

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
Sunset Lodge, LLC,)
and)
Franklin D. Beattie, as trustee of The)
Franklin D. Beattie Preservation Trust,)
and)
M. Baron Stanton,)
Plaintiffs,)
v.)
Town of Pawleys Island,)
Defendant.)

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2020-CP-22-00600

**ORDER AWARDING
LITIGATION EXPENSES**

RECEIVED
Mar 10 2022
SC Court of Appeals

PRESIDING JUDGE:
DATE OF HEARING:
TIME OF HEARING:
PLACE OF HEARING:
PLAINTIFFS' ATTORNEY:
DEFENDANT'S ATTORNEY:
COURT REPORTER:

The Honorable Michael G. Nettles
October 6, 2021
2:00 p.m.
Florence County Judicial Center
M. Baron Stanton
William C. Dillard, Jr.
Natalie Dahl, RPR

This matter came before the Court upon petitions for litigation expenses filed by the plaintiffs Sunset Lodge, LLC ("Sunset"), Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust ("Beattie"), and M. Baron Stanton ("Stanton") on January 25, 2021. At the beginning of the hearing, the Court granted the defendant Town of Pawleys Island ("Town")'s motion, with the consent of the plaintiffs, to consolidate the three related cases numbered 2020-CP-22-00600, -00601 and -00602 into a single case with Civil Action No. 2020-CP-22-00600. The plaintiffs' petitions for litigation expenses and attorney fees arose from the Court's grant of summary judgment in their favor on January 20, 2021, in what were at the time three separate condemnation challenge actions.

In support of their petitions the plaintiffs submitted affidavits of their attorney, which were updated and amended several times. The Town submitted a memorandum in opposition to the petitions as well as the affidavits of David G. Pagliarini, an eminent domain practitioner retained to provide an opinion regarding reasonable attorney fees in this matter, Town Attorney N. David Durant, Sr., Mayor Brian Henry, and counsel of record William C. Dillard, Jr. In response, the plaintiffs filed a reply memorandum/exhibit, the affidavits of plaintiff Beattie and Sunset member Charlie Howard, and four reply affidavits of plaintiffs' counsel (Stanton). Redacted copies of the plaintiffs' attorney fee agreements and some of their fee statements were submitted as well. The parties also submitted and referenced other documents as reflected in the record.

At the hearing, the Town put on the record its request, as also set forth in its September 24, 2021, *Pre-Hearing Motion Regard Fee Petition Matters*, that all dollar amounts on the final pages of the plaintiffs' fee statements be unredacted.

BACKGROUND

The plaintiffs in these consolidated cases sought an award of litigation expenses after obtaining summary judgment in their actions challenging condemnations initiated by the Town. In addition to out-of-pocket costs, plaintiffs Sunset and Beattie petitioned for attorney fees in a combined total amount of \$120,396.67 based on proportionate amounts of a total of 950.5 hours of attorney time averred to have been spent on the three matters. Specifically, Sunset sought an award of \$60,198.33 in attorney fees and \$913.33 in costs, Beattie sought an award of \$60,198.33 in attorney fees and \$913.33 in costs, and Stanton sought an award of costs of \$881.59.

At the hearing, Stanton confirmed that he was waiving his own additional claim to \$60,198.33 in attorney fees in the case in which he is the plaintiff, but he also asked the Court to take that fact into consideration when reviewing the reasonableness of the fees requested by the

other two plaintiffs. As conceded in the affidavit of plaintiff's counsel, the three cases were handled in tandem and involved essentially identical filings (e.g., 9/10/21 Stanton Aff. ¶ 72). When factoring back in the proportionate amount of time for the Stanton matter, the underlying premise of the plaintiffs claim is that \$180,595 worth of legal time was reasonably devoted to mostly simultaneous work on the three matters. As set forth below, the Court finds that the attorney fee request in the combined total amount of \$120,396.67 is unreasonable.

STANDARD ON REVIEW OF AN ATTORNEY FEE PETITION

Determination of the appropriate award is governed by the fee-shifting provision of the S.C. Eminent Domain Procedure Act ("the Act"). Specifically, the Act includes the following provision for an award of attorney fees to a successful challenge action plaintiff:

If, in the action challenging the condemnor's right to take, the court determines that the condemnor has no right to take all or part of any landowner's property, the landowner's reasonable costs and litigation expenses incurred therein must be awarded to the landowner. . . .

S.C. Code Ann. § 28-2-510(A) (emphasis added). Under the Act, "[l]itigation expenses' means 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 participation in condemnation actions" § 28-2-30(14) (emphasis added).

When determining the reasonableness of attorney fees, the fee arrangement between the party and its attorney does not control. As recognized in S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 13, 766 S.E.2d 700, 706 (2014), a Court applying fee shifting provisions under the Act has discretion to apply the factors identified in Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). Specifically, the Court may consider "(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.” Id. at 308, 486 S.E.2d at 760 (citing Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993)). “Consideration should be given to all six factors; none of the factors is controlling.” Taylor v. Medenica, 331 S.C. 575, 580, 503 S.E.2d 458, 461 (1998).

The S.C. Supreme Court has applied the Jackson factors to fee-shifting statutes in the context of a “lodestar” analysis. Layman v. State, 376 S.C. 434, 457, 658 S.E.2d 320, 332 (2008). “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.” Id. The six Jackson factors are applied to determine “the reasonable time expended and a reasonable hourly rate for purposes of calculating attorneys' fees.” Id. at 458, 658 S.E.2d at 333.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Analysis of Six Factors in Determining a Reasonable Attorney Fee

Based upon review of the plaintiffs’ redacted fee statements, the case records, the submissions and arguments of the parties, and applicable law, the Court makes the following findings of fact and conclusions of law regarding the six factors identified under Jackson:

(1) The nature, extent, and difficulty of the case

The Court finds, after full consideration of the affidavits and other materials submitted by and on behalf of the plaintiffs, that the plaintiffs’ fee claim is disproportionate and unreasonable in relation to the nature, extent, and difficulty of the litigation. While the case was not simple, it was nonetheless limited in scope and complexity. The plaintiffs filed for summary judgment on approximately the first day they were permitted to do so under Rule 56(a), SCRCP. Likewise, factual review of what Town Council considered and discussed at one or even a handful of meetings at which relevant decisions may have been made did not present an unusually demanding task. The plaintiff did not identify any expert witnesses and, although plaintiffs’ counsel deposed

the appraiser for the Town, no testimony from the deposition was referenced in the summary judgment order. Particularly with regard to the procedural claims on which the plaintiff prevailed and obtained relief, the case did not involve complex or difficult issues. As set forth in the *Affidavit of David Pagliarini*, this was a case of “limited complexity and scope” (¶ 31).

(2) The time necessarily devoted to the case

Plaintiff’s counsel states that he has or will work 1000.5 hours, or more, in connection with the three consolidated cases. The fee claim is calculated specifically based on 950.5 hours of previously tallied claimed attorney time. For context, the plaintiffs’ first five fee statements, presenting attorney time up through five days before entry of the January 20, 2021 summary judgment order, reflect an average of 4.2 hours every weekday, including holidays, over a six-and-a-half month period (600.7¹ hours over 143 weekdays). The sixth fee statement, presenting additional attorney time up through the March 3, 2021 hearing on production of billing statements, reflects an average of 5.1 hours every weekday, including holidays, over a seven week period (173.6 hours over 34 weekdays). The plaintiffs also claimed an additional 176.2 hours since March 3, 2021. The fee statements reflect that in July 2020, the first month of the case, plaintiffs’ counsel worked 27 of the 31 days of the month for a total of 162.8 hours, an average of just over six hours per each of the 27 days worked.

The plaintiffs’ fee statements are in a “block billing” format, with all of the task descriptions for a given day generally included in a single paragraph with a single total daily time entry. The plaintiffs have not provided any fee statements or time descriptions for the 176.2 hours claimed since March 3, 2021 (9/10/21 Stanton Aff. ¶ 61-62). While block billing is permissible and certainly not inappropriate, in the context of a fee petition it makes it more difficult for a

¹ 600.7 hours is the total the Plaintiff claims from these invoices after deduction of what Plaintiff’s counsel attributes as time related to the separate “Challenge Action II” cases.

reviewing court to determine the reasonableness of the time claimed to have been spent. In this case, the Court finds it relevant that the fee statements and fee affidavits did not include itemization to shed light on the massive amount of attorney time presented.

The plaintiff bears the burden to support its claim and is not entitled to a presumption that the claimed attorney time was reasonable. *See, e.g., Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp.*, 295 S.C. 208, 211, 367 S.E.2d 696, 698 (1988) (“The circuit court had before it only an affidavit from [petitioner]’s counsel stating, in conclusory fashion, that the fees were reasonable. Based upon this record, we conclude that the award is unsupported by the evidence.”). The Court may reduce a fee award where it finds that the claimed time represents “excessive and duplicitous work,” *Getzen v. L. Offs. of James M. Russ, P.A.*, 323 S.C. 377, 382, 475 S.E.2d 743, 746 (1996), or “an unreasonable duplication of efforts.” *City of N. Charleston v. Claxton*, 315 S.C. 56, 63, 431 S.E.2d 610, 614 (Ct. App. 1993).

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 the case, even factoring in reasonable time spent on motions that the Town lost or withdrew. 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’s determination of what was a reasonable amount of time necessarily devoted to the three cases is discussed further below.

(3) Professional standing of counsel

The Court finds that plaintiffs’ counsel has commendable professional standing and a wide latitude of experience.

(4) Contingency of compensation

This factor is not applicable under the circumstances of this case.

(5) Beneficial results obtained

The plaintiffs have obtained what is essentially temporary procedural relief based upon their stated position that “noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed[.]” (Amended Complaint p.11). In granting summary judgment to the plaintiffs, the Court quashed the Town’s condemnation notices and associated condemnation actions based upon findings that there were deficiencies in the procedure the Town used to initiate and pursue the actions. However, the plaintiffs did not obtain any permanent prohibitive relief or a declaration that the Town lacks authority to pursue the beach renourishment easements in the future. The Court stated that it “[did] not find it appropriate to address Plaintiff’s claims that the Town acted in fraud, bad faith, or related claims.” (Am. S.J. Order p.13, fn.5). The orders further specified that the ruling quashing the condemnation notices was “without prejudice to another attempt and attendant defenses if applicable.” ((Am. S.J. Order pp.14, 25). If the plaintiffs desire to challenge any future condemnation attempt by the Town based upon theories of fraud, bad faith, or lack of necessity, they will still bear the burden to prove those claims.²

The S.C. Supreme Court has recognized that it is appropriate for a court reviewing a fee request to consider that the claimant has only partially prevailed in the underlying litigation. Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995). Similarly, the U.S. Supreme Court established in Hensley v. Eckerhart, 461 U.S. 424 (1983), that “where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in

² See, e.g., Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 396, 175 S.E.2d 805, 814 (1970) (“Whether there is a necessity, a permanent taking or a public use are primarily legislative questions, and there is a presumption that the use contemplated is a necessary, permanent and public one. The burden would be upon the landowner to show that the public use is a sham and a fraud . . . [that] there is no necessity for the use or the condemnation proceeding’s purpose is to cloak some sinister scheme[.]”).

relation to the results obtained.” *Id.* at 440. *See also* Hueble v. S.C. Dep't of Nat. Res., 416 S.C. 220, 234, 785 S.E.2d 461, 468 (2016) (generally citing to Hensley in review of a fee award under 42 U.S.C.A. § 1988); *Layman v. State*, 376 S.C. 434, 461, 658 S.E.2d 320, 334 (2008) (generally citing to Hensley in review of an award under the “state action” statute, § 15-77-300).

The record makes it clear that a significant amount of the time and effort of plaintiffs’ counsel was devoted to the theories of fraud, bad faith, and lack of necessity, along with the associated claim for permanent prohibitive relief. (See, e.g., the table of contents and “preliminary statement” to the *Amended Complaint*; *Amended Summary Judgment Order*, p. 13 [summarizing the plaintiffs’ claims]; Plaintiffs’ *Motion for Summary Judgment*, pp.2-3 [discussing the claims based on fraud, bad faith, and lack of necessity]). While procedural protections for landowners under the Eminent Domain Procedure Act are serious and important, the Court finds it is also true that, in this particular case, the relief obtained by the plaintiffs can be fairly characterized as limited and temporary in relation to the full scope of what they sought.

The Court also finds that the plaintiffs were unsuccessful in their dispute with the Town over production and redaction of attorney fee statements and takes that factor into account in consideration of the reasonable attorney time devoted to the matter. The Town was granted its request for in camera review of all redactions, and certain redactions were removed. The Court finds that the claimed attorney time associated with that dispute is excessive in relation to the reasonable amount of time necessary to address any concerns about confidentiality and redaction.

(6) Customary legal fees for similar services

Plaintiff counsel’s hourly rate of \$190 in this matter is reasonable based upon his professional standing and experience. The circumstances of the consolidated cases, in which the essentially identical claims of three plaintiffs were pursued jointly, made it reasonable and in line

with customary billing practices for the total fees to be divided and billed in thirds to each of the three plaintiffs. According to plaintiffs' counsel, this is how the actual billing was handled. The Court finds it is reasonable that the attorney fee award be handled in the same way, with both claiming plaintiffs being entitled to one-third of the total reasonable fee for the combined litigation.

II. Determination of Reasonable Attorney Hours

After review of the plaintiffs' redacted fee statements, the case records, the submissions and oral arguments of the parties, the six factors identified under Jackson, and other applicable law, the Court finds that the reasonable amount of attorney time necessary for the plaintiffs in the three cases in this consolidated action, including pursuit of the fee award, was **125 hours**. The Court agrees with the *Affidavit of David Pagliarini* regarding what was a reasonable amount of time to be spent in tandem on the three cases. The Pagliarini affidavit accounts for reasonable efforts necessary to assert not only the procedural claims on which the plaintiffs prevailed, but also the other claims for fraud, bad faith, and lack of necessity that were not addressed in the summary judgment orders. The fact that the beneficial results achieved in the cases were more limited than that full requested scope of relief reinforces the Court's conclusion that 125 hours is an appropriate calculation of the time reasonably devoted to the cases on behalf of the plaintiffs.

III. Application of the Lodestar Analysis

Application of the six factors analyzed above leads to the following lodestar calculation for a reasonable attorney fee for both claiming plaintiffs in this matter:

$$\$190 \times 125 \text{ hours} = \$24,000 \text{ (rounded)} \times 1/3 = \$8,000 \text{ attorney fee.}$$

IV. Plaintiffs' Out-of-Pocket Costs

The Court finds that the claimed out of pocket costs of \$913.33 for Sunset, \$913.33 for Beattie, and \$881.59 for Stanton are reasonable.

IT THEREFORE ORDERED THAT:

1.) Litigation expenses are awarded to plaintiff Sunset Lodge, LLC pursuant to S.C. Code Ann. § 28-2-510(A) in the total amount of **\$8,913.33** (comprising \$8,000 attorney fees and \$913.13 out-of-pocket costs), and judgment shall be entered against the Town and in favor of said plaintiff in that amount;

2.) Litigation expenses are awarded to plaintiff Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust, pursuant to S.C. Code Ann. § 28-2-510(A) in the total amount of **\$8,913.33** (comprising \$8,000 attorney fees and \$913.13 out-of-pocket costs), and judgment shall be entered against the Town and in favor of said plaintiff in that amount;

3.) Plaintiff M. Baron Stanton has waived any claim to attorney fees but is awarded out-of-pocket costs pursuant to S.C. Code Ann. § 28-2-510(A) in the amount of **\$881.59**, and judgment shall be entered against the Town and in favor of said plaintiff in that amount;

4.) The plaintiffs' (A) unredacted fee agreements and fee statements submitted to the Court for in camera review and (B) redacted fee agreements and fee statements labelled "20001 – 20082") and submitted to the Court by counsel for the Town at the hearing, shall be filed under seal as part of the record of this matter; and

5.) These consolidated actions are hereby dismissed and shall be ended and stricken from the calendar. As set forth in the summary judgment orders, the dismissal is without prejudice to future condemnation attempts and attendant defenses, if applicable.

AND IT IS SO ORDERED.

_____, South Carolina

The Honorable Michael G. Nettles

_____, 2021.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-22-00600

Sunset Lodge, LLC; Franklin D. Beattie, as trustee of
The Franklin D. Beattie Preservation Trust; and
M. Baron Stanton, PLAINTIFF(S)

Town of Pawleys Island

Mar 10 2022
DEFENDANT(S)

SC Court of Appeals

Submitted by: William C. Dillard, Jr.

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : This order applies to the cases consolidated in C/A 2020-CP-22-0600 from the cases numbered 2020-CP-22-0600, -0601, and -0602.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Sunset Lodge, LLC	Town of Pawleys Island	\$ 8,913.33
Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust	Town of Pawleys Island	\$ 8,913.33
M. Baron Stanton	Town of Pawleys Island	\$ 881.59

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest
SCRPC Form 4C (02/2017)

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

M. Baron Stanton, Esquire

P.O. Box 245

Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

William C. Dillard, Jr., Esquire

P.O. Box 96

Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Natalie Dahl, RPR

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Georgetown Common Pleas

Case Caption: Sunset Lodge Llc , plaintiff, et al VS Pawleys Island Town Of

Case Number: 2020CP2200600

Type: Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140