

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HOWARD TOWN CENTER
DEVELOPER, LLC,

Plaintiff-Counter Defendant,

v.

HOWARD UNIVERSITY,

Defendant-Counter Plaintiff-
Third Party Plaintiff,

CASTLEROCK PARTNERS, LLC,

Third Party Defendant.

Civil Action No. 13-1075 (BAH)

Chief Judge Beryl A. Howell

MEMORANDUM AND ORDER

Upon consideration of the defendant Howard University's Motion for Allowance of Additional Damages, Attorneys' Fees and Expenses ("Def.'s Mot."), ECF No. 128, the memoranda in support and in opposition, and the entire record herein, the defendant's motion is GRANTED.

The defendant seeks attorneys' fees in the amount of \$1,035,481.50, which amount includes \$5,550.00 for fees associated with the request for attorneys' fees. Def.'s Mot. ¶¶ 4, 8; Def.'s Mot., Ex. 1, Declaration of Timothy F. McCormack ("McCormack Decl.") ¶ 35, ECF No. 128-1.¹ The defendant also requests \$51,004.00 in costs, \$263,802.74 in prejudgment interest, and \$1,725.55 in postjudgment interest, with postjudgment interest continuing to accrue at a rate

¹ The defendant initially estimated that attorneys' fees associated with the preparation of the fee request would total \$5,550.00. Def.'s Mot. ¶ 8. While the defendant's contemporaneous billing records reflect fees-on-fees in the amount of \$11,955.00, the defendant is seeking only \$5,550.00 in fees-on-fees. See Def.'s Resp. Court's Nov. 14, 2017 Order at 2, ECF No. 133.

of 1.22 percent per annum until the judgment is paid in full. Def.’s Mot. ¶ 4; Def.’s Reply Supp. Mot. Att’ys’ Fees (“Def.’s Reply”) at 4, ECF No. 132; McCormack Decl. ¶ 36.² The plaintiff and the third-party defendant do not dispute the reasonableness of the fees or expenses sought by the defendant. Pl.’s Opp’n Def.’s Mot. Att’ys’ Fees (“Pl.’s Opp’n”) ¶ 5, ECF No. 131.

The sole disputed issue here is whether the requested additional amount of judgment should be entered against the plaintiff, Howard Town Center Developer, LLC (“the Developer”), and the third-party defendant, CastleRock Partners, LLC (“CastleRock”), “jointly and severally” or whether the judgment should be entered against only the Developer. Def.’s Mot. at 4; Pl.’s Opp’n ¶¶ 2–3; Def.’s Reply at 4–5. The Developer and CastleRock argue that because “the Court ordered only that ‘Developer,’ defined by the Order as ‘Howard Town Center Developer, LLC,’ pay \$1,475,000 in damages, along with interest and fees,” it would be incorrect for the Court to impose judgment jointly and severally against both the Developer and CastleRock. Pl.’s Opp’n ¶¶ 2–3.

The Memorandum Opinion accompanying that Order makes clear that Howard Town Center Developer and CastleRock “generally will not be referenced separately when discussing the actions of the parties in this matter,” a practice that has been employed throughout this litigation. *Howard Town Ctr. Developer, LLC v. Howard Univ.*, No. 13-1075, 2017 WL 3493081, at *1 n.1 (D.D.C. Aug. 14, 2017); *see also Howard Town Ctr. Developer, LLC v. Howard Univ.*, No. 13-1075, 2017 WL 421909, at *1 n.2 (D.D.C. Jan. 31, 2017) (“[T]he third-party defendant will not be referenced separately when discussing the actions of the parties in

² The defendant initially requested prejudgment interest in the amount of \$267,581.16. Def.’s Mot. ¶ 3. This amount was calculated using an interest rate of 4.25 percent per annum and a date range spanning from May 31, 2013 (the date the complaint was filed) until September 5, 2017 (the date the defendant’s motion for attorneys’ fees was filed). *Id.* The parties now agree that the defendant is entitled to prejudgment interest from May 31, 2013, until only August 14, 2017. Def.’s Reply at 4; Pl.’s Opp’n Def.’s Mot. Att’ys’ Fees (“Pl.’s Opp’n”) ¶ 4, ECF No. 131. At the undisputed interest rate of 4.25 percent per annum, this amount totals \$263,802.74. Def.’s Reply at 4; Pl.’s Opp’n ¶ 4.

this matter.”). The plaintiff and the third-party defendant used this practice in their motion for summary judgment on their amended complaint. *See* Pl. & Third-Party Def.’s Mot. Summ. J. (“Pl.’s Mot. Summ. J.”) at 18 n.2, ECF No. 87 (“Because, as to the summary judgment issues, CastleRock’s responsibilities as an assignor are identical to [Howard Town Center Developer’s], this memorandum refers to the latter in describing those rights and obligations.”). Their notice of appeal did the same, stating that “Plaintiff Howard Town Center Developer, LLC, and Third-Party Defendant Castlerock Partners, LLC (‘Plaintiffs’)” were appealing the final judgment entered “in favor of Defendant Howard University and against Plaintiffs.” Notice of Appeal at 1, ECF No. 129. Having advanced this position before this Court, the plaintiff and the third-party defendant cannot now change their tune. Accordingly, it is hereby

ORDERED that the defendant’s motion is GRANTED; and it is further

ORDERED that the defendant is awarded attorneys’ fees and expenses from the Developer and CastleRock in the total amount of \$1,086,485.50, which amount includes \$1,029,931.50 in attorneys’ fees, \$5,550.00 in fees on fees, and \$51,004.00 in expenses; and it is further

ORDERED that the defendant is awarded prejudgment interest in the total amount of \$263,802.74 and postjudgment interest in the amount of \$1,725.55, and that postjudgment interest shall continue to accrue at a rate of 1.22 percent per annum from August 14, 2017, until the judgment is paid in full.

SO ORDERED.

This order is final and appealable.

Date: November 20, 2017

BERYL A. HOWELL
Chief Judge