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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HALL CA-NV, LLC, a Texas Limited Liability Company,

Plaintiff,

v.

LADERA DEVELOPMENT, LLC, a Nevada Limited Liability Company, et al.

Defendants.

Case No. 3:18-CV-00124-RCJ-CSD

ORDER

Following the trial held May 22 – 24, 2023, the Court entered findings of fact and conclusions of law on the record at the conclusion of trial. Those findings of fact and conclusions of law are incorporated in this Order as the Court set forth at the conclusion of trial. The following findings of fact and conclusions of law supplement and memorialize the findings of fact and conclusions of law that the Court made at the conclusion of trial.

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1 I. FINDINGS OF FACT

2 The Court makes the following findings of fact:

3 This matter arises out of a failed venture that filed for bankruptcy. Cal-Neva Lodge, LLC
4 (“Borrower”) previously owned a piece of property that operated as a resort hotel known as the
5 Cal-Neva Lodge (“the Property”). Borrower wanted to renovate the Property with a loan from Hall
6 CA-NV, LLC (“Plaintiff”). Borrower committed to a \$29,000,000 loan from Plaintiff. While
7 Borrower and Plaintiff negotiated the terms of the loan, Borrower worked with Ladera
8 Development, LLC (“Defendant”) to secure an additional \$6,000,000 in financing through a
9 mezzanine loan. Borrower and Defendant agreed to the loan terms.

10 After Borrower agreed to both loans, Plaintiff and Defendant agreed to a separate
11 agreement (“intercreditor Agreement”) that classified Plaintiff’s loan as senior to Ladera’s loan.
12 Importantly, the terms of the Intercreditor Agreement stated in part:

13 1. “Junior Lender shall not in any manner interfere with Senior Lender’s security interests
14 in the Property unless and until all of the Senior Debt is no longer outstanding.”

15 2. “Junior Lender agrees that it will not at any time contest the validity, perfection, priority
16 or enforceability of any of the Senior Debt, any of the Senior Loan Documents, or any of the liens
17 and security interests of Senior Lender in the Property or other collateral securing the Senior Debt.”

18 3. “[Junior Lender will] not take any action or vote in any way so as to (A) contest the
19 legality, validity or enforceability of this Agreement or any Senior Loan Document”

20 4. “Notwithstanding anything to the contrary contained in this Agreement, during the
21 continuance of any Insolvency Proceeding, the Senior Debt shall first be indefeasibly paid and
22 satisfied in full in cash before any payment or distribution of cash or other property is made upon
23 the Junior Debt. In any Insolvency Proceeding, any payment or distribution which may be payable
24 or deliverable with respect to the Junior Debt shall be paid or delivered directly to Senior Lender
for application to the payment and satisfaction of the Senior Debt unless and until the Senior Debt
shall have been indefeasibly paid and satisfied in full in cash.”

5. “If applicable, Junior Lender agrees to vote for any plan of reorganization approved by
Senior Lender in respect of Borrower in any Insolvency Proceeding respecting Borrower;
provided, however, that Senior Lender agrees not to unreasonably withhold or delay its consent to
Junior Lender’s voting for a different plan of reorganization if (i) the different plan is at least as
beneficial to Senior Lender (including without limitation with respect to Senior Lender’s payment,
lien and remedy rights thereunder) as the plan approved by Senior Lender, and (ii) Junior Lender
agrees in writing (A) that any payments received by Junior Lender by virtue of such Insolvency
Proceeding will be held by Junior Lender in trust for the benefit of Senior Lender until such time
as the Senior Debt is satisfied in full, and (B) if the Senior Debt will not be satisfied in full by

1 virtue of such Insolvency Proceeding, promptly pay over to Senior Lender the payments so held
in trust up to the amount of the deficiency.”

2 6. “Junior Lender agrees not to oppose any post-petition motion filed or supported by
Senior Lender, including, without limitation, motions for adequate protection with respect to the
3 Senior Debt, for relief from stay, or for Borrower’s application of cash collateral for use in the
ordinary course of its business or for postpetition borrowing from Senior Lender.”

4 7. “Junior Lender shall release insurance proceeds and condemnation awards, to be applied
to the restoration of the Property or to payment of the indebtedness evidenced and secured by the
5 Senior Loan Documents, in the same manner as Senior Lender, under, the terms and provisions of
the Senior Loan Documents, so that no conflicts are created by and among Senior Lender, Junior
6 Lender, or others in the application of insurance proceeds or condemnation awards. Senior Lender
has the sole and exclusive right, as against Junior Lender, to adjust settlement of insurance claims
7 under the insurance policies in the event of any covered loss or destruction. All proceeds of such
insurance related to the Property shall inure to the Senior Lender, and Junior Lender shall cooperate
8 (if necessary) in a reasonable manner in effecting the payment of such insurance proceeds to Senior
Lender. In the event Senior Lender permits the Borrower to utilize the proceeds of insurance to
9 replace any part of the Property, the consent of Senior Lender shall be deemed to include the
consent of Junior Lender.”

10 After the parties agreed to the Intercreditor Agreement, both parties individually acquired
11 insurance policies from Old Republic National Title Insurance Company (“Old Republic”). The
12 insurance policies contained different terms, but both sought to cover the parties’ respective
13 interests. Plaintiff purchased an insurance policy that did not cover any superior mechanics’ lien
14 arising from any prior work done on the Property. However, Defendant obtained an insurance
15 policy that did cover mechanics’ liens.

16 In early 2016, Plaintiff declared default on the loan it made to Borrower because Plaintiff
17 determined that Borrower had not maintained its financial obligations. Subsequently, the builder
18 hired for the renovation, Penta, filed suit against Plaintiff in state court, claiming that it had a
19 mechanic’s lien. The state court case merged with Borrower’s bankruptcy case once Borrower
20 filed for Chapter 11 Bankruptcy on July 28, 2016. The Bankruptcy Court determined that Penta
21 did have a mechanics’ lien on the property.

22 Approximately one year after the bankruptcy case started, Defendant filed a plan of
23 liquidation for Borrower. Plaintiff opposed Defendant’s liquidation plan because the plan allowed
24

1 Defendant to collect before Plaintiff's debts were paid. Allowing Defendant to collect before
2 Plaintiff received payment for all debts ran counter to the Intercreditor Agreement. Plaintiff sent
3 Defendant a demand letter that asked Defendant to withdraw their plan and support the committee
4 plan ("Lawrence Plan"). Plaintiff stated that it did not unequivocally support the Lawrence Plan,
5 but that it was working with Lawrence Investments, Inc., and other committee members to amend
6 the Lawrence Plan.

7 Instead of working with Defendant to come to a settlement on Defendant's plan, Plaintiff
8 filed in state court to prevent Defendant from presenting the plan to the Bankruptcy Court. The
9 state court granted Plaintiff's request for a TRO and Ladera withdrew its plan. Ladera filed a notice
10 of removal to remove the state court action back to the Bankruptcy Court. Upon removal, the
11 Bankruptcy Court dissolved the TRO and admonished Plaintiff's counsel for filing in state court.
12 Subsequently, Plaintiff filed for voluntary dismissal of the state court action.

13 The bankruptcy committee filed an additional plan that Plaintiff opposed. The Bankruptcy
14 Court approved the plan over Plaintiff's objection. Plaintiff filed an objection and received a stay
15 on the plan. After witnessing the parties dispute over the plan, the Bankruptcy Court ordered the
16 parties to enter mediation. That mediation led to a \$15,000,000 "Lien Litigation Reserve" to
17 provide the lenders with a percentage of their interests. However, Defendant was excluded from
18 engaging in negotiations with the other creditors on how to best split up the Lien Litigation
19 Reserve. For that reason, Defendant did not receive any of the Lien Litigation Reserve. Plaintiff
20 received \$27,400,000 after the bankruptcy settlement. The parties that received proceeds from the
21 Lien Litigation Reserve moved for settlement of the bankruptcy dispute after they split up the Lien
22 Litigation Reserve.

23 Plaintiff sued to recover on Defendant's insurance policy because Plaintiff's insurance
24 policy did not cover the mechanics' lien. Plaintiff claimed that it reserved the right under the

1 Intercreditor Agreement to receive all the proceeds from Defendant's insurance policy. Plaintiff
2 lost at the district court level and on appeal with the circuit court. But, Defendant still has not
3 collected on the insurance policy.

4 Plaintiff then brought this Action, alleging that Defendant breached the Intercreditor
5 Agreement when Defendant opposed the bankruptcy plan. Plaintiff's damages included the
6 amount that it was still owed under the loan that it made Borrower. Essentially, Plaintiff sought to
7 recover on Defendant's insurance policy through the breach of contract claim. Plaintiff also sought
8 to recover attorneys' fees from this Action, the state action that Plaintiff voluntarily dismissed, and
9 the bankruptcy dispute.

10 This Court determined in the Order on summary judgement that Defendant breached the
11 Intercreditor Agreement. Defendant breached when it supported the liquidation plan that allowed
12 for Defendant to obtain some of the funds that would have otherwise gone to satisfy Plaintiff's
13 debts. The Court determined at trial that Defendant did not breach when it defended its interest in
14 the insurance policy. Accordingly, Plaintiff is entitled to damages on the breach of the Intercreditor
15 Agreement.

16 Plaintiff claimed that it was owed \$32,677,957.75. That number included the Principal
17 (\$23,067,058.03), Contract Interest (\$4,545,526.92), Default Interest (\$2,304,654.21), Post-
18 Petition Protective Advances (\$1,137,939.01), Post-Petition Protective Advances Contract Interest
19 (\$70,648.18), Post-Petition Protective Advances Default Interest (\$36,030.71), Capital One
20 Advance (\$655,745.36), Capital One Contract Interest (\$3,275.89), Capital One Default Interest
21 (\$1,639.37), Loan Exit Fee (\$290,000.00), and the Prepayment Fee (\$565,440.08). However, the
22 Court determined that the Loan Exit Fee and the Prepayment Fee should not be applied to the
23 balance due. With that being said, the Court did a calculation to determine the final amount that
24 Plaintiff was owed before any payments and reductions:

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2	Principal	\$23,067,058.03
3	Contract Interest	\$4,545,526.92
4	Default Interest	\$2,304,654.21
5	Post-Petition Protective Advances	\$1,137,939.01
6	Post-Petition Protective Advances Contract Interest	\$70,648.18
7	Post-Petition Protective Advances Default Interest	\$36,030.71
8	Capital One Advance	\$655,745.36
9	Capital One Contract Interest	\$3,275.89
10	Capital One Default Interest	\$1,639.37
11	Amount Owed to Plaintiff	\$31,822,517.68
12		

13 As mentioned previously and at trial, Plaintiff admitted that it received \$27,400,000 after
14 the bankruptcy. The amount owed was further reduced by \$739,000 for Furniture, Fixtures, and
15 Equipment and again by \$101,519.35 from the Lien Litigation Reserve. The final amount owed
16 after payments and reductions was:

17	Payment After Bankruptcy	\$27,400,000.00
18	Lien Litigation Reserve	\$101,000.00
19	Furniture, Fixtures, and Equipment	\$739,000.00
20	Payments and Reductions	\$28,240,000.00
21	Amount Owed to Plaintiff minus Payments and Reductions	\$3,582,517.68

22 Plaintiff was owed \$3,582,517.68 on its loan after receiving payments and reducing the
23 amount owed by the economic realities. However, Plaintiff's damages are not the entire amount
24 owed under the Intercreditor Agreement.

The Court is granting Plaintiff damages in the form of a subrogation claim in the amount
of \$3,000,000. As pointed out in the Court's ruling at trial, Plaintiff's calculations were suspect.
Plaintiff failed to provide an itemization of the whole debt. Additionally, the Court has
significant concerns with Plaintiff overcharging on the debt. Defendant repeatedly pointed out

1 Plaintiff's willingness to overcharge on the amount owed. For these reasons, the Court grants
2 Plaintiff and Defendant an equal interest in Defendant's insurance policy. Neither interest shall
3 take priority over one another. On a \$6,000,000 title policy, the parties shall have equal priority.
4 Accordingly, if the ultimate recovery on the policy is above or below \$6,000,000, the parties will
5 take equal, proportional shares.

6 II. CONCLUSIONS OF LAW

7 The Court makes the following conclusions of law:

8 Plaintiff's ability to recover attorneys' fees was the only legal question left for trial.

9 Plaintiff argued that it was entitled to attorneys' fees for this Action, the state action that Plaintiff
10 voluntarily dismissed, and the bankruptcy dispute. Plaintiff brought this Action as a breach of
11 contract claim under the Intercreditor Agreement. Therefore, Plaintiff needed to show that the
12 breach caused Plaintiff to incur attorneys' fees.

13 A. Attorneys' Fees in the State Court Action

14 Plaintiffs seeking damages on a breach of contract claim must provide evidence that the
15 breach of contract caused the damages. *Taurus IP, LLC v. DaimlerChrysler Corp.*, 726 F.3d
16 1306, 1342 (Fed. Cir. 2013). At trial, plaintiffs must produce evidence "to prove damages
17 sustained on the breach" to receive damages from the court. *Id.*

18 Plaintiff did not provide any evidence showing that the breach of the Intercreditor
19 Agreement caused Plaintiff to incur attorneys' fees. Plaintiff had no reason to file the state court
20 action to prevent Defendant from filing a disclosure statement and plan. Defendant filed a
21 disclosure statement and plan that Plaintiff believed would violate the Intercreditor Agreement,
22 but Plaintiff sent Defendant a demand letter to withdraw the filing. Instead of working with
23 Defendant to discuss the alleged violation, Plaintiff went to the state court to seek a temporary
24 restraining order. Defendant could not support a plan that allowed Defendant to receive proceeds

1 before Plaintiff was paid. However, the Intercreditor Agreement did not bar Defendant from
2 filing a disclosure statement and plan, even the state court judge and, later, the bankruptcy judge
3 pointed this out. But, that is exactly what Defendant did, file a disclosure statement and plan.

4 Although Defendant did not violate the Intercreditor Agreement when it made the filing,
5 Defendant withdrew the plan shortly after Plaintiff filed the state court action. There was no
6 evidence proving that Defendant was unwilling to withdraw the plan based on the alleged
7 violation. Instead, Plaintiff took unneeded judicial action. The Court cannot grant attorneys' fees
8 for the state court action because Plaintiff could not show that filing the action was caused by the
9 breach.

10 *B. Attorneys' Fees in the Bankruptcy Action*

11 Plaintiff did not present any evidence to show that the breach of the Intercreditor
12 Agreement caused Plaintiff to incur attorneys' fees in the bankruptcy action. For the same
13 reasons mentioned previously, Defendant is not liable for Plaintiff's actions to prevent Defendant
14 from filing the disclosure statement and plan. Plaintiff did not present the Court with any
15 evidence to find that the breach caused Plaintiff to incur attorneys' fees in the bankruptcy matter.

16 *C. Attorneys' Fees in this Matter*

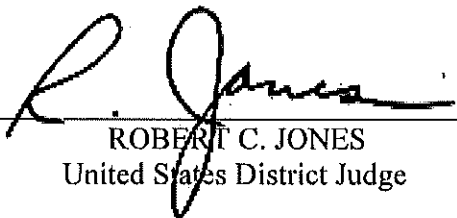
17 Finally, Plaintiff cannot recover attorneys' fees for this Action because the fees were not
18 reasonable, and the Court doubts the legitimacy of several the charges. Parties seeking attorneys'
19 fees must show that the fees are reasonable. *Shaw v. Am. Bank of Com.*, No. 07-22-00067-CV,
20 2023 WL 2933337, at *1–2 (Tex. App. Apr. 13, 2023). Plaintiff failed to provide enough
21 evidence to convinces the Court that \$1,311,000 was reasonable considering the claims that
22 Plaintiff brought in this Action. Further, Defendant poked many holes in the invoices that
23 Plaintiff provided to the Court. Without enough evidence to prove that the fees were reasonable,
24 the Court cannot grant Plaintiff attorneys' fees in this Action.

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III. CONCLUSION

I THEREFORE ORDER the Clerk of the Court to enter judgment in favor of Plaintiff, Hall CA-NV, LLC, as outlined above, and close this case.

IT IS SO ORDERED this 12th day of September 2023.


_____ **ROBERT C. JONES**
United States District Judge