

ARC NYWWPJV001, LLC v WWP JV LLC
2025 NY Slip Op 32595(U)
July 3, 2025
Supreme Court, New York County
Docket Number: Index No. 654977/2022
Judge: Joel M. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

-----X	
ARC NYWWPJ001, LLC, A DELAWARE LIMITED LIABILITY COMPANY,	INDEX NO. <u>654977/2022</u>
Plaintiffs,	MOTION DATE <u>03/04/2025</u>
- v -	MOTION SEQ. NO. <u>016</u>
WWP JV LLC, A DELAWARE LIMITED LIABILITY COMPANY,	DECISION + ORDER ON MOTION
Defendants.	

-----X	
WWP JV LLC, A DELAWARE LIMITED LIABILITY COMPANY,	Third-Party
Plaintiffs,	Index No.
-against-	
NEW YORK REIT LIQUIDATING LLC	
Defendant.	
-----X	

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 016) 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 576, 580
 were read on this motion for ATTORNEY FEES.

Plaintiff and Counterclaim Defendant, ARC NYWWPJ001, LLC (“Owner Member”),
 and Counterclaim Defendant, New York REIT Liquidating LLC (“NYRT”) (collectively, the
 “Moving Parties”) move for an Order awarding attorneys’ fees, disbursements, and costs
 pursuant to this Court’s Decision + Order awarding summary judgment in favor of the Moving
 Parties (NYSCEF 517) and Section 15.20 of the LLC Agreement. The Moving Parties seek
 \$828,528.22 in disbursements and \$400 in costs relating to the prosecution and defense of this

action, and Owner Member seeks \$8,897,659.68 for its reasonable attorneys' fees.¹ WWP JV LLC ("WWP JV") opposes this motion. For the following reasons, this motion is denied.

Absent a contractual agreement to the contrary, the general rule is that each party is responsible for its own attorneys' fees and costs of litigation (*see Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 492 [1989]; *AG 380, LLC v ComMet 380, Inc.*, 10 NY3d 507, 515 [2008]; *Mahani v Edix Media Group, Inc.*, 935 A2d 242, 245 [Del 2007]). A contractual agreement allowing a prevailing party to collect legal expenses relating to the action from the non-prevailing party must be explicit (*see Hooper*, 74 NY2d at 492; *Sage Sys., Inc. v Liss*, 39 NY3d 27, 31 [2022]). Under Delaware law, which governs the LLC Agreement, a "fee-shifting provision must be a clear and unequivocal agreement" (*Braga Inv. & Advisory, LLC v Yenni*, 2019-0408-PAF, 2023 WL 3736879, at *18 [Del Ch May 31, 2023], *judgment entered*, [Del Ch 2023]).

Here, Section 15.20 of the parties' LLC Agreement, titled "Recovery of Certain Fees" provides:

In the event a party hereto files any action or suit or arbitration against another party hereto ***by reason of any breach*** of any of the covenants, agreements or provisions contained in this Agreement (including a specific performance action commenced by the Non-Initiating Member pursuant to Section 11.5(d)), then in that event the prevailing party shall be there hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other Persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 15.20 shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

¹ The Moving Parties submit that NYRT joins solely as to the disbursements and costs portions of this Motion for Attorneys' Fees, Disbursements, and Costs. It does not seek to recover attorneys' fees (NYSCEF 542 at 4 n1).

(NYSCEF 204 [“LLC Agreement”] § 15.20 [emphasis added]).

In this case, Owner Member filed a Complaint asserting only one count seeking a declaratory judgment that “the Initial Budget Capital Requirements and the Initial Budget expired at year end 2018 and are no longer valid under the terms of the LLC Agreement, that no capital expenditures are ‘preapproved’ pursuant to the LLC Agreement for years beyond the current Budget Year, and that Administrative Member may not circumvent the conditions imposed upon the parties for determining and approving or opposing Major Decisions for each Budget Year as alleged above” (*see* NYSCEF 2 ¶35). WWP JV subsequently filed a claim for declaratory judgment against ARC and NYRT, and for fraudulent inducement, fraudulent misrepresentation, and unjust enrichment in the alternative against NYRT (NYSCEF 23). Importantly for present purposes, no party asserted a claim for breach of contract or for specific performance under Section 11.5(d) of the agreement, which are the bases for fee-shifting referenced in Section 15.20.

The Court’s February 2, 2025 Decision + Order granted summary judgment in favor of Arc & NYRT, and denied WWP JV’s motion for summary judgment, resolving all claims in this action (NYSCEF 517 at 5-6, 2 n1). The Court declared that the “Initial Budget expired on December 31, 2018, and that Owner Member does not have an obligation to fund capital expenditures pursuant to the Initial Budget” and “that Owner Member and NYRT have no obligation to maintain the Reserve referenced in Section 7.3(b) of the Agreement and the Agreement does not preclude them from distributing said Reserve to stakeholders” (*id.* at 5).

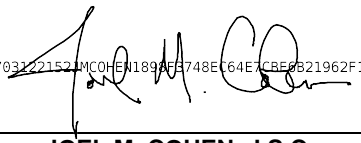
In these circumstances, and for the reasons asserted in opposition to the motion, the Moving Parties’ application for an award of fees and costs must be denied. Section 15.20 does not extend to “any and all disputes” or to all claims “relating to” the agreement or other similarly

broad language sometimes found in such agreements. Instead, it provides for “Recovery of *Certain Fees*” (emphasis added) and specifically refers only actions initiated “by reason of any breach” and carves out only one other type of action for specific performance (*cf Malkani v Cunningham*, 2024 WL 807401, at *4 [Del Ch Feb. 27, 2024], *judgment entered*, [Del Ch 2024], and *affd sub nom*, 2025 WL 1409097 [Del May 15, 2025] [awarding attorney’s fees under prevailing party provision for declaratory judgment where the fee-shifting provision provided “that, with respect to ‘any dispute’ among these parties, ‘the prevailing party shall be entitled to recover from the losing party all fees, costs and expenses’ ‘of enforcing any right under *or with respect to*’ the contract.”]). Moreover, the Court did not declare that there was any breach, nor did any party request such relief. The Moving Parties’ suggestion that WWP JV “threatened” a breach or that a breach was anticipatory is unpersuasive and not supported by the record or claims asserted.²

The Court has considered the Moving Parties’ remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that the Moving Parties’ Motion is **DENIED**.

<u>7/3/2025</u>			
DATE		JOEL M. COHEN, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

² The Moving Parties’ citation to cases discussing “by reason of the fact” standard in employment indemnification cases under a specific Delaware statute (*see Carr v Glob. Payments Inc.*, 2019 WL 6726214, at *4 [Del Ch Dec. 11, 2019], *affd*, 227 A3d 555 [Del 2020]; *Hyatt v. Al Jazeera Am. Holdings II, LLC*, 2016 WL 1301743, at *8 [Del. Ch. Mar. 31, 2016]) is unavailing.