

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)
)
 Joseph E. Robinson, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 Carolina King Retreat & Marina, LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

C/A No.: 2008-CP-14-645

ORDER

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 DATE 1-22-13
Bauleh B. Roberts
 CLERK OF COURT
 CLARENDON COUNTY, SC

THIS MATTER COMES BEFORE THE UNDERSIGNED, on Plaintiff's motion to Alter or Amend. In their motion Plaintiffs raise two issues: the first relates to attorney's fees and costs and the second relates to the reasonableness and necessity of the community services fee and marina services fee. As to the reasonableness of the afore-mentioned fees, Plaintiffs' motion is denied. As to the attorney's fees, Plaintiff's motion is granted as set forth below.

It is axiomatic that attorneys' fees are not recoverable unless authorized by contract or statute. *See, South Carolina Elec. & Gas Co. v. Hartough*, 375 S.C. 541, 654 S.E.2d 187 (Ct. App. 2007). In this case, the Plaintiffs' claim for fees and costs is based on contract, specifically the terms of the 99 year Lease Agreements, drawn by the Defendant. Defendant argues that the Uniform Declaratory Judgments Act trumps the relevant portion of the lease, and further questions whether the Plaintiffs are the prevailing party. In response to Plaintiffs' motion I must determine, first, which side is the "prevailing party" in the underlying action, second, whether the attorney's fees clause in the contract are trumped by statute, and third, whether the attorney's fees are reasonable.

First, under the common law, "one who successfully prosecutes the action . . . prevailing

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BENJAMIN G. ROBERTS
 CLERK OF COURT
 CLARENDON COUNTY, S.C.
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on the main issue, even though not to the extent of the original contention,” is considered the prevailing party. Heath v. County of Aiken, 302 S.C. 178, 394 S.E.2d 709 (1990). I conclude that the Plaintiffs are the prevailing parties in this action, even though they did not recover all that they sought. The Defendant’s charges were ordered to be reduced for the Community Services Fee, the Maria Services Fee, and the services of Terry Wiggins. Though the Plaintiffs did not get all damages they were seeking, they prevailed on the main issue of overcharging, and therefore are the prevailing party in this action.

Second, if a contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect. Schulmeyer v. State Farm Fire and Casualty Co., 353 S.C. 491, 579 S.E.2d 132 (2003). The Lease Agreement entered into by both parties stated in relevant part, “[i]n connection with any litigation arising out of this Lease, the prevailing parties **shall** be entitled to recover all costs incurred, including reasonable attorney’s fees through and including any and all appellate actions.” (Emphasis added). Shall is a mandatory word which takes the discretion as to whether or not to award attorney’s fees out of the court’s hands and leaves the court to make a determination as to whether the Plaintiffs are the prevailing parties and whether the fees requested by Plaintiffs are reasonable. On reconsideration, I conclude that the language of the Lease Agreement requires the awarding of fees and costs to the prevailing party, leaving only the determination of reasonableness for this court. See, First Savings Bank, FSB v. Capital Investors, 318 S.C. 555, 459 S.E.2d 307 (1995) (remanding matter to trial court for a determination of reasonable attorney’s fees on a Guaranty).

The six factors in Blumberg v. Nealco are controlling as to the reasonableness of Plaintiffs’ requested fees. Blumberg, 310 S.C. 492, 427 S.E.2d 659 (Finding six factors in

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determining an award of attorneys fees are: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained).

Under Bloomberg, the court is required to make a separate finding as to each factor in awarding attorneys' fees. As to factors 1-5, I find that the attorneys' fees affidavits filed on December 17, 2012 adequately address each of these factors and I adopt those statements as findings of the court. Specifically, I find that this action is a complex, commercial litigation matter with four original cases, consolidated into one and further involved numerous parties. Each of the four cases required numerous filings, and the consolidated case required extensive discovery. I find that Plaintiffs' counsels and members of Plaintiffs' counsel's firms expended a great deal of time working on these cases, as set forth in the attorneys' affidavits. I find that the Plaintiffs' attorneys were to be paid an hourly rate and that the rate charged is consistent with fees customarily charged in this locality for similar services. Further, I find that Plaintiffs' counsel and Plaintiffs' counsels' firms are held in high regard as to their professionalism and ethics as evidenced by their "AV" Martindale-Hubbell ratings as to warrant the fees charged. Finally, as to factor 6, I find that Plaintiffs' attorneys obtained a substantial benefit for their clients in this matter as they are the prevailing party. I therefore find that Plaintiffs' attorneys are entitled to recover fees and costs as follows:

Ian McVey-	
Attorney Fee-	\$32,485.75
Costs-	\$5,850.64
Tara Leaphart-	
Attorney Fee-	\$16,815.00
Ray E. Chandler-	

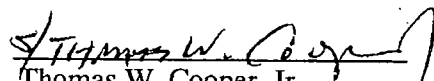
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Attorney Fee-	\$3,000.00
Costs-	\$6,728.93

Accordingly, this court grants the Plaintiff's motion in part and denies Plaintiff's motion in part. Defendant is directed to pay the above-referenced amount to Plaintiff's counsel, Callison Tighe and Robinson, LLC within thirty (30) days.

AND IT IS SO ORDERED.

Manning, South Carolina
July 19, 2013


Thomas W. Cooper, Jr.
Special Referee

Copies to be
Certified - sent to
Attorneys of Record

Please
file +
mail
certified
copies to all
counsel. Thanks!
GATL

* mailed on 7/23/13