

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CIVIL ACTION NO. 2020CP2200932
) (Consolidation of below Civil Actions)

Sunset Lodge, LLC,)
)
) Plaintiff,) 2020-CP-22-00932
)
) v.)
)

Town of Pawleys Island,)
)
) Defendant.)

RECEIVED
Aug 07 2023
SC Court of Appeals

Franklin D. Beattie, as trustee of)
The Franklin D. Beattie Preservation Trust,)
)
) Plaintiff,) 2020-CP-22-00931
)
) v.)
)

Town of Pawleys Island,)
)
) Defendant.)

M. Baron Stanton,)
)
) Plaintiff,) 2020-CP-22-00930
)
) v.)
)

Town of Pawleys Island,)
)
) Defendant.)

ORDER GRANTING ATTORNEY FEES AND COSTS

PRESIDING JUDGE..... Honorable Benjamin H. Culbertson
DATE OF HEARINGApril 14, 2023
PLAINTIFFS’ ATTORNEYM. Baron Stanton, Esquire
DEFENDANT’S ATTORNEY William C. Dillard, Jr., Esquire
COURT REPORTERWebEx

These consolidated cases (“this case”) are statutory condemnation challenge actions arising from efforts by the Defendant Town of Pawleys Island (“Town”) to condemn easements for beach re-nourishment. Now before the court is the plaintiffs’ motion for attorney fees and costs pursuant to Code of Laws of South Carolina 1976 §28-2-510(C)¹ following the Town’s withdrawal and abandonment of the underlying condemnation notices.

Prior to the Town serving condemnation notices in this case, previously filed attempts for condemnation filed by the Town were still pending (“first condemnation”). Condemnation notices in this case were served by the Town on the plaintiffs while the plaintiffs challenged the first condemnation. After the Court granted summary judgment in favor of the plaintiffs in the first condemnation, thus quashing that first set of condemnation notices, the Town formally abandoned this second set of condemnation notices.

By order filed April 22, 2021, this Court granted the Town’s Motion to Dismiss this action as moot with the parties’ stipulation that the plaintiffs could seek attorney’s fees. The plaintiffs opposed the Town’s Motion to Dismiss even though they sought to quash the condemnation notices in their Amended Complaint.²

The plaintiffs filed this motion for attorney fees and costs on October 21, 2022. In support of their motion, the plaintiffs submitted the affidavits of their attorney, which were updated and amended on March 8, 2023, and on June 8, 2023. The Town submitted a memorandum in opposition to the petitions as well as the affidavits of Town Attorney N. David Durant, Sr. and counsel of record William C. Dillard, Jr. In response, the plaintiffs filed a reply memorandum as

1 The Court denies the plaintiffs’ proffer of Code §15-77-300 as an additional grounds for attorney fees and costs in these condemnation actions.

2 The plaintiffs have appealed the Court’s order granting the Town’s Motion to Dismiss. That appeal is still pending.

well as affidavits, previously filed in the first condemnation. Plaintiffs seek attorney fees in a combined total amount of \$53,694.00 based on proportionate amounts of a total of 282.6 hours of attorney time alleged to have been spent in this case. Plaintiffs also seek \$751.71 in litigation costs. Specifically, each plaintiff seeks a separate award of \$18,148.57, being one-third of the requested attorney fees and costs.

Based upon the affidavits and memorandums submitted by the parties, the arguments of counsel and the record of this case, I do hereby find the following salient facts and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The plaintiffs' motion for attorney fees and costs was filed more than a year after they filed notice of appeal of the underlying dismissal. The Town, citing Rules 54(d) and 59(e), SCRCF, argues that the fee petition was not timely submitted and, therefore, not within the subject matter jurisdiction of the Court. However, the Court notes that the underlying dismissal did not prohibit the plaintiffs from seeking attorney fees and costs incurred prior to the dismissal. Therefore, the Court finds that, based on intervening procedural motions, the motion was timely and is within its subject matter jurisdiction.

Determination of an appropriate award is governed by the fee-shifting provision of the *South Carolina Eminent Domain Procedure Act* ("the Act"). Specifically, the Act includes the following provision for an award of attorney fees where a condemnation is abandoned:

If the condemner abandons or withdraws the condemnation action in the manner authorized by this chapter, the condemnee is entitled to reasonable attorney fees, litigation expenses, and costs as determined by the court.

S.C. Code Ann. § 28-2-510(C). The Act defines litigation expenses as "the *reasonable* fees, charges, disbursements and expenses *necessarily incurred* from and after service of the

Condemnation Notice, including, but not limited to, *reasonable* attorney's fees, appraisal fees, engineering fees, deposition costs, and other expert witness fees necessary for preparation or participating in condemnation actions...." (emphasis added).

Pursuant to the express terms of Code §28-2-510, a court is authorized to either award reasonable attorneys' fees to a prevailing landowner or deny the award in its entirety depending on the circumstances surrounding the litigation. If the court determines that an award is warranted, it must then consider a constellation of factors in calculating the amount of the award. Initially, the court must consider the itemized statement submitted by the landowner's attorney in support of the requested amount of litigation expenses. Once the court reviews this statement in conjunction with the circumstances surrounding the litigation, it may then determine a reasonable award of attorneys' fees. *S.C. Dept. of Transportation v. Revels*, 411 S.C. 1 766 S.E.2d 700 (2014).

The Court finds that the plaintiffs are entitled to an award of attorney fees and costs in this case. However, the Court finds that the fees and costs sought by the plaintiffs are unreasonable in relation to the nature, extent, duration, and difficulty of the litigation.

As conceded in the affidavit of plaintiffs' counsel, this case was handled in tandem with the issues, theories, pleadings, and other filings that were effectively identical with the first condemnation. The plaintiffs' prayer for relief in this case was for the Court to quash the condemnation notices and award the plaintiffs litigation costs. The plaintiffs filed their original Complaint in this case on November 12, 2020. The Town voluntarily withdrew the condemnation notices on February 10, 2021. Except for the plaintiffs' prayer for litigation costs, this case effectively ended with the filing of Notices of Abandonment on February 10, 2021, ninety-one days after the plaintiffs filed their original Complaint. During this time, the Complaint, the Answer, and the Amended Complaint were filed but, as documented in the affidavits of attorneys

Durant and Dillard, little else occurred; no motions were filed, no depositions were taken, no subpoenas were issued, no discovery records were exchanged, and, other than a set of interrogatories and a deposition notice served by the Plaintiffs, no other discovery was conducted. Extensive discussion in the Plaintiffs' fee affidavit of motions, discovery, depositions, and document production actually relates to the first condemnation that was already subject to a fee petition and award. Furthermore, much of the plaintiffs' factual and legal position came directly from the first condemnation that were pending at the time this case was filed. Accordingly, the necessary work for Plaintiffs' counsel in this case was greatly reduced because of work that had already been performed in the first condemnation.

Despite the record of this case having little activity before the Town willingly withdrew the condemnation notices, the plaintiffs seek attorney fees for 282.6 hours of legal services. Notably, while the plaintiffs' fee affidavit does not detail how specific entries of time were spent in this case, the daily time totals included in the final fee affidavit show that 221.3 hours are being claimed subsequent to February 10, 2021, when the Town abandoned its notice of condemnation. The Court also notes that the plaintiffs filed a notice of appeal of the order granting the Town's Motion to Dismiss on July 2, 2021. Hours of legal services incurred subsequent to February 10, 2021, could only relate to work on the motion currently before the Court or to matters arising from the plaintiffs' unsuccessful opposition to the motion to dismiss.

The Court finds that the reasonableness and necessity of the claimed attorney time is unsupported by the evidence. The claimed hours are excessive in light of the actual needs of this brief litigation, even factoring in reasonable time for the fee petition itself. Further, the record does not support the plaintiffs' assertion that the Town's approach to the litigation created some need or justification for plaintiffs' counsel to work the claimed number of hours.

The Court also finds that the plaintiffs are not entitled to recovery of fees and expenses associated with opposing the Town's motion to dismiss and ensuing procedural motions arising from the dismissal. This includes all work following the Town's filing of the Notice of Abandonment other than a reasonable amount of time for the motion currently before the Court.

Plaintiff counsel's hourly rate of \$190.00 in this matter is reasonable based upon his professional standing and experience. The circumstances of this case, involving the consolidation of three separate actions in which the essentially identical claims of three plaintiffs were pursued jointly, make it reasonable and in line with customary billing practices for the total fees to be divided in thirds to each of the three plaintiffs. The Court finds reasonable that the attorney fee award be handled in the same way, with each plaintiff being entitled to one-third of the total reasonable fee for the combined litigation.

The Court finds that the reasonable amount of attorney time necessary for the plaintiffs in this case is 57.5 hours devoted to this case prior to the Town's abandonment of this condemnation and an additional 8 hours for preparation and prosecution of this motion for fees and costs for a total of 65.5 hours. At \$190.00 per hour, I find that the plaintiffs are entitled to a total award of \$12,445.00 in attorney fees.

The Court further finds that the plaintiffs' request for expenses overstates the amount that was reasonably and necessarily incurred in this case. Specifically, the claims for mileage for travel to the motion to dismiss hearing (\$52.05), filing fees for the motion to reconsider (\$31.74 x 3), and filing fee for the motion to correct Form 4 (\$31.74) all relate to the plaintiffs' unsuccessful efforts to avoid dismissal and continue discovery. The plaintiffs are entitled to recover their filing fees (\$180.32 x 3) and consolidated fee petition filing fee (\$31.74), for total expenses of \$572.70.

CONCLUSION

The Court finds that the plaintiffs are entitled to a total award of \$13,017.70 in attorney fees and costs. Divided equally between the plaintiffs, the Court finds that each plaintiff is entitled to an award of attorney fees and litigation costs in the amount of \$4,339.23.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the plaintiffs' Motion for Attorney Fees and Litigation Costs is GRANTED; it is further

ORDERED, that the plaintiff Sunset Lodge, LLC, is awarded attorney fees and costs from the defendant Town of Pawleys Island in the amount of \$4,339.23; it is further

ORDERED, that the plaintiff Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust, is awarded attorney fees and costs from the defendant Town of Pawleys Island in the amount of \$4,339.23; it is further

ORDERED, that the plaintiff M. Baron Stanton is awarded attorney fees and costs from the defendant Town of Pawleys Island in the amount of \$4,339.23.

AND IT IS SO ORDERED.



Georgetown Common Pleas

Case Caption: Sunset Lodge Llc VS Pawleys Island Town Of

Case Number: 2020CP2200932

Type: Order/Attorney Fees

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148