

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY )

Ronald E. Price and Diana R. B. ) C/A No.: 2004-CP-08-1855  
Price, )

Plaintiff(s), )

ORDER FOR ATTORNEY'S FEES  
AND COSTS

vs. )

**RECEIVED**

Belinda Fox, Gerry Fox et. al. )

AUG 16 2019

Defendant(s). )

SC Court of Appeals

This matter came before me to consider the award of reasonable attorney's fees and costs to the Plaintiffs as set forth in S.C. Code Ann. §39-5-140 and this court's Order after Trial on the Merits (p. 37). On September 5, 2018, the Plaintiffs and their counsel filed detailed affidavits with exhibits as to the attorney's fees and costs incurred in this litigation. Pursuant to the terms of the filed order the Defendants had ten days to notify Plaintiffs' counsel of any objections. Subsequently in a post-trial status conference, the court again addressed the issue of attorney's fees and provided in the status conference order filed March 08, 2019 that the Defendants shall provide Plaintiffs' counsel within ten (10) days of this order being filed any objections they have to the attorney's fees and costs being claimed. No objections were provided to Plaintiffs' counsel.

**ATTORNEY'S FEES**

Under Dede v. Strickland, 414 S.E.2d. 134 (S.C. 1992), the Supreme Court has set forth the factors to be considered in an award of reasonable attorney's fees. These factors include nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the

contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained.

Nature, Extent, and Difficulty of the Legal Services Rendered.

This case involved multiple defendants and causes of action. It was litigated over several years, according to the affidavit of Plaintiffs' counsel it required extensive legal research and briefing on several issues including but not limited to negligent misrepresentation, the statute of limitations, partnerships and agent liability, the parol evidence rule and its limits, the impact of a contract disclaimer on claims for negligent misrepresentation, South Carolina Unfair Trade Practices Act, res judicata and the collateral source rule. The court notes the next factor has additional, overlapping information about the nature, extent and difficulty of the legal services rendered.

a. Time and Labor Necessarily Devoted to the Case.

As noted in the previous factor, this case involved multiple Defendants and was litigated over several years. According to the affidavit of the Plaintiff's counsel the discovery in the case was quite voluminous encompassing several large banker boxes and hundreds of documents from individuals, federal, state and local agencies, numerous FOIA requests, responses, subpoenas, requests for production and similar documents. Plaintiff's counsel had to sift through all these documents and organize this information. According to Plaintiffs' counsel, he has over 5,000 emails for all the Price matters. While he acknowledges this included all three cases his firm was handling for the Prices, he states most of these emails relate to this matter (1855). Plaintiffs' counsel had to file motions to compel and attend hearings regarding the same. The matter was made even more difficult because both the Foxes and Gilbert changed counsel multiple times from Jay Masty to Ross Miller and Paul Ferrara (the Foxes) and Jeff Spell and then Carl Hubbard for Gilbert and his entities. Jeff Spell refused to disqualify himself even though the Prices (whom he previously represented related to the closing in this matter) objected to his attempted representation. Plaintiffs' counsel had to file and prosecute a

motion to disqualify Spell, a subsequent motion to amend the order and defend the order on appeal (the appeal was dismissed).

Plaintiffs' counsel filed a motion to amend the pleadings and add parties, several legal briefs, and defended several motions for summary judgment. Plaintiffs' counsel also attended multiple status conferences both in person and on the phone.

Plaintiffs' counsel took the depositions of Gerry Fox and Troy Winn and defended the deposition of Diana Price, which was suspended and resumed. Plaintiffs' counsel also reviewed and excerpted the depositions of Danny Gilbert, Belinda Fox and Ron Price.

According to Plaintiffs' counsel's affidavit, the preparation for the trial in this matter was extensive and required culling hundreds of documents into about fifty exhibits which had to be organized, printed in sets and divided among the witnesses. Plaintiffs' counsel also had to contact and coordinate the testimony of seven different witnesses including three experts. Plaintiffs' counsel drafted direct and cross-examinations of the witnesses and reviewed and prepared the case for trial with the Prices. Plaintiffs' counsel also had to prepare and respond to a motion to dismiss filed just prior to trial.

This Court personally observed the professionalism and high quality of the legal representation provided by Plaintiff's Counsel at all hearings and written submissions in this matter.

The trial lasted two full days in which virtually all of Plaintiffs' counsel's time was spent either in trial or preparing for the next day of trial.

Subsequent to the trial, Plaintiffs' counsel spent several weeks preparing, revising and editing a proposed order including relevant findings of fact and conclusions of law. The final draft proposed order was 40 pages. See Contingency of Compensation for additional information relevant to this factor, as follows below.

b. Professional Standing of Counsel. Plaintiffs' counsel is a licensed member of the South Carolina Bar having been admitted by the South Carolina Supreme Court on November 16, 1990. He is also a member of the Richland County Bar and the United States District Court for the District of South Carolina. He has never been disciplined for ethical misconduct. He is a member of the S.C. Bar Solo and Small Firm division and the S.C. Bar Technology Committee. He has practiced law for over 28 years. He was recently honored by being listed by Columbia Business Monthly in the Legal Elite of the Midlands 2018 for "Business Litigation."

c. Contingency of Compensation. The Plaintiffs' fee agreement with Prices called for a non-refundable fee of \$2,500 for this case, \$2,000 which was applied to attorney's fees and \$500 as an initial costs retainer. The balance of the fee was a contingency fee of 30% of any recovery. Applying that to this case, the court awarded judgment on the unfair trade practices cause of action in the amount of \$247,590 (\$82,530 trebled). Thirty-percent (30%) of this amount equates to a contingency fee of \$74,277 plus the initial \$2,000 fee for a total contingency fee of \$76,277.

According to his affidavit, Plaintiffs' counsel hourly rate is \$250 per hour<sup>1</sup>. The contingency fee at that rate would equate to approximately 305 hours. If you consider the representation over a nine-year period<sup>2</sup>, even if Plaintiffs' counsel averaged only four hours each month on this case (and Plaintiffs' counsel states in his affidavit his time far exceeded that) that would exceed the hourly equivalent of the contingency fee (432 hours vs 305). Another comparison, if only half the 5,000+ emails related to this case and Plaintiff's counsel only charged the minimum increment of time (.10 hour) for

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<sup>1</sup> Plaintiff's counsel's rate was initially \$200 per hour when he began representing the Prices, it increased to \$250 per hour effective 1/1/2016.

<sup>2</sup> The case had already been pending for almost five years prior to his appearance in this case.

each email, this would equate to 250 hours *just for the emails*, and Plaintiff's counsel states he spent significantly more than .10 or 6 minutes on many of the emails.

d. Customary Fee Charged on the Locality for Similar Services. The fees charged for this case of a \$2,500 non-refundable retainer and a 30% contingency fee on any recovery are within the range of customary fees charged in the locality for similar cases.

e. Beneficial Results Obtained. Plaintiff's counsel obtained beneficial results for the Plaintiffs in this action by securing a judgment of \$247,590 plus costs and attorney's fees on the cause of action for unfair trade practices.

After due consideration of the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, the court finds an award of attorney's fees and costs to the full extent set forth in the affidavit is appropriate; therefore, Plaintiffs are entitled to recover \$76,277.00 in attorney's fees<sup>3</sup>

#### PRIOR COUNSEL

According to their affidavits, prior to retaining J. Derrick Jackson, and Tobias G. Ward, Jr. PA, the Prices retained other counsel to pursue this case. According to Exhibit 1, Table 1 to the Prices Affidavit they incurred \$7,075 in fees from other counsel for this case (1855). The Prices represent this figure is after deducting applicable fees shown on the trial exhibits to account for fees, associated with any other case. The court concludes this amount is reasonable and awards this as well.

#### COSTS

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<sup>3</sup> This fee is not the total attorney's fee due from the Plaintiffs as the Plaintiffs also recovered under breach of contract, but the court did not award attorney's fees for this cause of action.

Attached to their affidavits as exhibits are tables detailing the costs incurred by Prices before and after trial. See Table 4 to Affidavit of Plaintiffs' counsel. This table reflects total costs of \$7,001.06 for this case (1855). However, Plaintiffs request the court deduct \$163 in court reporting fees anticipated but not charged. Thus, total costs are \$6,838.06.

**WHEREFORE, HAVING SET FORTH THE GROUNDS THEREFORE,** the court hereby awards the Plaintiffs the sum of \$83,352.00 as reasonable attorney's fees and \$6,838.06 is costs.

**IT IS SO ORDERED.**

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Dale E. Van Slambrook  
Master-in-Equity, Berkeley County

Dated: \_\_\_\_\_