

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
Plaintiff	:	
	:	CIVIL ACTION NO.
V.	:	3-06-CV-1724 (JCH)
	:	
MICHAEL LAUER, MIZUHO	:	JULY 2, 2008
CORPORATE BANK, LTD.,	:	
KFP INVESTORS PARTNERSHIP,	:	
TOWN OF GREENWICH, CT, HEIDI	:	
LAUER, HANNAH HEMPSTEAD,	:	
Defendants	:	
	:	
MARTY STEINBERG, ESQ.,	:	
COURT-APPOINTED RECEIVER FOR	:	
LANCER MANAGEMENT GROUP II,	:	
LLC, LANCER OFFSHORE, INC.,	:	
OMNIFUND, LTD., LSPV, INC., LSPV,	:	
LLC, ALPHA OMEGA GROUP, INC.,	:	
G.H. ASSOCIATES, LLC, CLR	:	
ASSOCIATES, LLC and as	:	
RESPONSIBLE PERSON FOR	:	
LANCER PARTNERS, L.P.,	:	
	:	
Defendant-Intervenor	:	

RULING RE: MIZUHO'S ATTORNEYS' FEES

The court assumes familiarity with the facts and background of this case. See Ruling Re: Motions for Summary Judgment (Doc. No. 107 ). Following that Ruling, the United States of America filed a Motion for Entry of Order of Sale (Doc. No. 111) and Mizuho Corporate Bank (USA) filed a Motion for Judgment of Foreclosure by Sale (Doc. No. 110). The only opposition to either Motion was filed by Mizuho, which filed a Limited Objection to the United States's Motion (Doc. No. 119). Today, by separate Order, the court has entered the proposed order of Mizuho, which accompanied its

Limited Objection, with one substantive change. The court lowered the amount of sale proceeds to be paid to Mizuho by \$32,166.11. The reason for this reduction is the court's determination of reasonable attorney's fees due to Mizuho under its Note, as described below.

It is undisputed that Mizuho is entitled to fees pursuant to the terms of the Note it holds. However, the court finds that Mizuho has not proven the amount it claims as fees in its Affidavit of Fees is reasonable.

In a recent decision, Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany, 522 F.3d 182 (2d Cir. 2008), the Second Circuit discussed the two methods courts have used in calculating reasonable fees – the “lodestar” method, which is “based upon ‘the hours reasonably spent by counsel . . . multiplied by the reasonable hourly rate,’” Cruz v. Local Union No. 3 of Int’l Bhd. of Elec. Workers, 34 F.3d 1148, 1159 (2d Cir. 1994) (citation omitted), and the twelve-factor analysis as developed in Johnson v. Ga. Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). As the Second Circuit explained, these two methods “considered substantially the same set of variables – just at a different point in the fee-calculation process.” Arbor Hill, 522 F.3d at 187. In Hensley v. Eckerhart, 461 U.S. 424, 433 (1983), the Supreme Court “adopted the lodestar method in principle . . . without, however, fully abandoning the Johnson method.” Id. at 188. According to the Second Circuit, however, the simultaneous application of these methods “proved to be in tension,” and subsequent circuit courts “struggled with the nettlesome interplay between the lodestar method and the Johnson method.” Id.

In an attempt to clear up this “confusion,” id. at 189, the Arbor Hill court

abandons the use of the term “lodestar.” Instead, it explains that the better course is:

for the district court, in exercising its considerable discretion, to bear in mind all of the case-specific variables that we and other courts have identified as relevant to the reasonableness of attorney’s fees in setting a reasonable hourly rate. The reasonable hourly rate is the rate a paying client would be willing to pay. In determining what rate a paying client would be willing to pay, the district court should consider, among others, the Johnson factors; it should also bear in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively. The district court should also consider that such an individual might be able to negotiate with his or her attorneys, using their desire to obtain the reputational benefits that might accrue from being associated with the case. The district court should then use that hourly rate to calculate what can be properly termed the “presumptively reasonable fee.”

Id. at 190 (emphasis in original).

Mizuho initially filed with its Motion for Judgment of Foreclosure by Sale an exhibit, the Declaration of Jonathan M. Borg in Support of Attorneys’ Fees. Motion (Doc. No. 110) at Ex. E. The Affidavit details the long and multi-jurisdictional aspects of Mizuho’s efforts to foreclose on the property and collect its debt. Subsequently, Mizuho filed a Supplemental Declaration in Support of Mizuho’s Application for Attorneys’ Fees (Doc. Nos. 125 (redacted) and 126 (sealed)). Having now reviewed both the original and Supplemental Affidavits, the court concludes that they, together with the court’s knowledge of the litigation before this court, constitutes an adequate basis, particularly absent any objection, to substantiate the time spent on this matter.

However, nowhere in his original Affidavit did Attorney Borg set forth any basis for how the sum sought for attorneys’ fees, \$160,550, was arrived at. For example, there was no submission of the hours spent on various tasks, or the level of experience and expertise of the timekeeper working on a task. In the Supplemental Affidavit, the hourly rates of timekeepers have been provided, for various years, and information

about most timekeepers has also been provided. Based on its own experience with attorneys' rates in Connecticut, rates charged in connection with foreclosure actions,<sup>1</sup> as well as the rate charged by another Connecticut firm in this case (as local counsel), the court determines that the rates sought by Day Pitney are not reasonable.

For example, the rate claimed for Attorney Borg, an associate in 2007 who graduated from law school in 1998, is \$455 in 2007. The rate charged by Attorney Kaelin of Murtha Cullina, who graduated from law school in 1992, is \$325 in 2007. The court is aware that attorneys' rates are higher in Fairfield County than in Hartford (the location of the property and Attorney Kaelin's office, respectively), but the court's experience with attorneys' rates does not support a difference of 40 % where the higher rate attorney has 6 years less experience.<sup>2</sup> Further, the rate for Attorney Hofstal, an associate in 2007 who billed substantial amounts on the file and who graduated from law school in 1998, was \$355, again too high in comparison with Attorney Kaelin and rates generally known to the court.

In addition, no information as to the experience of several timekeepers has been provided, even in the Supplemental Affidavit. See, e.g., Jennifer Fernicola, Craig Mierzwa. Thus, the court must assume they were recent members of the bar when they began billing. Finally, the experience of none of the paralegals has been provided.

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<sup>1</sup>The court recognizes that collecting the debt at issue in this case was not a "simple foreclosure" action. Attorney Borg's Affidavit recounts the history of Mizuho's efforts. However, the portion of this matter before this court was not exceedingly complicated.

<sup>2</sup>It appears that many of the timekeepers were located in New York City. The court does not find that any special expertise required out of state counsel. Thus, while the client selected New York counsel, the court does not find it reasonable to assess the debtor New York rates.

Without any information submitted, the court can only assume they are all inexperienced, and the various rates charged (\$140–\$160) are excessive on that assumption.

Based on these examples, the court’s familiarity with billing rates in Connecticut, and the court’s review of the information submitted, the court concludes that the Pitney Hardin and Day Pitney fees should be reduced by 20% overall.<sup>3</sup> The court could have done a more precise reduction had Mizuho submitted, as is customary, a summary of total time billed by each timekeeper. However, such a summary was not submitted.<sup>4</sup>

In addition, Mizuho seeks \$34,833.24 in costs. Of this, it claims \$28,107.30 for publication costs, which the court ordered and now allows. The court also allows for FedEx, title searches, Town Clerk payments, service costs, travel, and an outside vendor. The court’s review of all of the Pitney Hardin, Day Pitney, and Florida counsel bills suggests to the court that additional costs of \$458.49 are reasonable.

However, Mizuho seeks costs for many items that the court considers to be overhead within the firm’s hourly rates, e.g., telephone, postage, photocopying, faxing, and computer research, as well as an item called “engagement costs,” the nature of which the court is unable to discern.<sup>5</sup> The court does not allow them.

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<sup>3</sup>The court notes that, in Exhibit 1 to the Supplemental Affidavit, a bill for Jan. 2008 is included twice. The court did not allow that bill twice. The court totaled the Pitney Hardin and Day Pitney bills for time billed and then took 80 % of that total.

<sup>4</sup>If Mizuho seeks further fees as part of its debt, the court orders that sufficient backup information be provided, including such a summary.

<sup>5</sup>If any of these items were extraordinarily high, such as out-of-office photocopying, or legal research or phone calls involving a foreign country, the court would consider allowing them. However, most of the items described above are for small amounts, and the court is unaware of circumstances that would justify them in this case.

In sum, the court awards Mizuho \$8,709.34 for work performed by Murtha Cullina,<sup>6</sup> \$120,718 for work performed by Pitney Hardin and Day Pitney, \$ 5,229 for work performed by Florida counsel, and \$28,565.79 for costs, for a total of \$163,222.13. This award to Mizuho is \$ 32,166.11 less than that sought in its Motion for Judgment of Foreclosure by Sale. Thus, the figure proposed in the proposed form of Order has been reduced accordingly.

**SO ORDERED.**

Dated at Bridgeport, Connecticut this 2nd day of July, 2008.

/s/ Janet C. Hall

Janet C. Hall  
United States District Judge

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<sup>6</sup>In his Supplemental Affidavit, Attorney Borg reports that the Murtha Cullina fees were not included in the original application. The court awards them today and includes them in the figure contained in its Order.