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IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

HAROLD RAYNOR A/KA/ HAROLD
REYNOR AND MICHAEL CALDWELL,

PLAINTIFFS,

vs.

CHARLES C. BYERS, JOHN T.
BAKHAUS, KURT KASLER, AND
KENNETH SMITH,

DEFENDANTS.

C/A NO.: 2009-CP-02-00706

ORDER GRANTING PLAINTIFFS'
MOTION FOR ATTORNEY FEES

FILED December 18, 15
Liz Hodard
C.C.C.P. & G.S. JMC
Ann Comer 8:30am
Deputy Clerk

THIS MATTER came before the court on Monday, November 9, 2015 upon the Motion of the Plaintiffs for Attorney Fees and Costs associated with the Default Judgment (hereinafter, "Judgment") referenced above. Plaintiffs were represented by Kevin N. Molony and Robert J. Harte. Defendant John T. Bakhaus was represented by Spencer Andrew Syrett. Defendant Kenneth Smith was represented by Herbert W. Hamilton.

The Judgment was entered on August 3, 2009 in Aiken, South Carolina. The Judgment included the principle amount of \$250,000.00, pre-judgment interest of \$9,535.20 as well as \$482.34 in costs and attorney fees of \$960.00. Over six years later, Plaintiffs conducted supplemental proceedings in four separate counties and have collected \$258,768.15. Subsequently, Plaintiffs brought this motion requesting \$90,365.80 in attorney fees, costs, and expenses.

In the present case, the contract between the parties was a simple promissory note, in which Defendants promised to pay back the principal of \$250,000.00 to Plaintiffs. The note, if read using the plain and ordinary meaning of the terms used by the parties, also included the award of interest at the rate of eight percent (8%) per annum should the Defendants default. Further, the parties contracted for Defendants to be liable for all costs of collection, including a reasonable attorney fee, should the Defendants default.

At the hearing, Plaintiffs presented an affidavit outlining the work performed in collecting the Judgment and detailing the relevant factors as set forth in Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E.2d 642 (Cl. App 1990); Baron Data Sys., Inc v. Lotter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989), and similar cases. Plaintiffs also presented an affidavit from a local attorney that stated in his opinion the fees requested by Plaintiffs were reasonable.

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Defendants objected to the award of attorney fees, arguing that the underlying contract between the parties was extinguished once the Judgment was entered. Defendants argued that because the original contract between the parties no longer existed, the obligation for them to pay a reasonable attorney fee ended at the time of the entry of default on August 3, 2009. Defendants cited case law from Maryland and argued the "Merger Doctrine" limited Plaintiffs ability to obtain attorney fees for post-judgment collections. Suntrust Bank v. Goldman 201 Md. App. 390 (2011), 29 A.3d 724.

The parties in *Suntrust* entered into a contract, which included a clause that provided the Defendant pay fifteen percent (15%) of the principle in attorney fees should the Defendant default and attorneys were required to collect the debt. Although the Plaintiffs incurred only \$3,094.00 in attorney fees, Suntrust requested that the Court order \$60,206.00 in attorney fees, equaling fifteen percent (15%) of the principle.

The Maryland Court of Appeals ruled that that percentage based fee calculations would not be enforced unless the amount of attorneys' fees actually incurred by the prevailing party exceed the amount calculated in accordance with the percentage formula. The Court reasoned that fee-shifting provisions are indemnification obligations, and thus, a party should not be permitted to obtain a judgment for an amount greater than the amount the party owes its lawyers. *Suntrust* at 395.

Although the Maryland courts have applied the "Merger Doctrine" to limit the ability for attorney fees to be awarded pursuant to a valid contract in certain situations, the courts of this state have not. Plaintiffs cited *Renaissance Enterprises v. Ocean Resorts*, 326 S.C. 460 (Ct.App. 1997), 483 S.E.2d 796 and argued the parties entered into a valid contract, which included the award of attorney's fees for work performed during supplemental proceedings.

In *Renaissance*, the South Carolina Court of Appeals was asked to determine whether the Master erred in granting attorney's fees for supplemental proceedings when the parties had contracted for the award of attorney fees in their original contract. *Id* at 469. Subsequent to the Circuit Court approving an arbitration award in favor of Renaissance, Renaissance filed and conducted supplemental proceedings to collect on the outstanding debt owed by Ocean Resorts. *Id* at 462. The original contract between the parties provided, in part,

"[i]f arbitration and/or litigation shall become necessary, [Renaissance] shall be entitled to recover from [Ocean Resorts], reasonable attorney's fees . . . and all other costs of such arbitration and/or litigation."

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Three years after the Circuit Court approved the arbitration award entered in favor of Renaissance, Renaissance filed the Motion for Attorney Fees. *Id* at 462. After reviewing the language of the contract between the parties, the Court ruled,

“[t]he contract between the parties clearly provided for the recovery of reasonable attorney's fees for necessary litigation. The supplemental proceeding was brought to collect on the debt owed pursuant to the contract. We find no reason that the agreement would not encompass fees incurred in this supplemental proceeding, brought in order to determine the amount due from the underlying proceeding” *Id* at 469.

Although the procedural steps taken to secure the Judgment in the present case differ somewhat from the facts in *Renaissance*, the underlying analysis is the same. A judgment was entered. The parties contracted for the award of attorney fees should any “litigation” or “collections” be necessary. Because the parties entered into a valid contract, Plaintiffs have met the first burden of being awarded attorney fees. Under the common law of South Carolina, a prevailing party has no right to recover attorney's fees. *Duke Power Co. v. South Carolina Public Service Commission*, 284 S.C. 81, 326 S.E.2d 395 (1985). In the absence of a common law right, the plaintiff must plead either a contract or a statute to receive enhanced damages or attorney's fees. *Hegler v. Gulf Insurance Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978).

In the present case, the parties clearly entered into a valid contract. The clear language of the contract at issue provides, in part,

“[i]n the event of default in the payment of this note, and if it is placed in the hands of an attorney for collection, the undersigned hereby agrees to pay all costs of collection, including a reasonable attorney's fee.”

I find the contract entered between the parties is clear and unambiguous. The parties contracted for an award of attorney fees in the event the Defendants default in the payment of the note. The contract clearly provides that the Defendants will pay all costs of collection, including a reasonable attorney's fee, upon the default of the Defendants. Read as a whole, I find the terms of the contract in no way limit the ability of the Plaintiffs to recover attorney fees in supplemental proceedings.

“It is a question of law for the court whether the language of a contract is ambiguous.” *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001) (citation omitted). The cardinal rule of contract interpretation is to ascertain and give legal

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effect to the parties' intentions as determined by the contract language. *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012) (internal citations omitted). Based on the terms of the contract, it is clear the parties intended for attorney fees to be awarded for *all costs of collection*.

Black's Law Dictionary defines the term, "all", as meaning, "each or every". <http://thelawdictionary.org/all>. Further, Black's Law Dictionary defines the term, "collection", as meaning, "a process for recovering delinquent amounts owed". <http://thelawdictionary.org/collection/>. Applying the clear meaning of the terms entered into by the parties, it is clear that attorney's fees were contracted for, and the obligation to the Defendants to pay such reasonable fees extended to each and every action the Plaintiffs were required to initiate to recover the delinquent amount owed, including supplemental proceedings.

Therefore, based on the Court's rationale in *Renaissance* and the clear and unambiguous language of the contract between the parties, I find and conclude that Plaintiffs are entitled to the award of reasonable attorney's fees associated with the supplemental proceedings undertaken.

Next, it is necessary to determine whether or not the requested attorney fees as set forth in Plaintiffs' Affidavit of Attorney Fees are reasonable. Plaintiffs filed an Affidavit of Attorney's Fees as well as an Affidavit from a local attorney, Paul Knapp Simmons, Jr., which stated in his opinion the requested fees of \$90,365.80 were reasonable. At the hearing, the Defendants objected to the reasonableness of the fees requested by the Plaintiffs.

I find the award of \$90,365.80 is consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. *Taylor v. Medenica*, 331 S.C. 575, 503 S.E. 2d 458 (1998).

According to the Affidavit of Attorney's Fees filed by the Plaintiffs, Plaintiffs' counsel worked approximately three hundred forty-eight hours (348.0) hours on collecting the outstanding debt. At the time of the filing of the Motion for Attorney's Fees, Plaintiffs' counsel had collected \$258,778.15, which is the entire principal of the Judgment. The issues presented were complex in nature and required extensive research into assets of four separate Defendants. Plaintiffs' counsel traveled to York County to conduct supplemental proceedings against Defendant Kenneth Smith. Plaintiffs' counsel traveled on two separate occasions to Beaufort County to conduct supplemental proceedings against Defendant Charles C. Byers and to Richland County

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on seven separate occasions for supplemental proceedings regarding Defendant John T. Bakhaus. Plaintiffs' counsel also worked with the Billings Law Firm in Lexington, Kentucky in an effort to collect properties owed by Defendant John T. Bakhaus. Plaintiffs incurred fees in the amount of \$4,843.47 for the representation of the Billings Law Firm. Further, Plaintiffs incurred fees for their previous attorney in the amount of \$7,368.68, before Mr. Molony and Mr. Harte were retained.

The contract between Plaintiffs and their counsel provided for a contingency rate of twenty percent (20%) of the amount collected to be awarded as attorney fees. At the present time, Plaintiffs have actually incurred attorney fees in the amount of \$66,467.78, plus costs and expenses. The additional amount to be collected on the Judgment is \$130,163.92, of which the Plaintiffs will incur additional attorney fees of \$26,032.78. If the Judgment were to be paid off in full, Plaintiffs actual attorney fees incurred would be \$92,500.56.

Considering the amount requested by Plaintiffs is less than the amount of fees Plaintiffs will actually incur and the six factors as set out in *Taylor*, I find the requested amount of \$90,365.80 is fair and reasonable. Further, Plaintiffs' Attorney Fee Affidavit sufficiently details the work performed by counsel in collecting the judgment.

IT IS THEREFORE ORDERED that the award of \$90,365.80 in attorney's fees, costs, and expenses be awarded to the Plaintiffs.

IT IS SO ORDERED.

DONE this 17 day of Dec, 2015 at Aiken,
South Carolina.

By: 
The Honorable Doyet A. Early, III