

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS, IN THE COUNTY OF AIKEN

KELLY SIMS,

Plaintiff,

v.

SHARON ENTEEN-PRUSSO
aka SHARON ENTEEN and
FALCON RIDGE, INC.,

Defendants.

Case No. 2018CP0200675

RECEIVED
FEB 21 2019
SC Court of Appeals

ORDER AWARDING EXPENSES OF MOTION TO COMPEL, INCLUDING
REASONABLE ATTORNEY'S FEES, TO SIMS

Having considered the circumstances of the motion,¹ the moving papers and any timely filed opposition papers, the oral arguments of the parties, the affidavits submitted pursuant to this Court's order ruling on the motion, the submissions of Mr. Geitner opposing the affidavits, and the reply of Plaintiff to that opposition, this court finds as follows:

1. There was insufficient basis for refusal of the discovery in question, and lack of basis for not following up with a motion asserting any proffered reason for failing to provide the discovery. Indeed, Mr. Geitner did not file a written response to the motion to compel, nor did he offer any substantive justification for his refusal to answer the deposition questions at issue at the hearing on the motion.

¹ Mr. Geitner's present South Carolina counsel, Mr. Bowers, was not in the case and was not present at the time of the deposition. Plaintiff Sims has stated that Plaintiff seeks no sanction or recovery against Mr. Geitner's South Carolina counsel. This Court agrees that neither the previous order nor this award implicates Mr. Geitner's South Carolina counsel in any way.

2. The discovery was reasonably sought.

3. It was necessary for Plaintiff to file a motion to obtain the discovery.

4. In accordance with Rule 37(a)(4), SCRCP, it is reasonable to require the party making the motion necessary to pay the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.

5. In that this court did not rule solely on the written submissions, but held a full hearing and allowed post-hearing submissions, there has been afforded, an opportunity for a hearing on whether to award expenses.

6. The expenses of \$14,486.69 submitted by the moving party are reasonable, taking into account numerous factors, the chief one of which is that the expenses were actually agreed and incurred.

7. Additionally, the legal services were complicated by pendency of the litigation in another state, making the services more extensive and difficult and requiring that local counsel be engaged. The time devoted was considerable and was all accounted for unless some has not actually been charged. Counsel have professional standing justifying the fees charged. The fees are those customarily charged by them in the locality for similar services, and the fees charged by others in the locality vary according to the nature of the matter and the lawyers hired, and

the fees in the instant case are within that range. The motion was granted in its entirety, and pertained to a matter which was necessary.

I therefore conclude that pursuant to Rule 37(a)(4), SCRCPP, Plaintiff Sims shall be awarded the expenses of this motion and that the \$14,486.69 she incurred was reasonably charged and incurred and shall be the award. The clerk of court is directed to tax these costs to the nonparty deponent, Mr. Geitner within ten days of entry of this order, referencing the subpoena in the case for any necessary information. The nonparty deponent, Mr. Geitner, is directed to pay them.

AND IT IS SO ORDERED.

Doyet A. Early, III
Circuit Court Judge, Second Judicial Circuit

Date: _____



Aiken Common Pleas

Case Caption: Kelly Sims VS Sharon Enteen Prusso , defendant, et al
Case Number: 2018CP0200675
Type: Order/Costs

So Ordered

s/D.A. Early III 2136