

Deutsche Bank AG, N.Y. Branch v Rosenfeld

2025 NY Slip Op 35067(U)

December 28, 2025

Supreme Court, New York County

Docket Number: Index No. 659459/2024

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

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DEUTSCHE BANK AG, NEW YORK BRANCH

INDEX NO. 659459/2024

Plaintiff,

- v -

MICHAEL ROSENFELD,

**DECISION
AFTER INQUEST**

Defendant.

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In Motion Sequence No. 01, the court granted plaintiff’s motion for summary judgment in lieu of complaint under the Payment Guaranty for a \$5 million judgment against defendant. As to the Shortfall Guaranty, the court granted the motion only on liability and scheduled an inquest to determine plaintiff’s damages, as well as plaintiff’s reasonable attorneys’ fees and enforcement-related expenses (Doc 55 [Decision + Order on Motion]). On consent, the inquest was conducted on papers.

Under the Shortfall Guaranty, plaintiff seeks a total of \$45,906,293.43 for the “Guaranteed Interest/Carry Shortfall.” The loan agreement defines “Guaranteed Interest/Carry Shortfall” as “any deficiencies in Tax Reserve Funds, Insurance Reserve Funds, and the Required Monthly Debt Service Payments” (Doc 71, para 5, citing loan agreement §§ 6.2.1, 6.9.1(a)(ii), 6.9.1(a)(iii), and 6.9.1(a)(v) [referring to Tax Reserve Funds, Insurance Reserve Funds, and Required Monthly Debt Service Payments]). The total sum plaintiff seeks for these amounts consists of \$41,843,188.33 in interest on the unpaid principal of the loan as of July 31, 2025, \$3,862,326.40 in advanced payments for real estate taxes as of July 31, 2025, and \$200,778.70 in advanced insurance

OTHER ORDER – NON-MOTION

premiums as of July 31, 2025. Plaintiff also seeks a total of \$308,949.04 in attorneys' fees and costs, consisting of \$300,670.50 in attorneys' fees and \$8,278.54 in costs.

Defendant raises two objections to the inquest (Doc 78). The court discusses these objections below.

As detailed in the following discussion, the court awards plaintiff \$45,906,293.43 for its damages under the Shortfall Guaranty. However, the court declines to award the full requested amount for attorneys' fees and costs.

DISCUSSION

I. Shortfall Guaranty

Plaintiff has adequately established its entitlement to damages under the Shortfall Guaranty: \$41,843,188.33 for unpaid default interest on the loan principal as of July 31, 2025; \$3,862,326.40 for advanced real estate tax payments as of July 31, 2025; and \$200,778.70 for advanced insurance premiums as of July 31, 2025.

In support of this portion of the inquest, plaintiff submits the affidavit of Maria Almounir, the Vice President at Hanover Street Capital. Hanover Street Capital provides asset management services to plaintiff. Ms. Almounir also submits various exhibits (Docs 68-70 [Supporting Exhibits]). The affidavit and exhibits explain the various interest calculations and invoices involved.

Specifically, plaintiff supports its interest calculations with a spreadsheet that shows the interest due on the unpaid balance of the loan at the default rate on each payment date (Doc 68 [Shortfall Guaranty Calculations]). In addition, Plaintiff submits invoices for the advance payments it made for the real estate taxes and insurance premiums (Doc 69 [Real Estate Taxes]; Doc 70 [Insurance Payments]).

In opposition, defendant first argues that plaintiff's submissions are defective because "Ms. Almounir does not work for Situs Asset Management LLC, she has no personal knowledge concerning the servicing of the loan," and "Ms. Almounir does not state that she is authorized to act as Deutsche Bank's agent" (Doc 78, para 5). The court rejects this argument. Ms. Almounir states that Hanover Street is Situs Asset Management LLC's "sister company," Hanover Street "provides asset management services to Plaintiff Deutsche Bank AG, New York Branch," and both Hanover and Situs are "wholly owned subsidiaries of SitusAMC Holdings Corporation" (Doc 67, para 1). The parent company, SitusAMC, "is retained by Deutsche Bank to provide . . . loan primary servicing and loan oversight services in connection with subject loans for the [underlying] property" (*id.*, para 2). She submits her affirmation "based upon personal knowledge" (*id.*, para 3). This is sufficient.

Next, defendant argues that plaintiff miscalculates the advance tax payments because tax grievances were submitted for tax years 2022, 2023, and 2024 (Doc 78, paras 6-7). Thus, plaintiff may have overpaid those taxes (*id.*, para 8). This is not a basis to overcome plaintiff's entitlement to damages for the tax payments. As of now, plaintiff has paid taxes defendant should have paid. If the tax grievances are resolved such that a refund is issued, defendant will be entitled to an offset. Accordingly, the court awards plaintiff \$45,906,293.43 for its claims for damages under the Shortfall Guaranty.

Plaintiff is also entitled to contractual default rate interest on the unpaid principal balance from 8/1/25 until the date of this decision after inquest. However, plaintiff did not submit calculations for this period (see Doc 58, para 7 [explaining that default rate interest is 5% plus the interest rate, and the 'interest rate' varied depending on LIBOR or a LIBOR alternative]). Thus, plaintiff shall submit a proposed judgment including the applicable default interest rates to accrue

on the unpaid principal balances for the period following 8/1/25, together with an affidavit from a person with knowledge establishing the applicable rates.

II. Attorneys' Fees

The court declines to award the full \$308,949.04 in attorneys' fees and costs plaintiff seeks on this inquest.

An award of reasonable attorneys' fees is within the discretion of the court (*see Diakrousis v Malanga*, 61 AD3d 469 [1st Dept 2009]). To assess the reasonableness of attorneys' fees, the court considers several factors, "including the time and labor required, the difficulty of the issues involved, and the skill and effectiveness of counsel...reduc[ing] the amount requested to eliminate work that was duplicative or was unnecessarily performed by an attorney, rather than a secretary or paralegal" (*JK Two LLC v Garber*, 171 AD3d 496, 496 [1st Dept 2019]; *S.T.A Parking Corp. v Lancer Ins. Co.*, 128 AD3d 479, 480 [1st Dept 2015]). The requesting party holds the burden of proof in proving the reasonableness of requested fees (*EVUNP Holdings LLC v Frydman*, 154 AD3d 558, 559 [1st Dept 2015]).

A fee award may also be reduced where there is block billing - the practice of lumping multiple charges together in a single billing entry (*see Matter of Silverstein v Goodman*, 113 AD3d 539, 540 [1st Dept 2014]; *RMP Capital Corp. v Victory Jet, LLC*, 139 AD3d 836, 840 [2d Dept 2016] [25% reduction of fee award "due to the use of block billing, including vague and nonspecific billing entries, and the nature of th[e] lawsuit"]). Specifically, courts may reduce requested fees when the use of block billing makes it "makes it exceedingly difficult for the court to identify whether the amount of time spent on a particular task is reasonable" (*546-552 W. 146th St. LLC v Arfa*, 99 AD3d 117, 123 [1st Dept 2012]). The court may also reduce fees where the

amount requested lacks proof (*Josefsson v Keller*, 141 AD2d 700, 701 [2d Dept 1988]). Thus, a reduction in fees that include blocking billing and lack proof is within the court's discretion.

The time records and entries plaintiff's counsel submits on this inquest indicate numerous instances of block billing. This ultimately prevents the court from determining the reasonableness of the requested attorneys' fees, as the court cannot differentiate nor specify how much time plaintiff's counsel spent on each task listed.

For instance, on February 5, 2025, attorney Michael Schmid billed 8.9 hours, listing:

“Strategy re Rosenfeld motion for stay and TRO; legal research re opposition to motion to stay and procedures re same; confer with Managing Attorneys' office re same; review and analyze motion papers re motion for stay and TRO; draft affirmation in opposition to same; email opposing counsel re same” (Doc 75 [K&S Time Entries], Invoice Date 4/16/25, pg. 2).

In addition, plaintiff provides CVs for only three of its attorneys who billed in these invoices, and omitted billing rates and bios for the numerous other attorneys, paralegals, and other support staff that appear in the invoices (see generally Doc 74 [Attorney Bios]; Doc 75).

Thus, although defendant does not oppose the part of plaintiff's inquest that seeks attorneys' fees, the court exercises its discretion to reduce the requested attorneys' fees amount. Under these circumstances, the court finds that a 40% reduction of the requested \$300,670.50 is appropriate (*see David Z. Inc. v Timur on Fifth Ave., Inc.*, 7AD3d 257, 258 [1st Dept 2004]).

The court also eliminates plaintiff's costs request for \$209.60 for “court minutes for the May 20, 2025 proceeding” (Doc 75). This amount was already included in plaintiff's bill of costs (Doc 66 [Bill of Costs]).

Thus, the court awards plaintiff a total of \$180,402.12 (reflecting a 40% reduction to the requested \$300,670.50 amount) for attorneys' fees. Plaintiff is also entitled to \$8,068.94 for its enforcement-related costs.

III. Conclusion

For the forgoing reasons, the court awards plaintiff \$45,906,293.43 for its damages under the Shortfall Guaranty. Additionally, as discussed above, the court awards plaintiff \$180,402.12 for its reasonable attorneys' fees, and \$8,068.94 for enforcement costs.

The court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that the court awards plaintiff \$45,906,293.43 for its damages under the Shortfall Guaranty. Plaintiff is also awarded \$180,402.12 for its reasonable attorneys' fees, and \$8,068.94 for plaintiff's enforcement costs. Plaintiff shall be entitled to post-judgment interest on these amounts from the date of this decision after inquest. Plaintiff is also entitled to recover contractual default rate interest on the unpaid principal balance for 8/1/25 until the date of this decision after inquest; and it is further

ORDERED that plaintiff shall submit a proposed judgment to the court for the amounts awarded in this decision, including the default interest on the unpaid principal balance for the period following 8/1/25, together with an affidavit from a person with knowledge establishing the applicable rates, within 30 days after the e-filing date for this decision after inquest; and it is further

ORDERED that the Clerk is directed to mark this case as disposed.

MELISSA A. CRANE, JSC

DATE: 12/28/2025

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify DECISION AFTER INQUEST)