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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

Case No. 2017-CP-07-2337

South Atlantic Forest Products, Inc. d/b/a Gaster Lumber & Hardware Appellant,

v.

GMK Associates Design Build Division, Inc. Respondent.

NOTICE OF APPEAL

South Atlantic Forest Products, Inc. d/b/a Gaster Lumber & Hardware ("Gaster") appeals the Orders of the Honorable Robert J. Bonds, which awarded in part Gaster's Motion for Attorney's Fees and GMK Associates Design Build Division, Inc.'s Motion for Attorney's Fees, dated March 10, 2022 (Exhibit 1), and the Order of the Honorable Robert J. Bonds, which denied Gaster's Motion for Reconsideration, dated April 27, 2022 (Exhibit 2).

Appellant received written notice of entry of this judgment, by way of the Order Denying Gaster's Motion for Reconsideration of Attorneys Fees, on April 27, 2022.

May 11, 2022

/s/ Lauren P. Williams
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EXHIBIT 1

ELECTRONICALLY FILED - 2022 May 10 4:08 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0702337

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.:2017-CP-07-2337
)	
South Atlantic Forest Products, Inc., d/b/a)	
Gaster Lumber & Hardware,)	
)	
PLAINTIFF,)	
	)	ORDER AWARDING
VS.	)	ATTORNEYS FEES
)	
GMK Associates Design Build Division,)	
Inc.,)	
)	
DEFENDANT.)	
_____)	

This matter came before the Court on February 11, 2022 upon the Plaintiff and Defendants' motions for Attorney's Fees following a jury verdict in favor of the Plaintiff on January 27th, 2022. The Plaintiff was represented by Russell Patterson, Esq. and Lauren Williams, Esq, and the Defendants were represented by Jahue Moore, Esq.

The Plaintiff brought two causes of action in this matter, a mechanics' lien and a breach of contract claim. During the trial the Court dismissed two Defendants, Frank Golson (Golson) and Traveler's Casualty and Surety Company of America (Travelers), who were only named as it related to the mechanics' lien cause of action. Plaintiff's counsel objected to the dismissal of the Defendants but did admit that Golson was named in error. The Plaintiff was awarded \$24,855.25 and \$0.00 in interest by the jury. The remaining Defendant, GMK Associates Design Build Division Inc. (GMK), was not awarded damages on their counterclaim.

The parties each submitted their fees to the Court for consideration. The Plaintiff requested \$153,235.28 in fees and costs relating to this action, whereas the Defendant requested \$57,820.00 in fees and costs.

Law

Generally, attorney's fees are not recoverable unless authorized by contract or statute. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). There 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; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993).

Discussion

The Court finds that based on the verdict and arguments of counsel that the Plaintiff undoubtedly prevailed in the mechanics' lien action. The jury award was, in fact, for the exact amount of the lien and, as such, pursuant to S.C. Code § 29-5-20, this Court may award reasonable attorney's fees and costs, not to exceed the amount of the lien which totaled \$24,855.24. However, whether the Plaintiff was the prevailing party in the breach of contract cause of action, is unclear to the Court. The Plaintiff argues it did prevail in the breach of contract cause of action and it is entitled to reasonable attorney's fees pursuant to the Defendant's breach. Further, the attorneys for Plaintiff argue that their fees would not be capped at \$24,855.24 under the breach of contract claim. The Court concludes that even if the Plaintiff is to be considered the prevailing party in the breach of contract action, for reasons set forth below, the Plaintiff's reasonable attorney's fees and cost should not exceed \$24,855.24. The Court also finds that Defendant Golson, who was dismissed by the Court in the mechanics' lien cause of action, was also a prevailing party, and as a result is entitled to reasonable attorney's fees and costs.

The Court has had the opportunity to preside over this matter, review memoranda concerning the award of reasonable attorney's fees and costs, examine a breakdown of attorneys' fees and costs of all parties, and hear arguments of counsel. Based on this arguments and evidence presented the Court concludes that the Plaintiff was in fact a prevailing party under the mechanics' lien cause of action and is entitled to reasonable attorneys' fees and cost of \$24,855.25. The Court further finds that the Defendant Golson was a prevailing party in the mechanic's lien cause of action and is entitled to \$7,000.00 for his attorneys' fees and cost. The Court arrived at the above mentioned figures by examining the six (6) factors used to determine an award of attorneys' fees and cost. The reasons and basis for these figures are as follows:

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

The Court acknowledges that mechanics' lien and breach of contract actions, while fairly routine, can become more difficult, particularly when they involve counterclaims thus increasing, to some extent, the difficulty of the legal services rendered by the attorneys in this matter. The Court believes that this was a more complicated case. The Court, however, finds the attorneys themselves made this case more complicated than it had to be. It was clear to the Court that there was a breakdown in communication between the attorneys in the matter and that breakdown greatly added to the complexity of the case.

B. Time and Labor Devoted to the Case

The attorneys for the Plaintiff and Defendants spent extensive time on this matter. Unfortunately, however, the time spent by both parties far exceeded the value of each parties damages. While the Court acknowledges that reasonable attorney's fees and costs can exceed the actual amount

recovered, the Court finds that it is not reasonable in this case because of the breakdown of communication between the attorneys. This breakdown only drove up the cost and time spent on this case and the Court concludes that this has led to the excessive fees and cost. Both attorneys in this matter clearly allowed this case to spiral out of control. As a result, the Court believes that a good deal of the fees claimed are excessive and deemed unreasonable.

C. Professional Standing of Counsel

The Court was not provided with letters or affidavits concerning the attorneys attesting to their professional standing. The Court, however, is aware of the reputations of the attorneys involved in this matter. Mr. Patterson and Mr. Moore have practiced for over 30 years and enjoy excellent reputations not only regionally but statewide. Ms. Williams provided significant information to the Court in the form of briefs before, during, and after trial. The Court also observed her ability in the courtroom. The Court finds her to be an excellent attorney and is confident that she is held in high esteem in the legal community.

D. Contingency of Compensation

Neither party produced a fee agreement to the Court but based upon the information argued and presented at the hearing it is clear to the Court that representation was provided on an hourly basis as opposed to a contingency fee.

E. Fee Customarily Charged in the Locality of Similar Services

The Court was not provided with affidavits but with only general information concerning fees customarily charged in the local area for similar services. Taking into account the Beaufort area,

and their levels of experience, the Court concludes that customary fees for a lawyer of Ms. Williams experience and standing would be in the \$175-\$250 range and the fees for attorney Patterson and Moore would range \$250-350 per hour.

F. Beneficial Result

As mentioned earlier, it would appear to the Court that Plaintiff did receive a beneficial result to wit, a \$24,885.25 verdict and that Defendant Golson as received a beneficial result to wit being dismissed from litigation by the Court with the acknowledgment of the Plaintiff's counsel that he was not an appropriate party.

For all of the above reasons, the Court finds that the Plaintiff is entitled to \$24,885.25 in attorney's fees and costs regardless of whether the Plaintiff is considered a prevailing party in the breach of contract claim. Defendant Golson is entitled to \$7,000.00 in attorney's fees and costs.

IT IS SO ORDERED!

The Honorable Robert J. Bonds
Presiding Judge

Walterboro, South Carolina
March ____, 2022



Beaufort Common Pleas

Case Caption: South Atlantic Forest Products Inc , plaintiff, et al VS Gmk Associates
Design Build Division Inc , defendant, et al
Case Number: 2017CP0702337
Type: Order/Attorney Fees

So Ordered

s/ Robert Bonds, 2770

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.:2017-CP-07-2337
)	
South Atlantic Forest Products, Inc., d/b/a)	
Gaster Lumber & Hardware,)	
)	
PLAINTIFF,)	
	)	ORDER DENYING PLAINTIFF'S
VS.	)	MOTION TO RECONSIDERATION
	)	OF ATTORNEYS FEES
GMK Associates Design Build Division,)	
Inc.,)	
)	
DEFENDANT.)	
_____)	

This matter came before the Court on April 8, 2022, upon the Plaintiff's Motion to Reconsider Attorney Fees. The hearing was conducted virtually. The Plaintiff was represented by Russell Patterson, Esq., and the Defendants were represented by Jahue Moore, Esq.

Procedural

The above-captioned case was tried before this Court the week of January 27th, 2022 in Beaufort County. The Court dismissed two Defendants, Frank Golson (Golson) and Traveler's Casualty and Surety Company of America (Travelers), who were only named as it related to the mechanics' lien cause of action. Plaintiff's counsel objected to the dismissal of the Defendants but did admit that Golson was named in error. After a four-day trial, the Plaintiff was awarded \$24,855.25 and \$0.00 in interest by the jury. The remaining Defendant, GMK Associates Design Build Division Inc. (GMK), was not awarded damages on their counterclaim. At the conclusion of the trial, the Court requested that the parties speak regarding attorney's fees and if they could not agree to a resolution the Court was to be notified to have a hearing on the award of reasonable attorney's fees and costs.

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On February 11th, 2022, this Court heard arguments on the Plaintiff's and Defendants' Motions for Attorney's Fees. The parties each submitted their fees to the Court for consideration. The Plaintiff requested \$153,235.28 in fees and costs relating to this action, whereas the Defendant requested \$57,820.00 in fees and costs. After considering the relevant law and arguments of Counsel, the Court submitted a formal order on March 10th, 2022 awarding the Plaintiff \$24,885.25 in attorney's fees and costs, and Defendant Golson, \$7,000.00 in attorney's fees and costs.

On March 21st, 2022, the Plaintiff submitted a Motion to Reconsider and Revise the Order Awarding Attorney's Fees under Rule 59(e), SCRPC. The Court heard this motion on April 8th, 2022, and DENIES the Plaintiff's Motion for the reasons set forth herein.

Law

Generally, attorney's fees are not recoverable unless authorized by contract or statute. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). There 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; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services, and (6) beneficial results obtained. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993).

Discussion

In this matter, the Plaintiff brought two causes of action; a mechanics lien and a breach of contract. The Plaintiff's Motion to Reconsider alleged that the Court erred by awarding the Plaintiff \$0.00 in attorney's fees and costs under its breach of contract claim and \$24,855.24 in attorney's fees and costs under its mechanics lien cause of action. However, the Court's Order dated March 10th, 2022 awarded attorneys fees and costs collectively to the Plaintiff and did not

specify what amount should be attributed to each cause of action. In its Order, the Court specifically stated that it was unclear if the Plaintiff was the prevailing party on both causes of action or only a single cause of action. This was partially due to the fact that the verdict form, agreed to by the parties, asked the jury to write the amount of money, if any, they felt the Plaintiff was entitled to based on the case presented. The verdict form did not ask the jury to determine if the Plaintiff prevailed on each individual cause of action. Additionally, these causes of action were intertwined and involved the same witnesses and the same evidence in some instances. However, the Plaintiff contends that despite the structure of the verdict form, it would be considered the prevailing party on both causes of action if a verdict was returned awarding the Plaintiff any amount of damages. The Court would be speculating if it tried to determine what amount of the award for damages, if any, was assigned to which cause of action. As a result, the Court ordered what it deemed as reasonable attorneys fees and costs for the entire action, irrespective of whether the Plaintiff prevailed on a single cause of action or both causes of action.

Next, the Plaintiff claims that the Court erred by awarding Defendant Frank Golson (Golson) \$7,000.00 in attorneys fees. The Plaintiff claims that Golson was not considered a prevailing party and this award was not supported by the evidence. The Court, however, has had the opportunity to preside over this matter, review memoranda concerning the award of reasonable attorney's fees and costs, examine a breakdown of attorneys' fees and costs of all parties, and hear arguments of counsel. Based on the arguments and evidence presented the Court concludes that Golson was in fact a prevailing party as he was removed from the case on a successful Motion for Directed Verdict. The Court arrived at the figure by examining the six (6) factors used to determine an award of attorneys' fees and costs: Nature, Extent, and Difficulty of

the Legal Services Rendered, Time and Labor Devoted to the Case, Professional Standing of Counsel, Contingency of Compensation, Fee Customarily Charged in the Locality of Similar Services, and Beneficial Result. *See Blumberg v. Nealco, Inc.*, 310 S.C. 494, 427 S.E.2d 659 (1993).

Golson was represented by Mr. Moore who also represented the other two Defendants in this matter. The Defendants, though separate and distinct entities or individuals, were represented by a single attorney for reasons unknown to the Court. However, the defense of each entity or individual involved similar legal arguments, evidence, witnesses, and discovery. The issues relating to each Defendant were intertwined, and it was clear to the Court that Mr. Moore, a well-respected and seasoned attorney was participating in discovery to the benefit of each client, including Golson.

However, Mr. Moore's client GMK, was the only Defendant to pursue counterclaims, which the Plaintiff admitted took up much of the Defense's case, though they were unsuccessful. Mr. Moore's billing rate and invoices submitted to the Court showed \$21,000.00 in attorneys fees for the time he spent trying this case. Based on the verdict and rulings of this Court, Golson is the only prevailing Defendant, as he was removed from the case. Therefore the Court finds that the Defendant Golson is entitled to \$7,000.00 in attorneys fees and costs. The Court based this decision on the fact that Mr. Moore was successful at trial for one of his three clients. Therefore it is reasonable to award Golson one-third of the \$21,000.00 spent by the Defense during the trial of this matter

Finally, the Plaintiff informed the Court that it made every effort to communicate and participate in resolving this matter in good faith and that most of its time spent working on this case was in defense of the counterclaims brought by GMK. Thus it is the Plaintiff's position that

the award of 24,885.24 is not representative of the time, effort, and attention that it put into this case. The Court recognizes the Plaintiff's hard work on this case and understands that it is a prevailing party, however, the Court must award only reasonable attorneys fees. In this case, the Court had the opportunity to observe the attorneys and although they zealously represented their clients, there was also a clear breakdown in communication that caused this case to spiral out of control. When the Court asked counsel to discuss a possible resolution regarding attorneys fees at the conclusion of the case, the Court noticed that the attorneys only addressed each other in raised voices. It was clear to the Court that though the attorneys were speaking neither was listening. The combative nature with which these attorneys approached this matter was demonstrated at the virtual hearing on this very motion by directly addressing each other rather than the Court.

The Plaintiff submitted invoices that represent that extensive time and attention was given to this case, however, a close review of the invoices reveals unreasonable fees in the eyes of the Court. For example, fees were billed at attorney rates for matters that could have been handled by paralegals, like calling an attorney's office to schedule a deposition. These types of tasks should have been billed at paralegal rates. Additionally, this case was also not so complicated as to require two attorneys to bill for the entirety of this four-day trial. Although these types of charges may be reasonable when presented to a client, they are not reasonable to this Court when determining an award of attorneys fees and costs.

For all of the above reasons the Plaintiff's Motion to Reconsider and Revise is respectfully DENIED. The Court finds that the Plaintiff is entitled to \$24,885.25 in attorney's fees and costs and Defendant Golson is entitled to \$7,000.00 in attorney's fees and costs.

IT IS SO ORDERED!

The Honorable Robert J. Bonds
Presiding Judge

Walterboro, South Carolina
April ____, 2022