHA,

Defendants.  
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ELLEN M. COIN, J.:

Plaintiff Trusty Capital Inc. (Trusty) moves for an order confirming an award of damages made at the conclusion of an inquest directed by this Court. Notwithstanding the lack of opposition, the motion is denied for the following reasons.

Previously, this court granted plaintiff's motion for summary judgment upon its complaint for payment of amounts due under three promissory notes made by JNJ Elegant Cleaners Inc. and guaranteed by the individual defendants. The court ordered that an inquest be held to assess the amounts of plaintiff's recoverable damages.

Each of the notes provided that in the event of default, the corporate defendants would be liable for plaintiff's "reasonable attorney's fees" which were "agreed to be at least 20% of the then outstanding obligations."

An inquest was held on April 13, 2015 before Judicial

Hearing Officer Ira Gammerman (JHO). No one appeared on behalf of any of the defendants, who defaulted at the inquest. At the conclusion of the inquest, the JHO suggested to plaintiff's counsel that he have the transcript of the inquest "so-ordered" and present it to the court for its signature. Plaintiff's counsel has failed to have the JHO so-order the transcript. Instead, he has made the instant motion in the absence of any report from the JHO to the court.

Aside from this procedural lapse, other reasons require denial of the instant motion.

Generally, the report of a special referee should be confirmed whenever the findings are substantially supported by the record, the issues have been properly defined and addressed, and matters of credibility have been resolved. (*Baker v Kohler*, 28 AD3d 375, 375-376 [1<sup>st</sup> Dept 2006]; *Thomas v Thomas*, 21 AD3d 949, 949 [2d Dept 2005]).

Here, however, the record consists solely of the following: (1) the JHO's questions to Trusty's President of the amounts due on the three notes; (2) Trusty's calculation of twenty percent of that amount; and (3) the JHO's question to plaintiff's counsel, "And you represent to me that that fee, \$91,847.56, is a reasonable fee for the services rendered in this matter" and counsel's affirmative response (Transcript at 11; Ex B to the Affirmation of Morse Geller Esq. dated May 5, 2015).

While the promissory notes provided that Trusty agreed that twenty percent of the outstanding balance of each loan was a reasonable attorney's fee, the JHO was required to make a finding that such fee was "reasonable." The courts have the traditional authority to supervise the charging of fees for legal services under the courts' inherent and statutory power to regulate the practice of law. (*First Nat. Bank of East Islip v Brower*, 42 NY2d 471, 474 [1977]; *Matter of Thomas B. v Lydia D.*, 120 AD3d 446, 446 [1<sup>st</sup> Dept 2014]). Thus, notwithstanding defendants' default at the inquest, the JHO should have obtained evidence of and made findings as to factors regarding the reasonableness of the fee, including the time and labor presented; the difficulty of the questions involved; the skill required to handle the problems presented; the lawyers' experience, ability and reputation; the amount involved and the benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained and responsibility involved. (*Matter of Freeman*, 34 NY2d 1, 9 [1974]; *S.T.A. Parking Corp. v Lancer Ins. Co.*, 128 AD3d 479 [1<sup>st</sup> Dept 2015]). Instead, the JHO merely relied on the 20 percent figure without determining whether it met any of the factors that would support its being "reasonable."

Accordingly, it is ORDERED that the motion to confirm the

award of damages of the referee is denied, and it is further  
ORDERED that the matter is remitted for a hearing de novo.  
This constitutes the decision and order of the Court.

Dated: July 21, 2015

ENTER:



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Ellen M. Coin, A.J.S.C.