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JUN 11 2018 THE COURT OF COMMON PLEAS

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

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

PETITIONERS,

vs.

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

RESPONDENTS.

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

ATTORNEYS' FEES AND COSTS AFFIDAVIT

FILED November 4th 2015
Paul Simons, Jr.
Hull Barrett, P.C.
2:15pm

I, Paul Simons, Jr., being duly sworn, deposes and states on oath as follows:

1. I am an attorney with the law firm of Hull Barrett, PC. I graduated from law school in May, 2006 and have been in private practice with Hull Barrett, PC since August, 2007.
2. I have had the opportunity to review the affidavit of attorney fees filed by Kevin Molony in the case of Harold Raynor A/K/A Harold Reynor and Michael Caldwell v. Charles C. Byers, John T. Bakhaus, Kurt Kasler, and Kenneth Smith.
3. Based on the reputation of Kevin Molony and Robert Harte, the favorable outcome they have achieved at this point on behalf of their clients, the difficulty of judgment collections, and the time they have spent on this case, I believe the requested amount of \$90,365.80 is fair and reasonable.

Further Affiant sayeth not.

HULL BARRETT, P.C.

By:

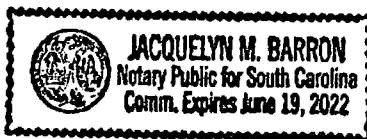
Paul Simons, Jr.
Paul Simons, Jr.
SC Bar No. 76883

SWORN to and subscribed before me on this 3rd day of November, 2015.

Notary Public

Aiken County, South Carolina

Jacquelyn M. Barron
My commission expires: 6/19/2022



STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

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

PETITIONERS,

vs.

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

RESPONDENTS.

IN THE COURT OF COMMON PLEAS

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

ATTORNEYS' FEES
AND COSTS AFFIDAVIT

FILED

10.29.15

[Signature]
D.C.C.P. & G.S.

[Signature] 350
Deputy Clerk

I, Kevin N. Molony, being duly sworn, depose and state on oath as follows:

1. Kevin N. Molony and Robert J. Harte are the attorneys for the Petitioners in the above captioned action. This affidavit is submitted to the court for its consideration in awarding Kevin N. Molony and Robert J. Harte reasonable attorneys' fees in the above case under the factors set forth in Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E.2d 642 (Ct. App 1990) and similar cases.
2. Time and labor expended: In connection with the subject matter, Petitioners' counsel have spent approximately 348.4 hours as of the date of this affidavit. Counsel also expects that additional time and expense will be necessary to prepare and argue future hearings associated with this case throughout South Carolina.
3. The novelty and difficulty of the questions raised: The legal principles involved in this case concerned researching titles to property, real estate transactions, personal property, and business associations in multiple states involving all four Respondents. Other principles included researching case law related to judgment creditors and the rights provided to them by the South Carolina courts, fraudulent transfers of property, and Kentucky and North Carolina law concerning judgment collections.

Charles C. Byers, one of the named respondents, lives in Beaufort, South Carolina. Petitioners' attorneys were required to conduct title searches for all of the property owned by Mr. Byers in Beaufort, South Carolina. Mr. Byers is also connected with multiple limited liability companies and corporations, both in South Carolina and North Carolina. Title searches were conducted in every county of both South Carolina and North Carolina

to determine the current assets of Mr. Byers and those of his limited liability companies. Petitioners' attorneys have attended two hearings in Beaufort, South Carolina in relation to Mr. Byers.

John T. Bakhaus, a second named respondent, currently resides in Richland County, South Carolina. Mr. Bakhaus owns property in Richland County, South Carolina. Title searches were conducted on all of the property in his name in Richland County. Mr. Bakhaus also owns fourteen (14) limited liability companies in South Carolina. A title search for all of the property associated with Mr. Bakhaus' limited liability companies was conducted. Petitioners' attorneys were able to locate an extremely large number of properties that were in the name of Mr. Bakhaus' limited liability companies in South Carolina. While doing so, Mr. Molony and Mr. Harte located property and corporations owned by Mr. Bakhaus in Lexington, Kentucky. Title searches had to be conducted on all of the property Petitioners' attorneys were able to locate in Lexington, Kentucky. Petitioners' attorneys have located legal counsel in Kentucky to aid in the collection effort. At this point, Petitioners have paid \$4,843.47 in legal fees for the work performed by the Kentucky lawyers.

Kenneth Smith is a resident of York County, South Carolina. The judgment in this case have been filed in York County and supplemental have been held in York County, South Carolina.

Kurt Kasler is a resident of Charlotte, North Carolina. The underlying judgment will be domesticated in Mecklenburg County, North Carolina as soon as possible if the judgment is not satisfied by Respondents Bakhaus and/or Defendant Smith.

Mr. Bakhaus, Mr. Smith and Mr. Byers are all members of limited liability companies in North Carolina. Petitioners' attorneys were required to search all relevant property records and conduct title searches on the joint business ventures of the three Respondents in North Carolina as well as the individual ventures. Through the research of the business associations, Mr. Molony and Mr. Harte located funds which were applied as partial satisfaction of the underlying judgment.

Approximately six years have passed since the date of the judgment and the date of the supplemental proceedings. This extended length of time has made the preparation for the supplemental proceedings more difficult. Respondents Bakhaus, Smith, and Byers were involved in an extremely large number of real estate transactions over the last six years, and Petitioners' attorneys were required to track all of these transactions to determine what assets were currently in the possession of the Respondents and/or their

companies. Further, many of the limited liability companies the Respondents were involved in converged, changed names, or changed registered agents.

As of the filing of this affidavit, all Respondents have failed to provide Petitioners' attorneys with the information ordered for them to provide by the Court. At this point, Mr. Bakhaus has yet to provide the Plaintiff's with any of the original information requested and ordered by the Court, other than a set of tax records. Mr. Smith provided no documentation associated with his assets or business associations. Mr. Molony and Mr. Harte have located assets of the Respondents through diligent research and multiple hearings in Richland County, York County, and Beaufort County.

4. The skill required to perform the legal service properly: The skill required in this case was that possessed by an ordinarily competent judgment collection attorney.
5. The preclusion of other employment by the attorney due to acceptance of the case: Petitioners' counsel do not assert that preclusion of other employment arose as a result of this case.
6. Customary fee: The customary attorneys' fees for the type of legal services involved ranges from \$200.00 to \$350.00 per hour.
7. Expectations at the outset of litigation: Petitioners were hopeful some of the monies owed to them would be collected, including the interest that has accrued since the judgment was entered. Petitioners were aware that the original contract they entered with the Respondents included reasonable attorney fees paid by the Respondents.
8. Time limitations imposed by the client or circumstances: Petitioners urged Mr. Molony and Mr. Harte to proceed with this case as quickly as possible. Both Mr. Molony and Mr. Harte have kept this matter at the forefront of their caseloads in an effort to resolve this matter as efficiently as possible for both parties.
9. The amount in controversy and the results obtained: The amount in controversy is \$258,768.15 plus 8% per annum interest until the entire amount is paid in full, with "reasonable attorney fees" being a part of the original contract between the Petitioners and the Respondents. At the time of this affidavit, the final results have yet to be determined. However, Petitioners' attorneys have located assets currently in the possession of the judgment debtors that could satisfy the entire judgment, plus interest, costs, expenses and reasonable attorney fees. As of October 2015, Petitioners have collected a total of \$258,778.15. The remaining amount owed to Petitioners is \$120,372.98 plus a reasonable attorney fee, costs, and expenses.

10. The experience, reputation and ability of the attorneys: Kevin N. Molony graduated from law school in May, 2010 and began a judicial clerkship with the Honorable William P. Keesley in August of 2010. In December of 2010, Kevin N. Molony began working for Solicitor Strom Thurmond Jr. in Aiken, South Carolina, where he tried violent crime and drug cases in Circuit Court. Kevin N. Molony was awarded the Solicitor J. Strom Thurmond, Jr. Award of Excellence in 2014. Four years after he began prosecuting with the Second Judicial Circuit Solicitor's Office, Kevin N. Molony opened Molony Law, LLC in Aiken, South Carolina. He has focused primarily on civil and criminal defense work. Approximately forty percent (40%) of Kevin N. Molony's time has been spent handling civil law cases similar to the one in the instant case. In the other judgment collection cases, Mr. Molony charges an hourly fee of \$210.00 per hour.

Robert J. Harte has been practicing law in Aiken, South Carolina for forty years. He was elected Solicitor for the Second Judicial Circuit and served in that role before opening his own law practice in Aiken, South Carolina. Robert J. Harte is known in Aiken, South Carolina as one of the best attorneys in the CSRA. Robert J. Harte has twenty-five years of experience in the areas of law associated with this case.

11. The undesirability of the case: There was no element of undesirability in handling this case.
12. The nature and length of the professional relationship with the client: This is the first time either Kevin N. Molony or Robert J. Harte have represented the Petitioners.
13. Awards in similar cases: We are not aware of any particular awards that would serve as guidance for this court in this case, but the reward requested is, in the opinion of the undersigned, typical of awards in similar cases.
14. Contract Provided For Reasonable Attorneys' Fees: In addition to the above factors, the court should be made aware that the Note signed by all Respondents 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." A copy of the original promissory note is attached as Exhibit A.
15. Petitioners' counsel have minimized the costs and expenses associated with this matter in an effort to resolve in any disputes and to efficiently conclude the case.
16. Connie Nixon spent 9.5 hours working on this case. Mrs. Nixon has been a paralegal in South Carolina for over twenty years. Mrs. Nixon prepared notebooks, helped research personal property of each Defendant, and helped research real property of each Defendant. Mrs. Nixon's services are charged at the rate of \$100.00/hour.

17. Prior to Mr. Molony and Mr. Harte's involvement in the case, Petitioners had retained Judge Andy Griffith to obtain a judgment and file the supplemental proceedings. However, in 2012 Judge Griffith was required to recuse himself do to his then new position as Master-in-Equity in Aiken County. Petitioners' legal fees for Judge Andy Griffith's representation were \$7,368.68.

18. After supplemental proceedings were conducted on February 4, 2015 and February 5, 2015, Plaintiff's retained the Billings Law Firm in Lexington, Kentucky to begin supplemental proceeding against Mr. Bakhaus in Kentucky. As of October 2015, Petitioners have spent \$4,843.47 on the services of The Billings Law Firm. The Billing Law Firm continues to work on the judgment collection in Kentucky, and Petitioners expect additional monies will be owed to the Billing Law Firm in the near future.

Mr. Molony and Mr. Harte also expect that additional time and expense will be necessary to collect the subject debt and see this matter to conclusion. Although both Mr. Molony and Mr. Harte spent a considerable amount of time researching assets of all Respondents, the requested attorneys' fees have been modified to reflect the time associated with one lawyer. Based on the progress made in the case, the efforts put forth by Mr. Molony and Mr. Harte, and the relevant factors as set forth in *Prevatte*, it is therefore reasonable to award Plaintiff reasonable attorneys' fees and costs of \$89,945.80 with leave for Plaintiff to request additional attorneys' fees and expenses at a later date.

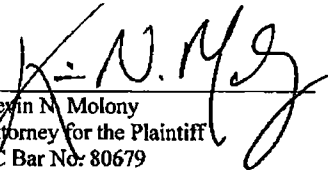
Id.

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Kevin N. Molony, Attorney at Law -	338.1 hours/\$210hr	=	\$71,001.00
Robert J. Harte, Attorney at Law -	10.3 hours/\$250hr	=	\$2,575.00
Connie Nixon, Paralegal -	9.5 hours/\$100hr	=	\$950.00
Previous Attorney Fees/Costs-	Judge Griffith	=	\$7,368.68
Receiver Fees-	Ned Pendarvis	=	\$2,500.00
Billings Law Firm-	Kentucky Counsel	=	\$4,843.47
Costs -	Filing Fees	=	\$1,127.65

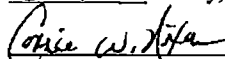
\$90,365.80

Further Affiant sayeth not.

By: 
 Kevin N. Molony
 Attorney for the Plaintiff
 SC Bar No: 80679
 237 Barnwell Ave. NW

SWORN to and subscribed before me
 on this 29 day of Oct, 2015

Notary Public
Aiken County, South Carolina


 My commission expires: 9/14/16

\$250,000.00

PROMISSORY NOTE
Columbia, South Carolina
March 14, 2008

FOR VALUE RECEIVED, the undersigned, according to their interests, promise to pay to Michael Caldwell and Harold Reynor, the principal sum of Two Hundred Fifty-Thousand and 00/100's. The principal will be due and payable March 1, 2009. If paid by the due date, no interest will be charged on the Note.

In the event of default, the entire indebtedness secured hereby will bear interest thereafter at the rate of 8% per annum until paid.

If at any time any portion of the principal or interest be past due and unpaid, the whole amount evidenced by this Note shall, at the option of the holder, become immediately due and payable, and the holder shall have the right to institute any proceedings upon this note and any lien given to secure the same for the purpose of collecting the principal and interest, with costs and expenses, or of protecting any security connected herewith.

In 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. Charles C. Byers and John T. Bakhaus guarantee this obligation.

The undersigned reserves the right to prepay in full or in part at any time without penalty.

Presentment, protest and notice are hereby waived.

Given under the hand and seal of each party on the date above written.

<u>Charles C. Byers</u>	25%	<u>March 14, 2008</u>
Borrower: Charles C. Byers	% Interest	Date
<u>John T. Bakhaus</u>	25%	
Borrower: John T. Bakhaus	% Interest	
<u>Kurt Koster</u>	16.667	
Borrower: Kurt Koster	% Interest	Guarantors:
<u>Kenneth Smith</u>	16.666	<u>Charles C. Byers</u>
Borrower: Kenneth Smith	% Interest	<u>John T. Bakhaus</u>
<u>Ron Woolwine</u>	16.666	
Borrower: Ron Woolwine	% Interest	



ORIGIN ID: AIKA (803) 648-0706
KEVIN MOLONY
MOLONY LAW, LLC
208 NEWBERRY ST., NW

SHIP DATE: 13JUN16
ACTWGT: 0.25 LB
CAD: 109211937/INET3730

AIKEN, SC 29801
UNITED STATES US

BILL SENDER

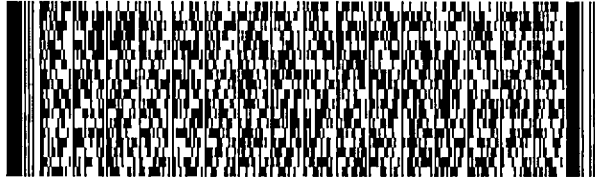
TO **ATTN: JESSICA**
SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET

COLUMBIA SC 29201

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