

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO. 2021-CP-32-00328

JOHN DEERE CONSTRUCTION &)
FORESTRY COMPANY,)
Plaintiff)
v.)
NORTH EDISTO LOGGING, INC.; THE)
PAUL & BRENDA GUNTER)
REVOCABLE TRUST UTD MARCH 26,)
2019; The ESTATE of PAUL D. GUNTER;)
MATTHEW P. RUSH; and MATTHEW)
CODY GUNTER,)
Defendants)

RECEIVED
Feb 22 2024
SC Court of Appeals

ORDER
AWARDING ATTORNEYS'
FEES AND EXPENSES

This matter is before the Court following the November 29, 2023, entry of an Order on Plaintiff John Deere Construction & Forestry Company's Motion for Order to Show Cause and Motion to Exclude Evidence and for Sanctions ("Verified Motion") that requires, in part, the payment by Defendants Matthew Cody Gunter, North Edisto Logging, Inc., The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, and The Estate of Paul D. Gunter ("Defendants") of Plaintiff's reasonable attorneys' fees and expenses incurred in connection with the Verified Motion and which directed Plaintiff to prepare an affidavit for examination by Defendants' counsel when agreement of the parties as to the amount of attorneys' fees and expenses could not be reached. A hearing on this matter occurred via WebEx in the virtual courtroom on January 16, 2024. Plaintiff was represented by Amy H. Wooten, Esquire and Paul A. Fanning, Esquire admitted *Pro Hac Vice*. Defendants were represented by D. Randolph Whitt, Esquire. For the reasons set forth herein, the Court awards Attorneys' fees and expenses as follows.

FINDINGS OF FACT / CONCLUSIONS OF LAW

This Court entered an Order on November 29, 2023, granting Plaintiff's Verified Motion. In Paragraph 4 of the decretal section of the Order, the Court ordered that Defendants, jointly and severally, shall pay Plaintiff's reasonable attorneys' fees and expenses incurred in connection with the Verified Motion and directed Plaintiff to prepare an affidavit for examination by Defendants' counsel.

At the hearing on January 16, 2023, the Court received oral argument from the parties regarding the reasonableness of the fee Plaintiff seeks. The Court reviewed the Affidavit of Paul Fanning in Support of Attorneys' Fees dated January 15, 2024 ("Affidavit"), including the spreadsheet detailing legal services rendered and expenses incurred. The Court further reviewed the pertinent pleadings in the file, including the Plaintiff's Verified Motion and Order.

The Court also considered the six factors typically considered in determining an award of fees, to wit the nature, extent, and difficulty of the legal services provided that are the subject of the fee award, the time and labor devoted, counsel's professional standing, contingency of compensation, the fee customarily charged for similar services in the locality, and the beneficial results obtained. With respect to such factors, the Court finds as follows:

Plaintiff had to expend additional time and effort prosecuting the case as reflected in Plaintiff's Verified Motion and the Order granting the same as a result of Defendants' failure to meet their discovery obligations. Defendants did not present evidence before or at the hearing suggesting that they had complied with the court's prior orders such that Plaintiff's Verified Motion and the Order entered in relation to it were frivolous or unnecessary.

A review of the Affidavit, and its supporting documentation, detail and substantiate the time and labor spent and that the same were reasonable and not duplicative. Defendants did not

present evidence before or at the hearing disputing the time spent, and their argument that the amounts expended were excessive were unaccompanied by evidence supporting their conclusory assertion that it was.

Plaintiff's attorneys presented evidence that they are experienced, skilled attorneys of good, professional standing. This is apparent through the work product submitted to the Court in this case. Ms. Wooten, who is serving as local counsel for Mr. Fanning in this matter, is a member of both the State Bars of South Carolina and North Carolina where she has been admitted to practice since 2011 and 2009, respectively. Mr. Fanning has been practicing since 1998, leads the Creditors' Right + Bankruptcy Section of his law firm, and is a Board Certified Specialist in Business and Consumer Bankruptcy Law. Defendants did not present evidence before or at the hearing disputing the qualifications or standing of counsel.

The contingency factor is not applicable, as Plaintiff's fee arrangement is an hourly one.

Based upon a review of the Affidavit, and its supporting documentation, along with the Court's familiarity with attorney fees customarily charged in this legal community, the Court finds the hourly rates and expenses set forth in the Affidavit to be consistent with the hourly rates and expenses charged by attorneys and paralegals with similar training and experience and appropriate. Defendants did not present evidence before or at the hearing, such as a counter-affidavit challenging the hourly rates presented by Plaintiff.

Plaintiff obtained a beneficial result as reflected in the entry of the Order, which granted its Verified Motion. Defendants' after-the-fact argument that Plaintiffs' victory was of no consequence because Defendants now claim they did not intend to introduce evidence or argument it is now precluded by the Order from utilizing does not nullify the significance or authority granted by the Order.

The Court finds that the amount of \$6,969.74 incurred in the prosecution of Plaintiff's Verified Motion is reasonable.

IT IS THEREFORE ORDERED that Defendants shall pay to Plaintiff attorneys' fees and expenses in the amount of **Six Thousand Nine Hundred Sixty-Nine and 74/100 Dollars (\$6,969.74)** within ten (10) days from the entry of this Order.

IT IS SO ORDERED.

[JUDICIAL SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: John Deere Construction & Forestry Company VS North Edisto Logging Inc , defendant, et al

Case Number: 2021CP3200328

Type: Order/Attorney Fees

It Is So Ordered

s/ Walton J. McLeod