

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )  
HARRIS INVESTMENTS )  
HOLDINGS, LLC, )  
Plaintiff, )  
v. )  
ARACELIS SANTOS, )  
Defendant. )

IN THE MAGISTRATE COURT  
CASE NUMBER: 2017-CV-08-10600019  
2016-CV-08-10605290

ORDER

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SC Court of Appeals

THIS MATTER comes before the Court on February 1, 2018, upon the Plaintiff's Motion for Award of Attorney's Fees filed on December 21, 2017, in the above-captioned actions. The Defendant filed a Reply to Plaintiff's Request for Attorney's Fees on January 25, 2018.

Present at the hearing were counsel for the Plaintiff, Merritt G. Abney, and counsel for the Defendant, Thomas R. Goldstein. The Court engaged in meaningful discussions regarding the applicable law and issues raised in the Plaintiff's Motion and the Defendant's Reply.

The general rule in South Carolina is that attorney's fees are not recoverable unless authorized by contract or statute. Baron Data Systems, Inc. v. Loter, 377 S.E.2d 296, 297 S.C. 382 (1989). In awarding reasonable attorney's fees, there are six factors to be considered by the Court: 1) The Nature, Extent, and Difficulty of the Legal Services 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. Id. See also Rule 1.5 of the S.C. Rules of Professional Conduct.

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In the instant case, the May 22, 2014, lease ("the First Lease") provides in pertinent part:

In the event that any legal matter, dispute, action or proceeding exist [sic] or is commenced by or between Lessor and Lessee under this Lease, the prevailing party shall be reimbursed reasonable attorney fees and court cost [sic] in such matter.

First Lease, Paragraph 46.

The December 1, 2015, lease ("the Second Lease") provides as follows:

In the event Landlord successfully defends any action by the Tenant, or if it is necessary for Landlord to employ an attorney for the collection of rent or any other sum due hereunder, or to enforce any covenant of this lease, or the termination of this lease, or for the possession of the Premises or any part thereof the Tenant shall pay all costs, including reasonable attorney's fees.

Second Lease, Paragraph 32.

The foregoing paragraphs of the respective leases clearly demonstrate that the contracts between the parties provided for reasonable attorney's fees and costs to "the prevailing party" as related to the First Lease and to the Landlord as related to the Second Lease.

The Defendant first contends that the Plaintiff is not a "prevailing party," arguing that neither the Plaintiff nor the Defendant are the prevailing party in these cases because the Defendant prevailed on many of the issues and the Plaintiff prevailed on many of the issues. A "prevailing party" is the 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. Seckinger v. The Vesselm Excalibur, 483 S.E.2d 775, 326 S.C. 382 (Ct. App. 1997). A party need not be successful as to all issues in order to be found to be a prevailing party. Id. While the Plaintiff did not prevail

on each and every issue or claim presented in its pleadings, the Plaintiff prevailed on the ultimate issue in each action, the ejection of the Defendant. As such, the Court finds that the Plaintiff is the prevailing party in this matter.

The Defendant next asserts that this Court is without jurisdiction to award an amount of attorney's fees in excess of the Court's general jurisdictional amount, \$7,500.00, citing S.C. Code Section 22-3-10. The Defendant argues that the attorney's fee award is a "money judgment" and therefore the Court lacks jurisdiction over the above-referenced dollar amount. The magistrate's court has concurrent jurisdiction with the circuit court in contract actions for the recovery of money only, if the sum claimed does not exceed \$7,500. S.C. Code 22-3-10(1); see Mosseri, Mosseri, Castro v. Austin's at the Beach, Inc., 642 S.E.2d 760, 372 S.C. 593 (Ct. App. 2007). This jurisdictional limit does not apply to "matters between landlord and tenant and the possession of land as provided in Chapters 33 through 41 of Title 27...." S.C. Code Section 22-3-10(10), Id. The Magistrate Court will retain jurisdiction in cases involving landlord and tenant and the possession of land even when any counterclaim exceeds \$7,500. S.C. Code Section 22-3-10(12), Id. In cases that do not fall under S.C. Code Section 22-3-10(12) when a counterclaim is filed which if successful would exceed the civil jurisdictional amount as provided in Section 22-3-10, then the initial claim and counterclaim must be transferred to the docket of the common pleas court for that judicial circuit. S.C. Code Section 22-3-30, Id. Chapters 33 through 41 of title 27 of the South Carolina Code deal with creation, construction and termination of leasehold estates, ejection of tenants, rent, undertenants of life tenants, and the Residential Landlord Tenant Act (which is not applicable to non-residential leaseholds). Mosseri, Mosseri, Castro, supra. The common theme of chapters 33 through 41 is possession of

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the property. Id. The instant cases were clearly matters between landlord (the Plaintiff) and tenant (the Defendant). The cases clearly involve the possession of land as both were initiated by the filing of an application for ejectment requesting that the Court evict the Defendant from the leased premises. Whereas the statute sets forth explicitly that the Court retains jurisdiction over counterclaims which exceed the jurisdictional limit in these matters, the statute is silent as to attorney's fees. However, the plain meaning of the statute indicates that this Court has jurisdiction over "all matters" between landlord and tenant and the possession of land. The Court finds that "all matters" includes a request for attorney's fees pursuant to a valid lease.<sup>1</sup>

**The Nature, Extent, and Difficulty of the Legal Services Rendered**

Although these matters were litigated in the magistrate court and without formal discovery, the parties' attorneys attended several hearings, including those pertaining to the Defendant's Motions for Removal, the Plaintiff's Motions for Summary Judgment, the Defendant's motion to dismiss her counterclaims, the hearing on the merits which lasted a full day with eight (8) witnesses, and the Defendant's Motion for New Trial which was heard in conjunction with the within Motion. These matters were highly contested and, as was the case in Loter, supra, were transformed from simple commercial eviction matters, if such things exist, into complex litigation. As such, the Court finds that the nature, extent, and difficulty of the legal services rendered in these matters was of such a nature that warrants an award of attorney's fees.

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<sup>1</sup> See also 1987 Op. Atty Gen, No. 87-10, p 45, wherein the South Carolina Attorney General opined that in matters brought pursuant to the South Carolina Residential Landlord and Tenant Act, the Magistrate Court has concurrent jurisdiction to include those cases brought pursuant to the Act where damages or attorney's fees may exceed the typical (then) \$1,000.00 jurisdictional limit established by S.C. Code Section 22-3-10. The Court finds the reasoning therein to be sound and equally applicable to commercial eviction matters.

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### The Time and Labor Necessarily Devoted to the Case

The Court has meticulously reviewed the time sheets provided by the as well as the Affidavit of Plaintiff's counsel in support of this Motion. The Court recognizes that these matters were time-consuming matters given the issues and contentious motions filed, briefed, and argued. The Court finds that the majority of the time and labor spent on the part of counsel for the Plaintiff and his staff was reasonable and not duplicative and thus an award of attorney's fees is warranted.

### The Professional Standing of Counsel

The Court finds that based on the aforementioned Affidavit of Plaintiff's counsel, the Motion, timesheets, and conduct throughout these proceedings that counsel for both parties are experienced commercial litigators enjoying strong reputations in the legal community.

### The Contingency of Compensation

This factor is inapplicable to the present cases as the fee arrangement between the Plaintiff and its counsel was not based upon a contingency fee.

### The Customary Fee for Like Work

The first step in setting a reasonable fee is determining the appropriate hourly rate. See Liberty Mut. Ins. Co. v. Employee Resource Management, Inc., 176 F.Supp. 510 (D.C.S.C. 2001). The reasonableness of the attorney's hourly rate is determined by the prevailing market rates in the relevant community. Id. The court must assess the experience and skill of the prevailing parties' attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation. Id.

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The Court finds that the rates charged in these matters were reasonable in the Charleston metropolitan market for Family Court, Circuit Court or Federal Court litigation based upon counsel's extensive experience and the Court's familiarity with attorney's fees customarily charged in the legal community.

However, the Court finds that while counsel for the Plaintiff reduced his hourly rate from his customary \$400.00/\$450.00 per hour to \$380.00 per hour, the hourly rate charged exceeds the hourly rates in the Charleston area for commercial evictions in magistrate court. Moreover, the Court finds that the hourly rate for the paralegal (\$205.00) and project assistant (\$115.00) exceed those of the prevailing market rates in the community.

As such, for purposes of the attorney's fees award in the present matters, the Court reduces counsel for the Plaintiff's hourly rate to \$280.00 per hour, a rate the Court finds commensurate with the prevailing market rates for practitioners in the magistrate courts of the Charleston market. Additionally, the Court finds it appropriate to reduce the paralegal hourly rate to \$125.00 per hour and the project assistant to \$80.00 per hour.

#### The Beneficial Results Obtained

The Court finds that the total benefit obtained by the Plaintiff in the matters currently before the Court was the ejection of the Defendant. While the result was not financially significant in terms of a dollar figure, the Plaintiff prevailed on the ultimate result that it sought, thus accomplishing the aims of the suit.

The Court finds that the majority of the claims upon which the Plaintiff prevailed were related substantially to the claims in which it did not. See Hensley v. Eckerhart, 461 U.S. 424 (1983) (Where the plaintiff has failed to prevail on a claim that is distinct in

all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised). The Court concludes that the successful and unsuccessful claims in these cases arose from a "common core of facts", and it is impossible to accurately separate out counsel for the Plaintiff's work on each different issue. This is also not a case where the unsuccessful theory so drove the evidentiary hearing and as such must in fairness be apportioned. Moreover, the Court sees no obvious way to reduce the award by a percentage of successful claims versus unsuccessful claims.

The Defendant contends that the charges submitted by the Plaintiff should "shock the conscience" of the Court. While certainly this Court rarely, if ever, sees attorney's fee affidavits which demonstrate over one hundred hours spent litigating a case in magistrate court or one in which the attorney's fee request exceeds fifty thousand dollars (\$50,000.00), the Court must consider the relationship of the parties and the nature of their contract in its analysis. The Plaintiff and Defendant are parties to two (2) separate commercial leases presumably entered after arms-length negotiations. While the Plaintiff corporation was likely more sophisticated than the Defendant in terms of business experience, the Defendant was aware of the contractual provision in the leases with respect to attorney's fees and the potential application thereof. In the context of the complex world of commercial real estate, regardless of the level of the court in which the case was tried, this Court cannot find that an attorney's fee request of this magnitude shocks the conscience of the Court.

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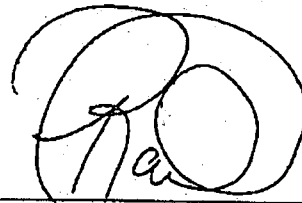
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Nevertheless, while the majority of the time and labor spent on the part of counsel for the Plaintiff in this matter was reasonable and not duplicative, the Court finds that any award of attorney's fees and costs in these matters should be reduced by some time the Court finds duplicative and the amount of costs other than "court" costs.

As such, and based upon the foregoing factors and relevant law, the Court finds that the Plaintiff is entitled to an award as follows: \$34,608.00 in attorney's fees based upon 123.6 hours of time, \$862.50 in fees for 6.9 hours of paralegal time, \$312.00 in fees for 3.9 hours of project assistant time, and \$104.73 in costs, for a total of \$35,887.23.

IT IS SO ORDERED.



The Honorable Rad S. Deaton  
Berkeley County Magistrate

February 9, 2018  
Charleston, South Carolina

Counsel for Plaintiff:  
Counsel for Defendant:

Merrit G. Abney, Esquire  
Thomas R. Goldstein, Esquire

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