

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

)

) CASE NO.: 2021-CP-04-01349

Poly-Med, Inc., Technology Drive 51, LLC,
Technology Drive 52, LLC, PMI Properties, LLC,

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Plaintiffs,

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v.

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Research Park, LLC,

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Defendant.

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SC Court of Appeals

ORDER ON AWARD OF ATTORNEY'S FEES AND EXPENSES

This matter came before the Court on Plaintiffs' Motion for Attorney's Fees and Expenses, filed March 8, 2024, which motion was supported by, among other things, affidavits from Plaintiffs' attorneys William A. Coates of Cassidy Coates & Price, P.A., and Marwan S. Zubi of Nicolai Law Group, P.C., attesting that, as of August 5, 2024, Plaintiffs had incurred legal fees and expenses to Mr. Coates's firm in the amount of \$72,447.96 and that, as of July 31, 2024, Plaintiffs had incurred legal fees and expenses to Mr. Zubi's firm in the amount of \$145,744.37, which amounts together totaled \$218,192.33 in legal fees and expenses Plaintiffs had incurred with respect to this matter.¹

¹ Messrs. Coates and Zubi filed their original fee affidavits contemporaneously with the filing of Plaintiffs' Motion for Attorney's Fees and Expenses on March 8, 2024. As directed by the Court at the July 24, 2024, hearing on Plaintiffs' motion, Messrs. Coates and Zubi filed additional affidavits on August 7, 2024, with updated figures through the dates stated above. This order is based on the legal fees and expenses attested to in Messrs. Coates and Zubi's affidavits filed August 7, 2024. The Court recognizes, however, that the provision of the Declaration of Covenants, Conditions and Restrictions of Clemson Research Park dated December 23, 1986, entitling the prevailing party in enforcement actions to recover legal fees and expenses expressly includes the prevailing party's entitlement to recover legal fees and expenses incurred in "any appeal thereof." After the conclusion of all appeals in this matter, provided, of course, that the

Plaintiffs are the owners, and in the case of Poly-Med, Inc. also the lessee, of parcels of land (“Parcels”) in the Clemson University Advanced Materials Center (the “Park”) in Anderson, South Carolina. The Park is subject to a Declaration of Covenants, Conditions and Restrictions of Clemson Research Park dated December 23, 1986, as amended (“Covenants”). In 2018, Defendant Research Park, LLC, acquired the Park, and took assignment of the rights, title and interest as Declarant and is the Park Authority under the Covenants.

In their original Complaint in this action, Plaintiffs asserted five causes of action against Defendant: (1) breach of the Covenants by charging maintenance fees in excess of actual maintenance and upkeep costs; (2) conversion of maintenance fees; (3) unjust enrichment with respect to the fees; (4) an accounting of the fees collected and spent; and (5) an injunction to prevent Defendant from selling Park Parcels in violation of the Covenants. Plaintiffs sought damages with respect to the overpayment of fees, interest and an award of their costs, disbursements and reasonable attorneys’ fees pursuant to the terms of the Covenants.

Defendant counterclaimed that Plaintiffs have “historically failed to make timely payment” of annual invoices from Defendant for maintenance fees. Defendant also alleged that Plaintiffs placed and maintained office trailers on their Parcel(s) in the Park without approval of Defendant.

At a hearing on the parties’ respective motions for summary judgment, the parties agreed to an accounting of the maintenance fees and the Court ordered the parties to select a qualified

ultimate outcome on appeal is such that Plaintiffs remain entitled to recover legal fees and expenses, Plaintiffs may move this Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses, to account for any legal fees and expenses that are not already covered by this order. If no appeal is taken in this matter after the filing of this order (the Court is aware that appeals were previously taken in this matter that were dismissed), once the time for appeal has expired, Plaintiffs may move the Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses with respect to the prior appeals in this matter, to account for any legal fees and expenses that are not already covered by this order.

accountant to perform it. Through its July 18, 2023 Order following the hearing, the Court also granted an award of attorneys' fees for Plaintiffs, in an amount to be determined after trial.

On February 29, 2024, following a bench trial, this Court entered judgment in favor of Plaintiffs in the amount of \$74,001.41 on their claim for breach of the Covenants plus costs and attorney's fees. The Court found in favor of Defendant on its counterclaim for removal of the officer trailers, but ultimately did not set a certain time frame in which they are to be removed. The matter would be reviewed at the request of Defendant's counsel and the Court reserved the right to order a specific timeframe in which Plaintiffs are required to act. Plaintiffs' other claims, and Defendant's other counterclaim, were disposed of at trial or through other post-trial prior orders of the Court.

Under the terms of the Covenants, the prevailing party in this action is entitled to an award of "costs and disbursements and reasonable attorneys' fees." Plaintiffs' Exhibit 5, p. 22. The authority to award attorney's fees may come from a restrictive covenant. *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 240, 616 S.E.2d 431, 434 (Ct. App. 2005). The "prevailing party" is "the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention is the one in whose favor the decision or verdict is rendered and judgment entered." *Heath v. Cnty. of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990) (quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (1964)); *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 778 (Ct. App. 1997). Given the parties' respective motions for summary judgment, the accounting prepared and the evidence and testimony at trial, the vast majority of this case and time at trial was devoted to Plaintiffs' claims that Defendant breached the Covenants by collecting maintenance fees well

in excess of the annual cost of maintenance and upkeep of the Park. Plaintiffs clearly prevailed on the main issue and are, therefore, “the prevailing party.”

As explained above, Plaintiffs’ attorneys submitted affidavits, as well as detailed billing records, showing the number of hours expended, the rates charged, and the fees and costs incurred by Plaintiffs. Counsel for Defendant was given the opportunity to either cross-examine Plaintiffs’ counsel on the amount of fees incurred and/or file a memorandum in opposition. Counsel for Defendant declined to cross-examine any of Plaintiffs’ counsel but did file memoranda in opposition Plaintiffs’ motion.

“[T]he court should consider the following six factors when determining a reasonable attorney’s fee: (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.” *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). “The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Brawley v. Richland Cnty.*, No. 2020-001135, 2024 WL 4281401, at *6 (S.C. Ct. App. Sept. 25, 2024) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).

This case began in July 2021 and has involved a substantial investment of time by Plaintiffs’ counsel. Plaintiffs’ counsel’s firms spent 619.6 hours on this case, over the course of more than three (3) years. The case involved significant discovery, discovery disputes and a dispute over, and the preparation of, an accounting so that Plaintiffs could determine the true maintenance costs incurred by Defendant, costs Defendant had concealed before the litigation was brought. Plaintiffs successfully defended motions to dismiss and for summary judgment and

succeeded, in part, on their own motion for summary judgment. The matter has been professionally prosecuted and professionally defended; however, the battle over the meaning of the Covenants resulted in considerable disputes, requiring numerous motions by both parties, before, during and after trial. The case was difficult and involved relatively complex questions of law and interpretation of the Covenants. The final decision will no doubt result in an appeal. In light of these facts, I find that the hours reflected in their original, revised and supplemental affidavits filed by Plaintiffs' counsel were reasonable.

None of the fee charged the Plaintiffs was based on any form of contingency. The hourly rates charged by Plaintiffs' counsel, as also reflected in the affidavits and billing records, ranged from \$95.00 for paralegals to between \$330.00 and \$413.00 for Plaintiffs' lead counsel.² I find these rates to be reasonable and consistent with rates customarily charged for similar services. As attested to in Messrs. Coates and Zubi's respective affidavits filed August 7, 2024, as of the dates stated therein, Plaintiffs have incurred legal fees and expenses totaling \$218,192.33, which amount consists of legal fees of \$212,204.70 and expenses (in the form of court costs, travel expenses, deposition costs and the like) of \$5,987.63, all of which the Court hereby finds to be reasonable.

Plaintiffs' attorneys have strong backgrounds, several decades of combined experience and are in good standing in multiple jurisdictions. The results they obtained are important, not only to Plaintiffs, but to all the owners in the Park, as it will not only compensate Plaintiffs for the maintenance fees they were overcharged for years but will determine the maintenance and upkeep cost for which Plaintiffs and other owners in the Park may be charged for the indefinite future.

² One attorney's hourly rate was \$461.00, but the hours expended by him in the case were very small on a relative basis.

Over the years to come, the results obtained in this case will result in substantial savings for Plaintiff and all Park owners.

However, the result of the case was not a complete victory for Plaintiffs. A reasonable fee award must be proportional to the degree of success obtained.” *Id.* at *7. “A review of the results obtained is a particularly important consideration, especially ‘where a plaintiff is deemed ‘prevailing’ even though he succeeded on only some of his claims for relief.’” *Id.* at *6 (quoting *Hensley*, 461 U.S. at 433). Plaintiffs did not prevail on all of their claims, as the case also involved Defendant’s counterclaim for an order requiring removal of the Plaintiffs’ office trailers. As a result, Plaintiffs are awarded seventy-five (75%) of the fees and expenses they incurred. Plaintiffs are, therefore, awarded \$163,644.25 ($\$218,192.33 \times .75$). At Plaintiffs’ request, in the interest of simplicity, and so this Court does not have to apportion the fees and costs among Plaintiffs, the award of fees and expenses is in favor of Plaintiff, Poly-Med, Inc., only.

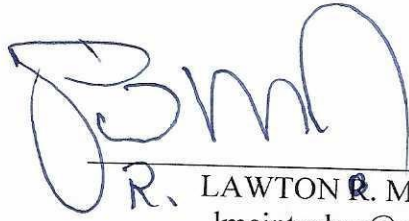
Accordingly, \$163,644.25 in attorneys’ fees and expenses shall be added to the judgment in favor of Poly-Med against Defendant.³

<SIGNED ON THE FOLLOWING PAGE>

³ Again, as explained above, this order is based on the legal fees and expenses attested to in Messrs. Coates and Zubi’s affidavits filed August 7, 2024. After the conclusion of all appeals in this matter, provided, of course, that the ultimate outcome on appeal is such that Plaintiffs remain entitled to recover legal fees and expenses, Plaintiffs may move this Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses, to account for any legal fees and expenses that are not already covered by this order. If no appeal is taken in this matter after the filing of this order, once the time for appeal has expired, Plaintiffs may move the Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses with respect to the prior appeals in this matter, to account for any legal fees and expenses that are not already covered by this order.

ATTACHMENT G

IT IS SO ORDERED.



R. LAWTON R. MCINTOSH
lmcintoshsc@sccourts.org
Judge, Tenth Judicial Circuit

12-9, 2024
Greenville, South Carolina
Anderson, SC (RLM)