

Commonwealth of Virginia

FIFTEENTH JUDICIAL CIRCUIT

JUDGES

Gordon F. Willis
Joseph J. Ellis
J. Overton Harris
Charles S. Sharp
Sarah L. Deneke
Michael E. Levy
Patricia Kelly
Herbert M. Hewitt
Victoria A. B. Willis
R. Michael McKenney
Ricardo Rigual



J. Overton Harris
Hanover Circuit Court
Post Office Box 505
Hanover, Virginia 23069-0505
(804) 365-6161

RETIRED JUDGES

Joseph E. Sprmill, Jr., Retired
William H. Ledbetter, Jr., Retired
H. Harrison Braxton, Jr., Retired
Ann Hunter Simpson, Retired
John R. Alderman, Retired
Horace A. Revercomb, III, Retired
J. Martin Bass, Retired
David H. Beck, Retired
Harry T. Taliaferro, III, Retired

July 26, 2017

R. Webb Moore
Kelly J. Bundy
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Richmond, Virginia 23223
Counsel for Plaintiff

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Counsel for Defendant

Re: Winding Brook Owner's Association, Inc. v. Thomlyn, LLC
Hanover Circuit Court Case Number CL15002223-00

Dear Counsel:

I. Statement of the Case:

This matter is before the Court on Plaintiff's request for attorney's fees and costs. A hearing was held on May 26, 2017. The Court heard testimony from R. Webb Moore and argument of counsel.

II. Findings of Fact:

The following facts are established by a preponderance of the evidence:

- 1) Plaintiff filed its initial Complaint on September 25, 2015. Defendant filed a Counterclaim on November 12, 2015.
- 2) The matter was scheduled for a jury trial on July 13, 2016.
- 3) On the day of trial, the parties represented they had reached a settlement agreement, and recited the agreement on the record.
- 4) Plaintiff never received the settlement payment.
- 5) On July 27, 2016, Plaintiff filed Plaintiff's Motion to Enforce Settlement Agreement.
- 6) Plaintiff subsequently decided to rescind the settlement, and on September 12, 2016 filed a Motion for New Trial Date.
- 7) Defendant then sought to enforce the settlement agreement.
- 8) On October 27, 2016, this Court entered an Order granting Plaintiff's Motion for New Trial Date, denying Defendant's Motion to Enforce Settlement Agreement, and setting the matter for a jury trial on February 15, 2017.
- 9) On February 3, 2017, Plaintiff filed its Third Amended Complaint, requesting judgment against Defendant in the amount of \$58,470.88 for Outstanding Assessments.
- 10) The case was tried before a jury for two days, beginning on February 15, 2017.
- 11) Defendant paid Total Asphalt Service, Inc. \$46,860.00 for parking lot repairs prior to trial.

12) During final argument, Plaintiff requested the jury award it damages of \$11,610.88 and find in favor of Plaintiff on Defendant's Counterclaim.

13) The jury ruled for Plaintiff on its Complaint as requested, awarding damages of \$11,610.88, and found in favor of Plaintiff on Defendant's Counterclaim.

14) Plaintiff's attorneys provided services necessary to obtain a judgment against Defendant for unpaid assessments owed to the property owner's association. Plaintiff's attorneys had to meet with the client, familiarize themselves with the relevant documents, research, draft and file the Complaint, record lien memoranda as new assessments became due and were not paid, propound discovery, prepare for a jury trial, attempt to enforce the settlement reached on the day of the first trial, move for a new trial date, research, draft, and argue pretrial motions, prepare for a jury trial a second time, present the case to the jury, and prepare for and attend this hearing.

15) Defendant did not comply with the settlement agreement, and did not provide proof of payment for parking lot repairs until the second day of trial.

16) At the hearing on Plaintiff's motion for attorney's fees, Plaintiff presented invoices for attorney's fees and costs, and asked this Court to award Plaintiff \$121,160.00.

17) Plaintiff expended \$624.10 in providing the Court with a transcript of this hearing as directed.

18) Plaintiff's attorneys submitted affidavits and detailed time records, and Plaintiff's attorneys participate with a consulting firm in the greater Richmond area to ensure the firm's hourly rates are consistent with or slightly below its competition.

19) Plaintiff's attorneys typically staff their cases with a partner and an associate. For this case, Ms. Bundy did most of the work at a lower hourly rate, Mr. Moore supervised, and a real estate paralegal assisted in preparing lien memoranda.

III. Contentions and Issues:

Plaintiff contends it is entitled to the full amount of the fees and costs it incurred in this case.

Defendant contends Plaintiff's claimed fees are punitive and unconstitutional, are not reasonable, and its claimed costs are not recoverable.

Issues: 1) Are Plaintiff's claimed fees punitive and unconstitutional?

2) Are Plaintiff's claimed fees reasonable?

3) Are Plaintiff's claimed costs recoverable?

IV. Rule of Law:

Sections 55-515 and 55-516 of the Code of Virginia, as well as the Declarations governing the Owner's Association and its members require the Court to award Plaintiff its reasonable attorney's fees and costs. There are seven factors for courts to consider in determining whether attorney's fees are reasonable: "(1) the time and effort expended by the attorney, (2) the nature of the services rendered, (3) the complexity of the services, (4) the value of the services to the client, (5) the results obtained, (6) whether the fees incurred were consistent with those generally charged for similar services, and (7) whether the services were necessary and appropriate."

Lambert v. Sea Oats Condo. Ass'n, 798 S.E.2d 177, 183 (Va. 2017) (citing *Manchester Oaks Homeowners Ass'n v. Batt*, 284 Va. 409, 732 S.E.2d 690 (Va. 2012)).

Unless otherwise specified, in cases before a court of record a court's discretion to award Plaintiff's costs is limited to those "essential for prosecution of the suit, such as filing fees or charges for service of process." *Advanced Marine Enters. v. PRC, Inc.*, 256 Va. 106, 126, 501 S.E.2d 148, 160 (Va. 1998). Costs for things such as photocopies, telephone bills, messengers, court reporters and transcripts for the use of counsel are not essential for prosecution of a suit. *Id.*

V. Analysis:

This Court is not aware of any case in Virginia where a court has found an award of attorney's fees to be punitive or unconstitutional. The cases Defendant cites in its response are cases in which the court reviewed punitive damages awards. An award of reasonable attorney's fees is neither punitive nor unconstitutional, and is required in this case.

Considering the factors listed in *Lambert*, the time and effort expended by Plaintiff's attorneys was substantial given the history of this case. The nature and complexity of the services in this case exceeded that of a standard breach of contract case. Plaintiff's attorney's services were valuable to its client. Plaintiff's attorney's obtained the result Plaintiff sought. The fees incurred were consistent with those generally charged for similar services. Expert testimony is not required in all instances to prove the reasonableness of attorney's fees, especially when the attorneys have submitted affidavits and detailed time records. *Seyfarth, Shaw, Fairweather & Geraldson v. Lake Fairfax Seven Ltd, Pshp.* 253 Va. 93, 96, 480 S.E.2d 471, 473 (1997) (citing *Tazewell Oil Company v. United Virginia Bank*, 243 Va. 94, 413 S.E.2d 611 (1992)). Plaintiff's attorney's services were necessary and appropriate; Plaintiff's attorneys did not engage in duplicative and excessive work.

Plaintiff's attorney's billing methods are appropriate. Block billing has not been universally condemned in Virginia. "When tasks are reasonably listed in block listings, in a manner that

provides a rational summary of the time spent on various projects, the Court will accept the block billing summary as reasonable.” *Tureson v. Open Sus. Scis. Of Va., Inc.*, 86 Va. Cir. 473, 474 (Fairfax 2013) (quoting *N. Va. Real Estate, Inc. v. Martins*, 80 Va. Cir. 478 (Fairfax 2010)). In this case, Plaintiff’s attorney’s tasks have been reasonably listed to provide a rational summary of the time spent on their projects. Plaintiff’s attorney’s time descriptions are sufficient for the Court to determine the reasonableness of the tasks and the amount of time spent on them.

The case Plaintiff relies on to argue all its costs are recoverable is distinguishable from this case. In *Chacey v. Garvey*, 291 Va. 1, 781 S.E.2d 357 (Va. 2015), the court analyzed a specific statute with language found nowhere else in the Code of Virginia – “directly associated legal costs.” *Chacey*, 291 Va. at 10, 781 S.E.2d at 361. The phrase used in § 55-515 of the Code of Virginia, “costs expended in the matter,” means those costs that are essential for prosecution of the suit. Plaintiff’s costs related to photocopies, telephone and facsimile bills, messengers, transcripts, etc. are not recoverable. *Advanced Marine*, 256 Va. at 126, 501 S.E.2d at 160. The exception in this case is the transcript required by the Court for its use in producing this letter opinion.

VI. Conclusion

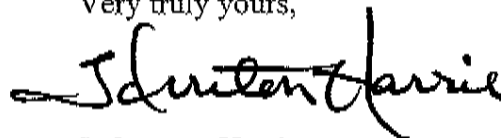
Plaintiff’s claimed fees are neither punitive nor unconstitutional. Plaintiff’s claimed fees are reasonable. Plaintiff’s claimed costs for filing and recording fees are recoverable. In addition, because the Court requested the transcript from this hearing, Plaintiff is entitled to payment of half the cost of obtaining the transcript.

VII. Order

The law requires an award to Plaintiff for Plaintiff's attorney's fees in the amount of \$117,155.81. The fees award includes billed fees totaling \$98,129.81 for work completed from May 5, 2015 – March 29, 2017, unbilled fees totaling \$4,621.00 for work completed from May 3, 2017 – May 24, 2017, anticipatory fees totaling \$4,405.00 for Plaintiff's attorney's preparation for and attendance at the hearing on this motion, and anticipatory fees totaling \$10,000.00 associated with the costs of collecting the attorney's fees award from Defendant. The law requires an award to Plaintiff for its costs in the amount of \$202.50. The costs award includes \$129.00 for filing fees paid in September 2015, and \$73.50 for recording fees shown on Plaintiff's attorney's invoices dated August 10, 2016 and February 10, 2016. Defendant is also ordered to pay Plaintiff \$312.05 for its portion of the transcript from this hearing.

Counsel for Plaintiff is to prepare an order consistent with this Court's ruling within two weeks.

Very truly yours,



J. Overton Harris
Hanover County Circuit Court Judge