

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
BRAD J. WALBECK AND LEA ANN
ADKINS, BOTH INDIVIDUALLY AND
DERIVATIVELY ON BEHALF OF THE
I'ON ASSEMBLY, INC.; I'ON ASSEMBLY,
INC.,

Plaintiffs,

vs.

THE I'ON COMPANY, LLC; THE I'ON
CLUB, LLC; THE I'ON GROUP, LLC F/K/A
CIVITAS, LLC; AND I'ON REALTY, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2010-CP-10-10490

) **ORDERING DENYING DEFENDANT,**
) **I'ON COMPANY, LLC'S, PETITION**
) **FOR ATTORNEYS' FEES AND COSTS**

FILED
2015 JUL 16 AM 10:03
JULIE J. ARNSTROM
CLERK OF COURT
BY _____

ORDER

THIS MATTER CAME BEFORE THE COURT on September 4, 2014, upon the Petition filed by the Defendant, I'On Company, LLC, requesting that the Court award attorneys' fees and costs in connection with Plaintiff Lea Ann Adkins' breach of contract claim. Plaintiffs were represented by attorneys Justin Lucey, Joshua Evans, and Dabny Lynn; the I'On Company was represented by attorneys Brian Duffy, Rutledge Young, and Seth Whitaker; and re-aligned Plaintiff, the I'On Assembly, Inc., was represented by attorneys Tim Bouch and Yancey McLeod.

Having reviewed the submissions of the parties and having heard the oral arguments presented by counsel, this Court DENIES the I'On Company's Petition for Attorneys' Fees and Costs for the reasons set forth below.¹

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¹ A detailed background of this matter may be found in the Court's Order Denying Defendants' Motion for JNOV.

LEGAL DISCUSSION

The I'On Defendants assert that they are entitled to attorneys' fees from Ms. Adkins based upon the following provision of Ms. Adkins' Lot Purchase Agreement:

12(d) **Fees and Costs:** If either party requires services of an attorney to enforce obligations under this Agreement, the prevailing party shall be due from the non-prevailing party reasonable attorneys' fees, costs and expenses actually incurred.

Defendants are not entitled to an award of attorneys' fees because Adkins did in fact prevail at trial as a derivative plaintiff on behalf of the I'On Assembly.²

The jury found in favor of the Assembly on three causes of action brought within the derivative claims initiated by Walbeck and Adkins. In addition, the derivative Plaintiffs prevailed as to a number of Defendants' affirmative defenses; some were overruled by directed verdict, and the jury expressly overruled the statute of limitations defense. The derivative Plaintiffs also prevailed on the Assembly's amalgamation claim.

More importantly, the legal and public benefit achieved by Adkins and Walbeck outweighed any limited success by Defendants. Walbeck and Adkins brought about the filing of this action, despite the reluctance of the Assembly and its governing body to take necessary steps to address the breaches by the I'On Defendants. Following the "realignment" of the Assembly with the Plaintiffs on the eve of the first trial, the Assembly recovered the waterfront amenities from the transferee; the jury in the second trial awarded substantial damages after hearing

² This section of the Lot Purchase Agreement is inapplicable for additional reasons. First, it is not clear that this provision would apply to the subject matter of this suit; Adkins pursued a third-party beneficiary claim at trial, not a direct breach of contract claim. Second, as the jury awarded a substantial verdict (one million, seven hundred fifty thousand dollars) to the Assembly through the derivative plaintiffs, the I'On Defendants cannot be characterized as "prevailing parties" under the terms of the Agreement. Finally, while the jury denied Adkins' individual claim, the Court denied Defendants' counterclaim against Adkins, resulting in a draw on the individual claims.

evidence of the cost of the amenity compromise and of other damages/loss of use brought about by the actions of the Defendants.

There is simply no practical or legal way to separate the derivative verdicts from Adkins or to attribute them more to Walbeck, just because he prevailed on his claim for personal damages and Adkins did not. The jury unanimously found that Defendants' acts constituted negligent misrepresentations and breaches of their fiduciary duties to the Assembly. Further, the jury found that the Defendants' breaches were committed recklessly, willfully, and/or wantonly. But for the actions of these Defendants, no attorneys would have been necessary to "enforce obligations under this Agreement." The I'On Defendants' argument that additional costs were incurred defending Ms. Adkins' individual claims is unavailing as there was substantial overlap of evidence and law between the Walbeck and Adkins claims, and between the individual claims and the derivative claims.

A plaintiff may achieve "prevailing party" status so long as: (a) plaintiff succeeded on any significant issue raised in the action; or (b) the litigation, in its entirety, resulted in some benefit. *Stevenson v. Branch Banking and Trust Corp.* ("BB&T"), 159 Md. App. 620, 662-663 (2004). Here, both of the foregoing factors are satisfied; Adkins succeeded on her derivative claims and the litigation of these claims directly benefited Adkins, personally, as well as hundreds of other I'On homeowners who are a part of the Assembly by virtue of their lot ownership in I'On. Not only did the jury find the Defendants breached various duties owed to the I'On Assembly, into whose shoes Adkins stepped, the jury also found the Defendants did so recklessly, willfully, and/or wantonly. Consequently, Adkins qualifies as a "prevailing party".

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*Id.*³ *cf. Farrar v. Hobby*, 506 U.S. 103, 111–12, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992) (“[A] plaintiff ‘prevails’ when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.”).

"Our supreme court has defined a "prevailing party" as "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 [and] is the one in whose favor the decision or verdict is rendered and judgment entered." *EFCO Corp. v. Renaissance on Charleston Harbor, LLC* 370 S.C. 612, 617-618, 635 S.E.2d 922, 925 (Ct. App. 2006). From the outset, the main issue in this litigation has been Plaintiffs' allegation that the I'On Defendants improperly sold the "Creekside Park" and "Community Dock" to a third-party, thus violating their obligation to convey these (and the related) amenities to the I'On Assembly and its members, free and clear of all encumbrance. This is the very issue upon which the Assembly prevailed, and it happened only after the initiation of this action by Walbeck and Adkins. The jury rejected the majority of Defendants' arguments on this matter, and they simply are not "prevailing parties" under the Lot Purchase Agreement.

³ In *Stevenson versus Branch Banking and Trust Corporation* ("BB&T"), 159 Md. App. 620, 662 (2004), the Maryland Court of Appeals addressed the question of whether the trial court erred in awarding Stevenson attorneys' fees, when according to BB&T, "[Stevenson] was not the prevailing party at trial. By almost every measure, [BB&T], not Ms. Stevenson, was the prevailing party." Notably, in addressing the "prevailing party" issue, the *Stevenson* Court provided as follows:

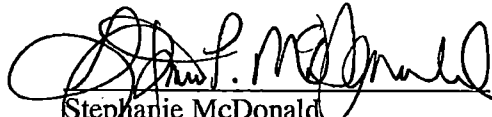
... [F]ederal courts characterize a plaintiff as the prevailing party when she succeeds on any significant issue that achieves some of the benefit sought in bringing the action; he or she does not have to win it all to be regarded as prevailing ... Similarly ... this Court held that plaintiffs may be considered the prevailing parties if a significant issue is resolved so as to achieve some of the benefit through litigation.

Id. at 662-663 (emphasis added) (citations omitted).

CONCLUSION

Based on the foregoing and after full consideration of the factual and legal issues presented, it is hereby ordered that the I'On Company's Petition for Attorneys' Fees is DENIED.

AND IT IS HEREBY ORDERED!


Stephanie McDonald
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina
July 13, 2015