

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2019-CP-10-01108

Balfour Beatty Construction, LLC,
Plaintiff,

ORDER AWARDING ATTORNEYS'
FEES & COSTS

v.

Library Associates, LLC; and Metropolitan
Life, a New York Corporation

Defendants,

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May 13 2024

SC Court of Appeals

Library Associates, LLC,

Third-Party Plaintiff,

v.

Lithko Contracting, LLC, *et al.*

Third-Party Defendants.

This matter came before the Court on Library Associates, LLC's Petition for Attorneys' Fees and Costs, filed November 6, 2023. In its Petition, Library provided William H. Bundy Jr.'s affidavit to support its claim for attorneys' fees and costs in the amount of \$2,026,278.55. Library also provided the affidavit of Marvin D. Infinger, Esquire to support the reasonableness of its claim to attorneys' fees. A hearing was held on April 2, 2024 at which time Mr. Infinger testified.

REASONABLENESS OF FEES AND COSTS

Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991) set forth the six-factor test to determine the award of attorneys' fees based upon: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Applying these factors to this case, I find:

1. This has been a very complex construction case which required protracted litigation. This matter involved multiple subcontractor claims and mechanics liens. This case was filed in 2019 and subsequently involved a five-week trial in the Fall of 2021.
2. Library's counsel devoted thousands of hours in its efforts to resolve this case.
3. Library's counsel of record, William H. Bundy, Jr. and Brent McDonald, maintain an excellent professional reputation in the South Carolina Bar.
4. The contingency of compensation factor is not relevant as Library's counsel was paid an hourly rate not conditioned upon the outcome of the case.
5. The outcome obtained by Library's counsel was a beneficial result for their client. The Order of October 6, 2023 awarded a judgment of \$3,320,329.00 in favor of Library Associates, LLC against Balfour Beatty Construction, LLC under the breach of contract and breach of contract accompanied by a fraudulent act causes of action. Significant to this court's determination of attorney fees, Library successfully defended against a Mechanic's Lien cause of action sought by Plaintiff Balfour Beatty Construction, LLC.
6. Mr. Bundy and Mr. McDonald's hourly rates of \$400 and \$350 are below the customary hourly rate charged for litigation of this nature and complexity and by attorneys of similar professional standing. As testified by Marvin D. Infinger, (who this court finds both highly credible and imminently qualified), a customary hourly rate for an attorney of Mr. Bundy's caliber is \$600 and \$450 for Mr. McDonald – a 50% increase above the billed hourly rate.

Based upon these findings, the court concludes Library Associates, as the prevailing party in the defense of the mechanic's lien case, is entitled to an award of attorney's fees. SC Code §15-27-10 (a).

REDUCTION OF FEES AND LODESTAR ENHANCEMENT

After the hearing, and despite its objection to Mr. Infinger's affidavit as untimely, Balfour Beatty submitted the Affidavit of Franklin Worrell, a certified financial forensic accountant and CPA. Mr. Worrell reviewed the invoices submitted by Library's counsel and placed the invoices into 5 Groups which he concluded led to a 74.5% overstatement in the amount of time expended in defending the mechanics lien claim. This court disagrees with his assessment.

In *Maybank v. BB&T Corporation*, 416 S.C. 541, 787 S.E.2d 498 (2016), the Supreme Court approved a twenty percent fee reduction after a showing of unrelated or unreasonable costs. This Court adopts the Supreme Court's ruling in *Maybank* and reduces Library Associates' award of attorneys' fees by thirty percent (30%). The court concludes a 30% reduction in fees is warranted based upon the fact multiple claims were presented and tried in this matter; however, the clear majority of time expended by the parties during the 5 week trial of this case was spent trying the Plaintiff's mechanics lien foreclosure action on which Defendant's prevailed.

Also in *Maybank*, the Supreme Court upheld a lodestar fee enhancement of fifty percent. While the facts in this case differ from *Maybank*, "a lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case and is calculated by multiplying a reasonable hourly rate by the reasonable time expended." *Layman v. State*, 376 S.C. 434, 457, 658 S.E.2d 320, 332 (2008).

Upon review of the memorandum, affidavit and testimony of Marvin Infinger, this Court finds there exists good cause, considering the complex litigation and successful outcome achieved by Library's counsel, to award a lodestar fee enhancement of fifty percent to the rate of the attorneys' fees incurred. Accordingly, Mr. Bundy's hourly rate is hereby set at \$600 per hour and Mr. McDonald's at \$450 per hour.

ASSESSMENT OF ATTORNEY'S FEES AND COSTS

Library Associates' Petition for Attorneys' Fees was submitted on November 6, 2023 in the amount of \$2,026,278.55. Substantial other costs were included in its petition which ultimately sought over \$50 Million Dollars in damages.

After application of the thirty percent fee reduction to Library's requested amount of \$2,026,278, the court finds the sum of \$1,418,395 as the amount of attorney's fees. This sum is then subject to the lodestar fee enhancement of Fifty Percent, which this Court finds results in an award of \$2,127,592 in attorney's fees.

In addition, the court grants Library Associates' Petition for an award of Costs in the amount of \$655,197 which is the amount of costs submitted by Sam Hadley as Library's financial expert witness. Ms. Hadley's testimony was crucial to understanding the amounts of time and figures placed into the record and finds this cost to be reasonable and properly awarded in this action. See *Maybank*, supra. The remaining costs, the majority of which include loan costs both past and projected, are denied as consequential damages not allowed under the parties' contract.

Upon review of the memoranda, affidavits, and invoices submitted by Library Associates' counsel and in application of the *Glasscock* factors, and in consideration of the arguments, memoranda and affidavits submitted, this Court determines that an award of \$2,782,789 in attorneys' fees and costs is both reasonable and equitable to award Library Associates.

IT IS THEREFORE ORDERED that this Court hereby awards the sum of \$2,782,789.00 in attorneys' fees and costs to Library Associates and hereby issues its Form 4 Order in that amount as judgment on the attorney's fees and costs.¹

¹ Following the preparation of this order, the Court received a Supplemental Affidavit of Additional costs and fees from Kim Brown on behalf of Library Associates. The affidavit seeks an additional \$191,369.90 for costs incurred since submission of the attorney's fees and affidavit of November 6, 2023. The majority of these fees and costs were

IT IS SO ORDERED!

Mikell R. Scarborough
Master in Equity, Charleston County

spent preparing for and attending the post-trial motions hearing held on April 2, 2024. The Court will not award these additional fees and costs at this time but reserves a decision on their award at a later time.



Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC ,
defendant, et al
Case Number: 2019CP1001108
Type: Order/Attorney Fees

So Ordered

s/Mikell R. Scarborough 3062