

RICHARD C. DETWILER - Managing Member
803-404-6964
RickDetwiler@CallisonTighe.com

CALLISON  TIGHE

January 18, 2023

RECEIVED

Jan 18 2023

SC Court of Appeals

VIA EMAIL: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

**Re: Capital Produce Distributors, Inc. vs. U.S. Logistics, LLC
Appellate Case No. 2022-001069**

Dear Ms. Kitchings:

The above-referenced appeal is being held in abeyance pending the circuit court's ruling on Capital Produce Distributors, Inc.'s motion for attorneys' fees and costs. This correspondence is being sent to advise the Court that the circuit court has now issued an Order Awarding Plaintiff Attorneys' Fees and Costs. The clocked-in Order filed January 18, 2023, is enclosed herein for your reference.

If you should have any questions, please contact our office.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC

s/ Richard C. Detwiler

Richard C. Detwiler

RCD:kam

Enclosure

cc: (w/ encl.) William R. Padget, Esquire (via email only)
Christina M. Brown, Esquire (via email only)

to \$21,553.20 for six partially unpaid invoices it sent to Plaintiff in the summer of 2016, plus its attorneys' fees and costs. When it became aware of Defendant's Ohio suit, Plaintiff attempted to resolve the matter with Defendant informally. These efforts were unsuccessful and Plaintiff retained local counsel in Ohio who, on June 15, 2018, filed a motion to dismiss on the basis that Defendant's lawsuit was brought in the wrong forum. Thereafter, on July 6, 2018, Defendant unilaterally dismissed its Ohio lawsuit, without prejudice, "reserv[ing] the right to re-file their [*sic*] action." However, Defendant did not agree to reimburse Capital Produce for its attorneys' fees and costs associated with the Ohio lawsuit.

Subsequently, Plaintiff brought this action on August 9, 2018. In its Complaint, Plaintiff sought reimbursement for its attorneys' fees and costs associated with the Ohio lawsuit brought by Defendant, along with its continuing fees and costs necessarily incurred in the South Carolina action to enforce these rights. Defendant filed counterclaims against Plaintiff, generally reasserting its entitlement to the \$21,553.20 at stake in the dismissed Ohio action and seeking its own attorney's fees and costs in the Ohio and South Carolina actions.

On November 26, 2019, Plaintiff filed its offer of judgment to Defendant, pursuant to Rule 68, SCRCP, in the amount of \$28,500.00. Defendant declined to accept Plaintiff's offer of judgment. As noted above, on May 13, 2022, after trial, the jury returned a verdict in Plaintiff's favor finding that it was entitled to the attorneys' fees sought in the litigation.

ANALYSIS

The affidavit of trial counsel for Plaintiff, Ian T. Duggan, demonstrates that Plaintiff has incurred, as of the conclusion of trial, \$140,074.39 in attorneys' fees and costs in the defense of Defendant's Ohio lawsuit and in furtherance of its claims and defenses in this case. Defendant filed post-trial motions, which have been addressed by this Court. Accordingly, the foregoing amount is based upon the actual expenditure of time in this case.

Additionally, as noted above and as the public index reflects, on November 26, 2019, Plaintiff filed its Offer of Judgment in this case under Rule 68, SCRCP. Because the jury determined that Plaintiff is entitled to a verdict for attorney fees and that determination is more favorable than the rejected offer (judgment in its favor in the amount of \$28,500.00), Plaintiff is entitled to "eight percent interest computed on the amount of the verdict or award from the date of the offer [November 26, 2019] until the entry of judgment." Rule 68(b), SCRCP.

There is no exception to the application of interest under Rule 68 just because Plaintiff's

damages in this case consist entirely of attorney's fees and costs. To do so, would countermand the very point of the offer of judgment rule in the limited set of cases when an aggrieved and wronged party, like Plaintiff, must resort to continuing litigation to enforce its rights. *See, e.g., Garrison v. Target Corp.*, ___ S.C. ___, 869 S.E.2d 797, 809 (2022) (observing that "the award of interest under an offer of judgment statute serves the purpose of promoting fair and reasonable compromise of litigation without trial.") (internal citations and quotations omitted); *Marek v. Chesny*, 473 U.S. 1, 5, 105 S. Ct. 3012, 3014 (1985) ("The plain purpose of Rule 68 is to encourage settlement and avoid litigation. For these reasons, Plaintiff is entitled to an award of its attorneys' fees and costs incurred in connection with its defense against Defendant's Ohio suit and the prosecution and defense of this suit in South Carolina, along with interest in accordance with Rule 68, SCRPC.

In this case, the parties' contract provided that in addition to any other damages, Plaintiff was entitled to its "attorneys' fees and costs relating to the enforcement of the terms of this Contract." Plaintiff's only claim at trial was for the reimbursement of its fees and costs related to the defense of the lawsuit Defendant brought in Hamilton County, Ohio, and the fees and costs it incurred in connection with this lawsuit.

At trial, Defendant's sole witness was Katie Springob. In her direct testimony, she asserted that Defendant did not believe that the "Contract of Carriage" governed the parties' relationship. But, in cross-examination, Ms. Springob confessed that if the Contract of Carriage did apply, Plaintiff would be entitled to its attorneys' fees and costs arising from both the prior lawsuit in Ohio and this South Carolina action. The jury returned a verdict in Plaintiff's favor; therefore, this Court grants Plaintiff's attorneys' fees and costs incurred in the defense of the Ohio suit and in its prosecution and defense of this case.

I. Applicable Law.

Traditionally, under the "American Rule," the parties to a lawsuit bear the responsibility of paying their own attorneys' fees. *See Layman v. State*, 376 S.C. 434, 658 S.E.2d 320, 329 (2008) (citing *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986)). However, our Supreme Court recognizes distinct exceptions to this general rule, among them being an award of attorneys' fees under an agreement via contract. *Am. Fed. Bank, FSB v. No. One Main Joint Venture*, 321 S.C. 169, 175, 467 S.E.2d 439, 442 (1996). "When a contract exists, the award of attorneys' fees is left to the discretion of the trial judge and will not be disturbed unless an abuse

of discretion is shown.” *Id.*

In exercising its discretion to determine an amount of reasonable attorneys’ fees and costs, courts in this State have historically relied on six common law factors of reasonableness: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *See Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1987). Moreover, attorney fees for a single claim should include fees incurred for a case with multiple claims where the claims “shared the same common facts and required combined efforts.” *Maybank v. BB&T Corp.*, 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016).

II. Under the Contract of Carriage, Plaintiff is Entitled to Its Actual Attorneys’ Fees & Costs.

At the onset, Plaintiff asserts that this Court need not engage in a more thorough analysis of the reasonableness of the attorneys’ fees and costs it has incurred because the parties’ contract lacks the term “reasonable.” The supplemental Affidavit of Ian T. Duggan, Plaintiff’s counsel, (**Exhibit A**) reveals that based upon additional fees for post-trial motions and additional advanced costs, the actual fees and costs incurred by Plaintiff are now \$148,698.07. Where a sophisticated party, like Defendant, agreed to be responsible for Plaintiff’s attorneys’ fees and costs if forced to enforce the terms of the contract, this Court should not re- write the contract to compel an additional term. *See Dedes v. Strickland*, 307 S.C. 155, 160, 414 S.E.2d 134, 137 (1992) (“it is a well established principle of law that where there is a contract providing for such, the amount of attorneys fees is governed by the contract.”).

Plaintiff is entitled to its reasonable fees and costs, Capital Produce requests attorneys’ fees in the amount of \$136,776.50, which reflects the actual time requested, and also requests reasonable costs in the amount of \$11,921.57. Plaintiff’s claim for contractual indemnification in this case shared common facts with the other claim originally asserted for additional damages arising from Defendant’s breach of contract. The same two transactions that gave rise to causes of action breach of contract also supported the contractual indemnification claim. Discovery for the contractual indemnification claim overlapped fully with preparing the breach of contract of claim. Accordingly, the requested fees are recoverable under the Contract of Carriage in full given the overlap in this matter. Additionally, the fees requested are reasonable when applying

the *Jackson v. Speed* factors in this case:

A. The Nature, Extent, and Difficulty of the Case

This litigation has been ongoing for over four years, involved numerous depositions, and produced significant amounts of documentary evidence. The litigation involved numerous disputed motions, including several motions to compel over discovery disputes, two motions for summary judgment by US Logistics, and several motions *in limine*. This case required piecing together emails/correspondence from numerous US Logistics' personnel, along with information from multiple freight-tracking computer database systems—all with the intended aim of demonstrating the actual and apparent authority of Cory Rose over a multi-year business relationship. Additionally, counsel's efforts in this case also required significant attention to be paid to Defendant's own counterclaims in this case. While Plaintiff was able to cull much of this potential evidence down for presentation at trial, the straightforward nature of its trial presentation belies counsel's extensive efforts.

All these matters required significant time and effort by experienced counsel, which garnered beneficial results for Capital Produce on its cause of action and in defense of US Logistics' counterclaims

B. The Time Necessarily Devoted to the Case

This case was litigated for over four years before trial. Trial lasted four days and required preparation for a week beforehand.

C. The Professional Standing of Counsel

Richard C. Detwiler serves as the managing member of Callison Tighe. Admitted to the South Carolina bar in 1986, Mr. Detwiler is a very experienced litigator who Martindale Hubbell has recognized with an "AV-Preeminent" rating. He has also been recognized by Best Lawyers in America for Commercial litigation and Workers' Compensation Law. Additionally, he has been recognized as a "Top Rated General Litigation Attorney" by Super Lawyers and has been honored as one of the "Legal Elite of the Midlands" by Columbia Business Monthly.

Ian T. Duggan is likewise an experienced litigator, who has tried over 40 criminal and civil matters to a verdict, and previously served as a Senior Trial Counsel for the United States Air Force. Admitted to the South Carolina Bar in 2010, he has also been recognized with an "AV-Preeminent" rating by Martindale Hubbell and is recognized by Best Lawyers in America for Commercial Litigation.

Both Mr. Detwiler and Mr. Duggan served as trial counsel in this case and are well known in the legal community for handling commercial litigation matters. In addition, Harry A. Dixon was also counsel of record in this case. He was admitted to the South Carolina bar in 2016. Mr. Dixon joined Callison Tighe after completing clerkships with two federal judges: Judge Dennis W. Shedd of the United States Court of Appeals for the Fourth Circuit and Judge Terry L. Wooten of the United States District Court for the District of South Carolina. His practice is focused on many areas, including commercial litigation.

Other attorneys assisted in this matter with both Callison Tighe and Callison Tighe's local Ohio counsel, Schroeder, Maundrell, Barbieri & Powers in Cincinnati. The total time spent for Callison Tighe and attorneys, paralegals, and legal assistants through trial is shown on the table below:

D. The Contingency of Compensation

No portion of the fees charged by Capital Produce's counsel was on a contingency basis.

E. The Beneficial Results Obtained

Capital Produce won a verdict in its favor on its sole cause of action submitted to the jury. The jury also ruled in Capital Produce's favor on Defendant's counterclaims for contract damages and attorneys' fees and costs. Accordingly, counsel for Plaintiff secured the most beneficial result possible in this case.

F. The Customary Legal Fees for Similar Services

The amounts charged by counsel for Capital Produce are in line with rates charged for this type of work. In light of the above factors, the \$136,776.50 of attorney fees requested by Capital Produce (including the attorney fees incurred in Ohio) is reasonable under the applicable factors plus reasonable litigation costs of \$11,921.57 for a total of \$148,698.07. Further supporting the reasonableness of the attorney fees, is a comparison of the fees and costs incurred by Capital Produce in this action, \$141,588.95.

III. Plaintiff is Entitled to 8% Interest Under Rule 68, SCRCP.

As set forth in its Motion, Plaintiff is also entitled to 8% interest under Rule 68, because Defendant failed to take advantage of its November 26, 2019, offer to resolve this case for \$28,500.00. Rule 68, SCRCP, provides if the offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover "eight percent interest computed on the amount of the verdict from the date of offer until the entry

of judgment.” Due to this Court’s delay in calculating the award of attorney fees, the computation of interest is backdated to July 7, 2022 when the Court issued its decision denying the post-trial motions.

ORDER

Based upon the foregoing reasons, **IT IS THEREFORE ORDERED** Plaintiff is entitled to a judgment for actual attorneys’ fees and costs in the amount of \$148,698.07 plus eight percent interest dating from November 26, 2019 until July 7, 2022.¹

AND IT IS SO ORDERED.

Signature page to follow

¹ This Court does not find any basis for a lodestar analysis, as requested by Plaintiff, to determine an award of attorney fees pursuant to the contract between the parties.



Richland Common Pleas

Case Caption: Capital Produce Distributors Inc vs Us Logistics Llc , defendant, et al
Case Number: 2018CP4004211
Type: Order/Attorney Fees

IT IS SO ORDERED!

s/ Alison Renee Lee