

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

SEA VILLA HOMEOWNERS)	
ASSOCIATION, INC.)	
)	
Plaintiff-below)	
Appellee,)	
)	
v.)	C.A. No. CPU6-14-000330
)	
ANNE R. LAVINE,)	
)	
Defendant-below)	
Appellant,)	

Submitted: June 24, 2016
Decided: August 24, 2016

John A. Sergovic, Jr., Esq., Attorney for Plaintiff/Appellee.
Anne R. Lavine, pro se, for Defendant/Appellant.

DECISION ON APPELLEE’S MOTION FOR RE-ARGUMENT

On June 10, 2016, Plaintiff-below/Appellee Sea Villa Homeowners Association, Inc. (“HOA”) filed a motion for re-argument pursuant to Court of Common Pleas Civil Rule 59(e) asking the Court to reconsider its June 3, 2016 decision to limit the amount of attorney’s fees awarded to HOA’s counsel. For the reasons discussed below, Appellee’s motion for re-argument is **GRANTED**.

Procedural History and Facts

The HOA initiated an action in the Justice of the Peace Court against Defendant-below/Appellant Anne R. Lavine (“Lavine”), seeking unpaid assessments dating back to

2008, as well as interest thereon and attorney's fees. On April 2, 2014, the J.P. Court entered default judgment against Lavine, who then filed a timely appeal *de novo* to this Court. The parties filed numerous pre-trial motions in this Court, and appeared at hearings before both the Commissioner and the Judge. On February 24, 2016, the Court granted summary judgment in favor of the HOA and against Lavine. As part of its order, the Court requested that HOA's counsel submit calculations of prejudgment interest and reasonable attorney's fees. Counsel filed the prejudgment interest calculation and an affidavit of attorney's fees on March 4, 2016. On June 3, 2016, the Court accepted and awarded the calculated prejudgment interest in the amount of \$1,061.06. However, the Court declined to award the HOA's counsel the \$21,200.98 in attorney's fees and \$1,124.71 in related costs sought because the Court believed such an award was unreasonable and also disallowed by 10 *Del. C.* § 3912. The HOA filed a timely motion for re-argument pursuant to Rule 59(e), arguing the Court, *inter alia*, incorrectly applied 10 *Del. C.* § 3912 and that this improperly affected the outcome of the Court's decision.

Discussion

The Court will determine whether re-argument will be granted from the motion and the answer in accordance with Rule 59(e). Motions for re-argument "will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."¹

¹ *Beatty v. Smedley*, 2003 WL 23353491, at *2 (Del. Super. Mar. 12, 2003) (internal citations omitted).

The Superior Court has held the 10 *Del. C.* § 3912 limitation on attorney's fees inapplicable to an action by a condominium association to recover unpaid annual assessments due and owing under the association's code of rules and regulations.² This holding was extended to a homeowner's association assessment collection action in a New Castle County decision of this Court.³ Though the Court remains convinced that the amount of attorney's fees sought in this action is unreasonable, the Court agrees it should reassess the attorney's fee award without regard to the 20 percent limitation articulated in 10 *Del. C.* § 3912.

As discussed in its June 3, 2016 order, the *Delaware Lawyers Code of Professional Responsibility* DR-1.5 factors guide the Court's analysis. The Court may also consider the losing party's ability to pay the attorney's fees.⁴ Since the parties did not provide information in relation to factors (2), (5), (6), (8) or Lavine's ability to pay the requested attorney's fees, the Court considers the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (3) The fees customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

Regarding factors (3) and (7), the Court finds the fee rates charged by Plaintiff's attorneys are customary in this jurisdiction for similar legal services performed by attorneys of comparable competence, reputation and experience.

However, the Court believes Plaintiff's counsel expended more time and labor than is typically and reasonably exerted in this jurisdiction to litigate cases of similar complexity. This case did not present novel or difficult legal questions. While Lavine, an

² *Ashton Condo. Ass'n, Inc. v. Kossol*, 1992 WL 354163 (Del. Super. Nov. 16, 1992).

³ *Bayview Manor II Maint. Corp. v. Alkhatib*, 2012 WL 4788117 (Del. Com. Pl. Apr. 30, 2012).

⁴ *General Motors Corp. v. Cox*, 304 A.2d 57 (Del. 1973).

unrepresented litigant, complicated matters by filing unnecessary motions and objections, counsel chose to vigorously oppose or otherwise respond to almost all of these filings. Many of the parties' arguments were unduly repetitive, given the lengthy record of past litigation between the parties over virtually the same issues. Importantly, the Court cannot ignore the common sense limitation that labor expended, and thus the attorney's fees charged, should bear some relation to the benefit conferred to the client. The Court acknowledges nonmonetary benefit is conferred by helping Plaintiff enforce the HOA assessment obligations, and that the threat of owing additional large attorneys' fees may discourage other HOA members from refusing to pay HOA assessments. However, the principal amount sought in this case was \$2,870.00. Plaintiff chose to spend more than \$22,000 to pursue this case, nearly eight times the amount involved, with no guarantee that the Court necessarily would award it any attorneys' fees.

Upon reconsideration, the Court awards counsel \$2,050.44 for preparing and trying this case in the J.P. Court. According to counsel for Plaintiff's fee affidavit, counsel spent 5.4 hours filing and prosecuting this case to judgment in J.P. Court. The time and labor expended there was reasonable. However, counsel spent approximately **75 hours** defending against Appellant's appeal *de novo* to the Court of Common Pleas and re-prosecuting the action. The amount of time spent was unreasonable in the Court's view. As discussed above, this matter was overcomplicated by the parties. The main issues before the Court – nonpayment of assessments and the applicable statute of limitations–were fairly simple. Counsel spent a lot of time researching and responding to clearly unmeritorious motions. The Court will award counsel fees for time spent preparing the more relevant of the filings, such as the motion to dismiss, the complaint, the pre-trial stipulation and the motion for summary judgment, and for time spent in

Court or reviewing Court orders. However, the Court reduces the amount requested for the reasons discussed above. Furthermore, the Court will not consider fees incurred relating to the preparation of the attorney's fee affidavit, as courts do not usually award attorney's fees for time spent preparing the affidavit of attorney's fees.⁵

Given the above, the Court finds an award of \$5,000.00 in attorney's fees and expenses for work before this Court is reasonable, in addition to the \$2,050.44 fees incurred in J.P. Court, and yet remains sufficient both to deter HOA members from withholding assessments without just cause, and not deter the HOA from exercising its collection rights.

Conclusion

For the foregoing reasons, the HOA's motion for re-argument is **GRANTED**. The Court vacates its previous attorney's fee award, and grants the HOA attorney's fees in the amount of \$7,050.44, to be included in the judgment entered in this matter.

IT IS SO ORDERED this ____ day of August, 2016.

Kenneth S. Clark, Jr.,
Judge

⁵ See *Stone v. Stone*, 1984 WL 553541 (Del. Super. June 12, 1984).