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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE DD Dannar, LLC, Plaintiff/Counterclaim Defendant, v. SC LAUNCH!, Inc., Defendant/Counterclaim Plaintiff.	IN THE COURT OF COMMON PLEAS Civil Action No. 2015-CP-23-00142

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SC Court of Appeals

ORDER GRANTING DEFENDANT/COUNTERCLAIM PLAINTIFF SC LAUNCH, INC.'S MOTION FOR AWARD OF ITS ATTORNEY'S FEES AND EXPENSES

This matter came before the Court for hearing on August 9, 2017 upon motion of Defendant/Counterclaim Plaintiff SC Launch!, Inc. ("SCL") for an award of its attorneys' fees and expenses incurred in this lawsuit. In support of its motion, SCL submitted the affidavit of its counsel and submitted detailed billing information and legal authorities. Counsel for Plaintiff/Counterclaim Defendant DD Dannar, LLC ("Dannar") submitted a memorandum in opposition and argued for a reduction in the amount of the award of fees requested on several grounds. For the reasons set forth below, SCL's motion is granted, and SCL is awarded judgment against Dannar for fees in the total amount of $147,977 plus expenses of $2,195.78.

When Dannar entered into the SCL'S program for start-up businesses located in South Carolina, the parties executed a Financing Agreement dated as of April 14, 2011 ("the Agreement"), and SC Launch provided Dannar high-risk financing for its start-up business and mentoring and other valuable services. The Agreement contained a Relocation Provision pursuant to which Dannar promised to pay a Relocation Fee if it relocated its business to another state within

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five years from the date of the Agreement. Section 3.3.C of the Agreement provides that, should SCL elect to employ the services of an attorney to represent it in the enforcement of Dannar's obligations under Relocation Fee section of the Agreement, Dannar "will reimburse SC Launch the reasonable fees and expenses of said attorneys and any court costs."

Dannar repaid the amount advanced in April 2013 and subsequently relocated its business to Indiana less than five years after executing the Agreement. Dannar filed this lawsuit on January 7, 2015 and asserted a cause of action for declaratory relief declaring that the Relocation Provision constitutes an unenforceable penalty or that it has no obligation to pay it. SCL asserted a counterclaim for breach of the Relocation Provision and for an award of judgment in the amount of the Relocation Fee and prejudgment interest. A review of the record reveals that the case was hard fought by capable counsel.

By order of the Honorable Robin S. Stillwell filed on June 15, 2017, SCL was granted summary judgment in its favor against Dannar as to the claim Dannar asserted and as to SCL's counterclaim, and judgment was awarded for the Relocation Fee of $200,000 plus interest. In addition, Judge Stillwell's order held that SCL is also entitled to an award of its attorneys' fees and expenses incurred in connection with its enforcement of Dannar's obligations in an amount to be determined by the Court.

SCL filed its motion for an award of its attorneys' fees and expenses dated June 29, 2017 with the supporting affidavit of its counsel outlining why the award is proper under the factors set forth in *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993) and related cases. Pursuant to *Blumberg,* "[t]here are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case;

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3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained."

On August 2, 2017, Dannar filed its memorandum opposing SCL's fee request. In its memorandum and in oral argument at the hearing on this matter, counsel for Dannar did not dispute that SCL was entitled to an award of fees and expenses and did not challenge the request under the *Blumberg* factors with regard to the standing of counsel or the hourly rates charged by counsel for SCL. Further, SCL's fees were not contingent on the outcome of the proceedings, so that factor is not in dispute. I find that SCL adequately established under the *Blumberg* factors that the hourly rates charged were reasonable, that counsel for SCL is capable, and that there was no contingency fee at issue.

Dannar also does not challenge the amount of expenses SCL requested. I also find that the expenses SCL requests in the amount of $2,195.78 are reasonable and appropriate.

Dannar challenges the amount of the fee request under the *Blumberg* factors 1, 2, and 6 enumerated above. Those issues are addressed below.

Nature, extent, and difficulty of the legal services rendered.

Dannar's primary objection to SCL's motion is that the amount of time spent on this matter by SCL's counsel was excessive and that the Court should exercise its discretion to award less than the amount requested. Dannar argues that the case simply involved the interpretation of a contract provision, did not require any proof of damages, and did not involve factual or legal issues that were sufficiently complex to warrant the amount of fees requested. In addition, Dannar submits that it prevailed on a motion to compel discovery and that fees incurred in connection with that motion should not be awarded.

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While the case did not go to trial, a review of the affidavit of counsel for SCL, the case file, and the detailed billing information provided demonstrate that the amount of the fees requested is justified. As noted, it is clear that the case was hard fought by capable counsel for both parties. Further, a review of Judge Stillwell's 24 page order granting SCL summary judgment reveals the rather complex facts and legal issues involved in this case, which further supports SCL's motion.

Counsel for SCL also argues that the Court should take into consideration the fact that the fees at issue were actually incurred by, billed to, and paid by a sophisticated organization. In the case of *Johnson v. Johnson,* 296 S.C. 289, 372 S.E.2d 107 (Ct. App. 1988), the Court held that it was an abuse of discretion for the trial court not to award the full amount of the fees actually incurred by the prevailing party absent sufficient justification. Similarly, in the case of *Palmetto Health Credit Union v. Open Solutions, Inc.,* 2011 WL 11702 (D.S.C. 2011), Judge Currie addressed the argument that the court should find the fees a prevailing party actually incurred presumptively reasonable by virtue of acceptance in the marketplace as follows:

> The court finds the reasoning of the Seventh Circuit somewhat persuasive on this point:
>
> > [A]s a matter of the efficient and fair administration of the federal courts, individual scrutiny of line-item entries is neither necessary nor appropriate in contractual fee-shifting cases. Given the fact that the fees were paid by a party who had no reassurance of indemnity, we believe that market considerations normally would render unnecessary resort to the time-consuming examination of individual expenses.
>
> *Metavante Corp. v. Emigrant Sav. Bank,* 619 F.3d 748, 774 (7th Cir.2010). This factor weighs in favor of finding the fees reasonable but is not sufficient standing alone.

2011 WL 11702, *5. This Court also finds that reasoning persuasive, although not sufficient standing alone. SCL is a sophisticated organization, and it actually incurred and paid the fees at

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issue. SCL has established the reasonableness of those fees, and Dannar has failed to demonstrate a sufficient basis for awarding less than the amount of fees actually incurred.

Dannar also argues the award requested should be reduced on the grounds that approximately $10,000 of the amount requested had not yet been incurred by SCL, based on a statement in SCL's supporting affidavit anticipating amounts that might be incurred in the future. The affidavit and detailed billing information submitted by counsel for SCL reflected that fees had been incurred, billed to, and actually paid by SCL in the amount of $147,997.[1] That amount was supported by detailed billing information in two spreadsheets, one of which included total billings of $137,055 and one included total billings of $10,992. I find that the amount of fees requested were amply supported and actually billed and paid by SCL.

The motion to compel that Dannar filed was denied in part and granted in part by order of the Honorable W. Jeffrey Young filed on November 16, 2016. Among other things, the order required SCL to confirm that it did not have additional documents responsive to certain of Dannar's discovery requests and to clarify one of SCL's responses. It appears that there were reasonable issues in dispute and no sanctions were imposed against SCL. I find the time spent on this motion was reasonable and appropriate and see no basis for a reduction of the fee request.

Time and labor necessarily devoted to the case.

Counsel for Dannar contends that the amount of time counsel for SCL spent on this case was excessive given the factual and legal issues in this case. The affidavit of SCL's counsel, the supporting detailed billing information, and a review of the record in this case, including the order

[1] In the affidavit of counsel in support of SCL's motion, the fees requested were calculated to be $148,997. Counsel for SCL acknowledged at the hearing on this motion that the amount included a $1,000 math error, and that the requested amount should be reduced to $147,997.

granting SCL summary judgment, amply demonstrate that counsel for SCL actually devoted the amount of time on this case that is the subject of the fee request and that the amount of time was reasonable and necessary under the circumstances. Accordingly, I find and conclude that SCL has demonstrated that it is entitled to the amount of the fees requested under this *Blumberg* factor.

The beneficial results obtained.

Counsel for Dannar contends that the amount of the fees awarded SCL should be reduced because there was nothing extraordinarily beneficial about the result obtained by SCL in this case. SCL achieved complete success in this case with regard to both the claims asserted by Dannar and the claims asserted by SCL in its counterclaim. I find and conclude that SCL has demonstrated that it is entitled to the amount of the fees requested under this *Blumberg* factor.

For the reasons set forth herein, I find and conclude that SCL has demonstrated that it is entitled to an award of fees in the total amount of $147,977, plus expenses of $2,195.78, under the factors set forth in *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993) and related cases. Accordingly, judgment is hereby awarded in favor of SCL against Dannar in the amount of $147,977 for its attorneys' fees, plus expenses of $2,195.78

IT IS SO ORDERED.

_____

The Honorable Perry H. Gravely
Presiding Judge, Thirteenth Judicial Circuit

August _____, 2017
_____, South Carolina

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Greenville Common Pleas

Case Caption: DD Dannar LLC vs. SC LAUNCH Inc

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Type: Order/Attorney Fees

Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755