

Crosby JMW LLC v 138th St. Apts. LLC

2024 NY Slip Op 30953(U)

March 21, 2024

Supreme Court, New York County

Docket Number: Index No. 154099/22

Judge: Lynn R. Kotler

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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: PART 8**

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CROSBY JMW LLC

Plaintiff(s),

-against-

138TH STREET APARTMENTS LLC

Defendant(s).
-----X

**DECISION AND ORDER
AFTER HEARING**

INDEX NO.: 154099/22

Present:
Hon. Lynn R. Kotler, J.S.C.

Petitioner filed an RPAPL 881 proceeding in May 2022 and moved for an order granting it a license to enter respondent's property and granting petitioner's engineer the right to conduct a preconstruction survey (motion sequence 1). The parties then entered into a License Agreement dated January 18, 2023 (NYSCEF 30). Thereafter, in August 2023, respondent moved by Order to Show Cause for a money judgement for license, professional and legal fees (motion sequence 2). By order dated February 27, 2024, this court issued a decision setting the matter down for a hearing on attorney's fees, professional fees and license fees.

The hearing was held via Microsoft Teams on March 19, 2024. Cory Stryker and Doreen Fischman, Esq. testified on behalf of the respondent at the hearing. Petitioner did not call any witnesses. The court reserved decision at the conclusion of the hearing.

Based upon the testimony and the evidence introduced at the hearing, the court's decision is as follows.

Cory Stryker is employed by Friedman Management Corp, an agent for respondent 138th Street Apartments LLC. Mr. Stryker testified that he is familiar with the License Agreement entered into between petitioner and respondent and that on

April 18, 2023, sidewalk protections were placed on the property and adjoining property. Mr. Stryker further testified that they received only one month of license fees, \$3,600 and that they have not received any other monies from petitioner to date. He testified that pursuant to the agreement, petitioner was to pay \$3,600 per month for the first 8 months, \$5,000 for months 9 through 12 and \$10,000 for months 13 and thereafter. Mr. Stryker calculated the monies owed through today totaling \$40,200 which includes the initial \$3,600 paid to respondent.

Doreen Fischman, attorney for respondent, testified in the narrative about her legal fees. Ms. Fischman has been practicing law in New York State since 1976 and started her career as an associate at Debevoise and Plimpton. She also has an LLM in taxation from New York University. In 1980, Ms. Fischman started her own firm and which focuses on real estate law. She further testified that she submitted her legal invoices (see, NYSCEF 40, 41 and 42) and that her hourly rate is \$825 per hour which reflects her time spent in conjunction with petitioner's failure to comply with the License Agreement. Ms. Fischman's three legal invoices total \$13,447.50. Ms. Fischman further testified that petitioner was to deposit \$25,000 in escrow as per the License Agreement which was negotiated to protect respondent for any damage to its property by petitioner and if petitioner failed to pay fees, then in that case respondent was to use those funds. Ms. Fischman explained that until the License Agreement is terminated, respondent's property needs to be protected and that respondent would be entitled to those monies for any damages. Meanwhile, petitioner's counsel argued that any judgment entered in favor of respondent should not include the \$25,000 deposit and

that respondent cannot have it both ways, either the agreement is in effect or the agreement has been terminated due to breach of contract.

The court reviewed the License Agreement and the three legal invoices entered into evidence by respondent. Mr. Stryker credibly testified that the License Agreement provides for monthly license fees to respondent, that respondent only received one license fee payment of \$3,600 and that the total due respondent for license fees is \$40,600. Further, Ms. Fischman credibly testified about her professional career, her hourly rate and the legal services provided to her client and related to the proceeding. The court finds that the legal fees due respondent, \$13,447.50, is reasonable in light of Ms. Fischman's professional experience and petitioner's non-compliance.


Ms. Fischman's request for petitioner to deposit \$25,000 in escrow is denied. While the License Agreement, paragraph 21 provides that petitioner is to deposit the sum of \$25,000 to be held in respondent's escrow account, that issue is beyond the scope of the limited hearing as per the Court's order dated February 24, 2024, which was for attorney's fees, professional fees and license fees.

Based on the foregoing, it is hereby **ORDERED** that respondent is entitled to recover \$40,600 as and for License fees; and it is further hereby **ORDERED** that respondent is entitled to recover legal fees in the sum of \$13,447.50; and it is further **ORDERED** that the Clerk is directed to enter judgement accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is expressly denied and this constitutes the Decision and Order and Judgment of the court.

Dated: New York, New York

March 21, 2024

So Ordered: 

Hon. Lynn R. Kotler, J.S.C.