

Hotel Carlyle Owners Corp. v Schwartz
2017 NY Slip Op 32481(U)
November 20, 2017
Supreme Court, New York County
Docket Number: 157070/12
Judge: Ellen M. Coin
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 63

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Hotel Carlyle Owners Corporation,

Index No. 157070/12
Decision and Order

Plaintiff,

-against-

Murray Schwartz,

Defendant.

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Ellen M. Coin, J.:

Defendant Murray Schwartz moved for an order seeking return of any amounts recovered by plaintiff Hotel Carlyle Owners Corporation (Carlyle) in this action. By interim order dated March 24, 2017, the court directed that a hearing be held to determine the amounts owed by defendant to plaintiff pursuant to the proprietary lease between the parties, arising out of this action; and to determine the propriety of plaintiff's application of funds received from defendant pursuant to the May 2015 settlement agreement and plaintiff's execution of the May 12, 2014 judgment. The hearing was held on July 21, 2017 and November 2, 2017.

Findings of Fact

Schwartz was previously the owner of the shares attributable to apartment 1418-1419 (the Apartment) in the Hotel Carlyle, located at 35 East 76th Street, New York, New York. He entered

into a proprietary lease for the Apartment on or about May 20, 1993. 745 shares in plaintiff corporation were attributed to the Apartment (Notice to Admit dated June 15, 2017; plaintiff's ex. 1).¹

At the hearing neither side produced the lease between the parties. Apparently Schwartz had lost his copy of the stock and lease (ex. B to plaintiff's ex.1). Plaintiff produced its form of lease (plaintiff's ex. 3), which provides that its Board of Directors determines the rent attributable to each apartment on an annual basis (id. at 1-3). The lease provided that in the event of a default by the lessee and commencement of an action by plaintiff, "Lessee will reimburse Lessor for the expense of reasonable attorneys' fees and disbursements thereby incurred by Lessor" (id. ¶2.12 at 20).

Plaintiff increased the maintenance charges for all apartments for 2014 and 2015 in accordance with the Proprietary Lease provisions (plaintiff's ex. 1 at exs. D, E).

Previously, by order dated April 28, 2014, this court granted plaintiff's motion for partial summary judgment against Schwartz for unpaid maintenance in the sum of \$124,504.40 for the period 4/1/12-8/31/13 and in the sum of \$37,957.55 for the period 9/1/13-1/31/14 (docket entries 90, 115). Judgment was entered on

¹The exhibits referred to in this decision were admitted into evidence at the hearing held on July 21, 2017 and November 2, 2017.

those sums (a total of \$162,461.95), plus interest, for the total amount of \$171,204.98 on May 12, 2014 (Def's ex. C). Schwartz obtained a bond of the judgment pending appeal from Suretec Insurance Company (Suretec) in the amount of \$225,000 on May 28, 2014 (plaintiff's ex. 1 at ex. G).

Thereafter Schwartz sought to sell his apartment. In furtherance of the sale, plaintiff Carlyle and defendant Schwartz entered into a settlement agreement dated May 15, 2015, resolving certain aspects of plaintiff's claims in this action. Pursuant to the settlement agreement, Schwartz paid the sum of \$170,688.55 to Carlyle, of which \$116,633.22 was attributed to unpaid maintenance, and the balance of \$54,055.33 to Carlyle's legal fees (Plaintiff's ex. 1, exs. F, H thereto). In addition, Schwartz agreed to pay maintenance for the period from June 1, 2015 until the date of closing of sale of his apartment at the Hotel Carlyle (id. ¶ 5). The sale closed on June 3, 2015.

Thereafter, in October 2016 Schwartz sold real property in Amagansett, New York. Carlyle had filed its 2014 judgment with the Suffolk County Sheriff, who executed on the sale proceeds of the Amagansett property on February 28, 2017 (plaintiff's ex. 1 at ex. P), receiving \$225,581.08. The net sale proceeds to Carlyle, after deduction for the Sheriff's poundage (\$10,091.19), was \$215,544.89. Carlyle thereupon issued to Schwartz a full satisfaction of the May 12, 2014 judgment (plaintiff's ex. 1 at

ex. Q). Thus, as of February 28, 2017, plaintiff had received the total sum of \$386,233.44.

Gregory Dinella, Director of Finance of the Hotel Carlyle, testified that he computed the amounts of outstanding unpaid maintenance attributable to defendant's apartment (plaintiff's ex. 5). In summary, the computation reflects the following:

maintenance for the period 2/1/14-12/31/14: \$92,849.35
(monthly maintenance of \$8,440.85 for 11 months)

maintenance for the period 1/1/15-5/1/15: 44,364.75

maintenance for the period 6/1/15-6/3/15: 887.30

Total maintenance 2/1/14-6/3/15: \$138,101.40

Although in the Settlement Agreement plaintiff asserted that defendant owed miscellaneous charges for so-called "Incidentals" (plaintiff's ex. 10, ex. A thereto), at the hearing plaintiff offered no invoices or other proof that such Incidentals had been incurred, billed or were due and owing.

While plaintiff introduced testimony as to the legal fees it had incurred in connection with this action, there is no motion before the court for summary judgment for plaintiff's legal fees.

Analysis

Maintenance

Carlyle established, without contradiction, that during his tenancy, Schwartz owed the following sums as and for maintenance for his apartment:

4/1/12-8/31/13	\$124,504.40
9/1/13-1/31/14	37,957.55
2/1/14-12/31/14	92,849.35
1/1/15-5/31/15	44,364.75
6/1/15-6/3/15	<u>887.30</u>

Total: \$300,563.35

Plus: Interest on
5/12/14 judgment: 8,743.03

Plaintiff's attorneys' fees
per 5/15/15 settlement
agreement: 54,055.33

Total owed by Schwartz: \$363,361.71

Credit to Schwartz

Schwartz is entitled to credit for the following sums:

Payment per 5/15/15 settlement agreement:	\$170,688.55
Net proceeds of Amagansett execution:	<u>\$215,544.89</u>

Total: \$386,233.44

Final Calculation

Total owed by Schwartz: \$363,361.71

Less: recovered to date: 386,233.44


Balance owed to Schwartz: \$22,871.73

It is therefore ORDERED that plaintiff's motion to compel the return of funds is granted to the extent that the Clerk is directed to enter judgment in favor of defendant Murray Schwartz

and against plaintiff Hotel Carlyle Owners Corp. in the sum of \$22,871.13, with interest thereon at the statutory rate from the date of February 28, 2017; and the balance of the action is severed and continued.

ENTER

Dated: November 20, 2017



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

HON. ELLEN M. COIN