

**Eco Engg., Inc. v Source Renewables, LLC**

2024 NY Slip Op 34206(U)

November 24, 2024

Supreme Court, New York County

Docket Number: Index No. 654318/2022

Judge: Joel M. Cohen

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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: COMMERCIAL DIVISION PART 03M

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ECO ENGINEERING, INC.,

Plaintiff,

- v -

SOURCE RENEWABLES, LLC, SOURCE NY PORTFOLIO II JV, LLC, ICON ENERGY, LLC D/B/A SOURCE POWER COMPANY, STEELFIELDS SOLAR, LLC, STEELFIELDS SOLAR 2 LLC, WILLIAM TODD COFFIN, LOCUST SOLAR, LLC, LOCUST SOLAR II, LLC

Defendant.

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INDEX NO. 654318/2022

MOTION DATE 07/16/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 99

were read on this motion for INQUEST.

In its inquest application, Plaintiff Eco Engineering, Inc. (“Plaintiff”) seeks an award of money damages for the aggregate principal owed on five promissory notes in the amount of \$3,750,000 plus aggregate contractual interest totaling \$2,353,208.47 as of July 14, 2024 (NYSCEF 84 ¶ 19 [“Kirkpatrick Aff.”]). Upon the foregoing documents and for the reasons set forth below, Plaintiff’s requested relief is **granted**.

**BACKGROUND**

This case arises out of obligations owed to Plaintiff by Defendants Locust Solar II, LLC, Source Renewables, LLC, Source NY Portfolio II JV, LLC, Icon Energy, LLC, Steelfields Solar, LLC, and Steelfields Solar 2, LLC (collectively “Defendants”) pursuant to five promissory notes (the “Notes”) and two related guarantees. On July 12, 2024, the Court entered an order granting

Plaintiff's motion for summary judgment in lieu of complaint as to liability against Defendants for the principal amounts owed on the Notes and directing that the interest owed on the principal amount and the reasonable attorneys' fees owed to Plaintiff pursuant to the terms of the Notes be determined by inquest (NYSCEF 60). The Court strongly recommended that the parties stipulate to a form of judgment with respect to interest in lieu of an inquest (*id.* at 5).

The Notes provide for interest on principal to accrue at eight percent (8%) or ten percent (10%) annually (the "Contract Rate") (NYSCEF 36, 39, 41, 42, 43). The Notes provide that, should an "Event of Default" occur, that a "Default Rate" of twenty percent (20%) or twenty five percent (25%) applies. The Notes do not provide for Contract Rate and Default Rate interest to accrue together. The Notes also provide for the recovery of "reasonable attorney's fees and expenses" incurred by Plaintiff. There is no dispute that the parties entered the Loan Documents for the aggregate amount of \$3,750,000 and that Defendants had not repaid any portion of the principal as of Plaintiff's motion for summary judgment (*see* NYSCEF 53 ["Defendants' Response to Statement of Material Facts"]).

## DISCUSSION

### I. Interest

The Court finds Defendants' assertion that Plaintiff's method for calculating the interest is unclear to be without merit. Plaintiff's methodology is made clear in its memorandum (NYSCEF 92 at 3-5) and the accompanying affirmation of Plaintiff's President/CEO Thomas Kirkpatrick (NYSCEF 84 ¶ 19 ["Kirkpatrick Aff."]). Defendants propose no alternative method nor raise any particularized issues with Plaintiff's calculations.

Upon comparing the table of calculations with the terms of the Notes (NYSCEF 85-89, Ex. A-E to Kirkpatrick Aff.), the Court finds that by and large the proposed methodology

comports with the terms of the relevant agreements. The only discrepancy between the proposed calculation method and the terms of the Notes is that Plaintiff does not give effect to provisions that would compound the interest monthly in its calculations. Such discrepancies benefit Defendants, and this aspect of the calculation appears consistent with the parties' course of dealing in calculating interest (*see* Kirkpatrick Aff. ¶ 17), so the Court will not disturb it.<sup>1</sup>

Accordingly, the Court finds that Plaintiff has submitted sufficient evidence to support the interest award it seeks.

## II. Reasonable Attorneys' Fees

The Notes provide for the recovery of "reasonable attorney's fees and expenses" incurred "in connection with" the notes, making the loans thereunder, the occurrence of any event of default, and collection of any amounts due (Kirkpatrick Aff. Ex. A, B, and E at ¶ 18; Ex. C and D at ¶ 19). Contrary to Defendants' position, this does not restrict the amount recoverable to costs incurred in connection with this litigation (*see* NYSCEF 94 ["Nicolay Aff."] ¶ 13). Nor does the Court credit Defendants' assertion that the failure of Plaintiff's counsel to itemize its services per loan renders the fees sought unreasonable given that Plaintiff sought and obtained relief on all five notes in one action (*id.* ¶ 17).

In determining the reasonability of a fee award, courts consider the time and labor required, the difficulty of the issues involved, and the skill and effectiveness of counsel (*see JK Two LLC v Garber*, 171 AD3d 496, 496 [1st Dept 2019]). The fee determination may also take into account "whether a party has engaged in conduct or taken positions resulting in delay or

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<sup>1</sup> The Court notes what appears to be an arithmetic error in the per diem at contract rate for Note III (*see* Kirkpatrick Aff. ¶ 19). Because such error (if it in fact exists) also benefits Defendants, who have not appeared, the Court will not address it *sua sponte*.

unnecessary litigation” (*id.*, quoting *Cohen-McLaughlin v McLaughlin*, 132 AD3d 716, 718 [2d Dept 2015]). No hearing is required to make a fee determination when the Court possesses sufficient information by which to make an informed assessment of the reasonable value of the services rendered (*Bankers Fed. Sav. Bank v Off W. Broadway Devs.*, 224 AD2d 376, 378 [1st Dept 1996]).

Here, Plaintiff has provided sufficient information via unredacted, contemporaneous invoices breaking down the hours its counsel spent on this matter (*see McCormick 110, LLC v Gordon*, 200 AD3d 672, 675 [2d Dept 2021] [noting that affidavit from plaintiff’s counsel along with contemporaneous invoices provided sufficient basis for fee award pursuant to contractual agreement]; NYSCEF 91 [“Fee Invoices”]).

#### **A. Time and Labor Required**

Plaintiff’s counsel spent 242.47 hours since August 22 to collect the amounts due under the Loan documents pursuant to an hourly fee arrangement, resulting in a total attorneys’ fees amount of \$86,480 and costs of \$3,038.60 (*see* NYSCEF 90 [“Peña Aff.”] ¶ 6-7). These reflect the firm’s customary rates, which are consistent with fees charged for similar services in the same geographic area (*id.* ¶ 7). In response to Plaintiff’s invoices, Defendants raise several issues regarding whether the time spent was reasonable and whether it was spent on services unrelated to litigation or collection of the Notes.

First, Defendants assert that the services rendered between August 2, 2022 and October 26, 2022 were “mostly unrelated” to the drafting of the complaint filed in November of 2022 (*Nicolay Aff.* ¶ 13). Upon review of the invoices from that time, however, the Court finds that the services were related to pursuing settlement regarding the Notes, securing liens regarding the Notes, and otherwise preparing to file the instant action. These expenses were incurred in

connection with enforcing the Notes and are eligible for recovery under the terms thereof if they are reasonable (*see* Kirkpatrick Aff. Ex. A, B, and E at ¶ 18; Ex. C and D at ¶ 19).

Second, Defendants note that some of the 16 hours billed from January 3, 2023 and February 28, 2023 were spent removing improperly named parties and amending the Complaint as a result, rendering approximately half the time spent in that period unreasonable (Nicolay Aff. ¶ 14). Plaintiff responds by noting that at most 16 hours were spent on this task, which required review of multiple contracts, and that in any event all of the time was spent to collect on the Notes. The Court does not find that the relatively brief time spent in connection with amending the complaint was unreasonable.

Third, Defendants aver that it was unreasonable for Plaintiff's counsel to spend time preparing discovery demands that were never served on Defendants (Nicolay Aff. ¶ 15). In response, Plaintiff's counsel notes that after responding to Defendants' voluminous discovery demands, it determined that Plaintiff could proceed to summary judgment without incurring additional fees and costs pursuing discovery from Defendants. Plaintiff's counsel was correct, as Plaintiff prevailed in its summary judgment motion. As such, the Court will not penalize Plaintiff's counsel for failing to serve unnecessary discovery demands based on hindsight. The costs were reasonable when incurred, and Plaintiff is entitled to reimbursement for them.

Finally, Defendants take issue with the amount of time Plaintiff's counsel devoted to opposing Defendants' motion for summary judgment (Nicolay Aff. ¶ 16). Defendants submit that spending 60 hours opposing a motion for summary judgment is unreasonable because "a motion for summary judgment on promissory notes is not a complex exercise" (*id.*). Even if that were the case as a general matter, Plaintiff's counsel notes that responding to Defendants' usury arguments was a complex exercise involving research into the civil and criminal usury statutes

and application thereof, enforceability of the choice of law provisions in the Notes, and enforceability of the usury savings clauses in the Notes, as reflected in the summary judgment moving papers raising and responding to these issues (NYSCEF 52, 54). Accordingly, the Court does not find the time Plaintiff's counsel spent in connection with that motion to be unreasonable.

Overall, the Court finds the requested award to be reasonable in light of the amount of time and labor expended by Plaintiff's counsel in this action.

#### **B. Difficulty of the Issues Involved**

This factor weighs in favor of Plaintiff. While Plaintiff maintains that Defendants' obligations under the Notes are clear, they note that the underlying loans are complex and part of a series of 16 loan transactions between the parties (*see* NYSCEF 35, Affidavit of Tom Kirkpatrick in Support of Motion for Summary Judgment ["Moving Kirkpatrick Aff."] ¶ 7- 8). Further, as noted above, Defendants raised a complex usury defense with subsidiary issues that were fully litigated in favor of Plaintiff (*see* NYSCEF 52, 54).

#### **C. Skill and Effectiveness of Counsel**

This factor also weighs in favor of approving the fee award. Plaintiff's counsel achieved significant success for its client, winning on the issue of liability for the principal amount of the debt on all of Plaintiff's claims and recovering nearly four million dollars in principal plus millions more in interest. The requested fee of \$86,480.00 is reasonable in comparison to these results.

### III. Costs

Plaintiff has provided sufficient evidence via contemporaneous invoices to support an award of costs in the amount of \$3,038.60 (*see* Fee Invoices).

Accordingly, it is

**ORDERED** that as to Note I, Plaintiff is awarded damages against defendants, Locust Solar II, LLC and Source Renewables, LLC, jointly and severally, as to the principal amount of \$670,000.00 and interest in the amount of \$515,441.10 as of July 16, 2024, and per diem interest for each day thereafter at the rate of \$458.90 through entry of judgment; it is further

**ORDERED** that as to Note II, Plaintiff is awarded damages against defendants, Source Renewables, LLC and Source NY Portfolio II JV, LLC, jointly and severally, as to the principal amount of \$729,792.00 and interest in the amount of \$515,133.18 as of July 16, 2024, and per diem interest for each day thereafter at the rate of \$499.86 through entry of judgment; it is further

**ORDERED** that as to Note III, Plaintiff is awarded damages against defendants, Source Renewables, LLC and Icon Energy, LLC, jointly and severally, as to the principal amount of \$500,000.00 and interest in the amount of \$267,178.08 as of July 16, 2024, and per diem interest for each day thereafter at the rate of \$273.97 through entry of judgment; it is further

**ORDERED** that as to Note IV, Plaintiff is awarded damages against defendants, Source Renewables, LLC and Icon Energy, LLC, jointly and severally, as to the principal amount of \$1,339,585.51 and interest in the amount of \$716,109.38 as of July 16, 2024, and per diem interest for each day thereafter at the rate of \$734.02 through entry of judgment; it is further

**ORDERED** that as to Note V, Plaintiff is awarded damages against Steelfields Solar, LLC, Steelfields Solar 2, LLC, and Source Renewables, LLC, jointly and severally, as to the principal amount of \$526,980.75 and interest in the amount of \$339,346.73 as of July 16, 2024



and per diem interest for each day thereafter at the rate of \$390.95 through entry of judgment; it is further

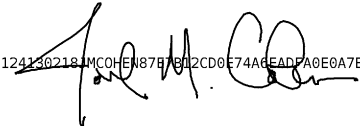
**ORDERED** that Plaintiff is awarded reasonable attorneys' fees and costs in the amount of \$89,518.60; it is further

**ORDERED** that post-judgment interest shall accrue at a rate of nine percent (9%) per annum pursuant to CPLR § 5004; and it is further

**ORDERED** that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

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11/24/2024

DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE