IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

BAYVIEW MANOR II MAINTENANCE, CORPORATION,	)	
Plaintiff,	)	
v.	)	**C.A. No.: CPU4-10-007455**
IDRIS M. ALKHATIB, and HELENA Y. ALKHATIB,	)	
Defendants	)	

Date Submitted: April 23, 2012
Date Decided: April 30, 2012

AMENDED MEMORANDUM OPINION AND ORDER

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Attorney for Plaintiff

Idris M. Alkhatib and Helena Y. Alkhatib, 501 Florence Fields Lane, Bayview Manor II, New Castle, Delaware 19720
Pro se Defendants

WELCH, J.

I. Facts & Procedural Posture

This is a debt collection action seeking payment for money owed pursuant to a residential real property deed restriction and maintenance declaration. On February 15, 2012, trial was held in this matter. The primary issue at trial was not whether Mr. and Mrs. Alkhatib (the "Defendants") owed the money sought. Rather, the gravamen of the dispute centered upon whether Bayview Manor Maintenance Corporation ("Plaintiff") was entitled to attorney's fees incurred in pursuing this action.

At the conclusion of trial, the Court took the matter under advisement. Later, the Court determined that it required further briefing and legal argument concerning whether Plaintiff was entitled to attorney's fees, and if so, in what amount. Accordingly, the Court ordered the parties to submit legal memoranda on this issue. The parties filed the requested memoranda.

On March 15, 2012, the Court issued a memorandum opinion and order in this matter, entering judgment in favor of Plaintiff, and further finding that Plaintiff was entitled to recover any and all reasonable attorneys fees incurred in collection of the debt pursuant to the maintenance declaration and deed. At that point in the proceedings, however, neither Plaintiff nor the Defendants had filed any affidavits concerning the appropriate amount of attorney's fees awardable. Accordingly, the Court ordered the Plaintiff to file an affidavit of attorney's fees. The Court also stated that the Defendants would have an opportunity to respond to said affidavit within ten days, where they could argue that the attorney's fees requested were not reasonable.

On April 4, 2012, Counsel for Plaintiff filed an Affidavit of Attorney's Fees, seeking an award of attorney's fees and costs in the amount of $4,825.73. In the Affidavit and attached time sheet, Counsel for Plaintiff argued as follows:

- Counsel's normal hourly rate is $200.00. However, Counsel charges Plaintiff a reduced hourly rate of $175.00. This is the hourly rate on which Counsel calculated the charges sought in the affidavit.

- Counsel performed 26.9 hours worth of work on this case, including the following legal services:

    - Preparing the Complaint;
    - Responding to Defendant's argument that the debt was paid;
    - Preparing and attending the pre-trial conference held in this matter;
    - Preparing a continuance request;
    - Preparation and attending trial;
    - Preparation of post-trial memoranda;
    - Preparation of the Affidavit of Attorney's Fees; and
    - Communicating with Plaintiff throughout the various stages of the proceedings.

- Counsel and Plaintiff both warned the Defendants on numerous occasions throughout the proceedings that from the time that Counsel was retained, attorney's fees were accruing.

- Counsel has been a member of the Bar of the Supreme Court of the State of Delaware for over twenty years.

On April 17, 2012, the Court entered an Order on Affidavit and Application for Counsel Fees and Costs, granting Plaintiff's Application. At that time, the Court's docket did not reflect that Defendant filed a Response to Plaintiff's Affidavit. The Court entered this Order because based on its review of the case file, Plaintiff's Affidavit, and the applicable law, the amount of attorney's fees and costs requested was reasonable.

On April 24, 2012, the Court received a letter from Defendants arguing that on April 13, 2012, the Defendants did in fact file a Response to Plaintiff's Affidavit. Upon review of the Court's docket, the Court discovered that Defendants did file a Response to Plaintiff's Affidavit as stated in their April 24, 2012 letter. However, as of the Court's April 17, 2012 Order, the Response was not docketed.

In Defendants' April 13, 2012 filed document captioned: Answers to Plaintiff[']s Application for Attorney[']s Fees and Cost[s] (the "Response"), Defendants argued that the fees requested in Plaintiff's Affidavit are not reasonable. In the Response, Defendants asserted three arguments in support of this contention. First, Defendants argue that Plaintiff and Plaintiff's Counsel frustrated their attempts to settle by refusing to provide Defendants with the exact amount of attorney's fees accrued when Defendants requested this information at various times since the filing of this action. Second, Defendants assert that they are aware of similar cases filed against other Bayview residents where Plaintiff was more willing to engage in settlement discussions, and the settlements ultimately agreed upon included attorney's fees at significantly lower sums than Plaintiff requests in this case. Finally, Defendants contend that they were willing to mediate this claim before trial, but that Plaintiff refused to mediate in bad faith, which resulted in significant unnecessary attorney's fees.

II. Discussion

Before the Court reaches the substance of Plaintiff's Affidavit and Defendants' Response, the Court must first consider the effect of its' April 17, 2012 Order granting Plaintiff's Application for Attorney's Fees. The provisions of CCP Civil Rule 60(a) provide that the Court may, *sua sponte*, correct "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission." The Court finds that its April 17, 2012 entry of judgment on the issue of the amount of attorney's fees awarded in this case was erroneously entered as the result of a clerical error. While the Response was timely filed, it had not been accepted and incorporated in the Court's docket as of April 17, 2012. Had the Response been docketed at this time, the Court would have considered the Response. Therefore, pursuant to

CCP Civil Rule 60(a), the Court now vacates its April 17, 2012 Order and will reconsider Plaintiff's Application for Attorney's Fees in light of Defendants' Response.

In Delaware, the general rule is that each party must bear its own costs and attorneys fees unless there is a contractual or statutory basis for the award of attorney's fees. *Dixon v. Council of Cliff House Condo.*, 2009 WL 5455537, at *3 (Del. Com. Pl. Dec. 8, 2009). As previously stated by the Court in its March 15, 2012 Memorandum Opinion and Order, "Plaintiff is entitled to recover reasonable attorney's fees incurred in collection on this debt pursuant to the maintenance declaration and the deed on Defendants' home." *Bayview Manor II Maint. Corp. v. Alkhatib*, C.A. No. CPU4-10-007455, at *7 (Del. Com. Pl. Mar. 15, 2012). Therefore, the sole remaining issue in this case is whether the attorney's fees requested in Plaintiff's Affidavit of Attorney's Fees are reasonable under Delaware Law.

The determination of whether attorney's fees requested in a particular case are reasonable is within the discretion of the Court. *Dixon*, 2009 WL 5455537 at *4. Delaware decisional law provides that the Court exercise this discretion after consideration of the following factors:

- The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- The likelihood, if apparent to the client, that the substance of the particular employment will preclude other employment by the lawyer;
- The fees customarily charged in the locality for similar legal services;
- The amount involved and the results obtained;
- The time limitations imposed by the client or by the circumstances;
- The nature and length of the professional relationship with the client;
- The experience, reputation, and ability of the lawyer or lawyers to perform the services;
- Whether the fee is fixed or contingent;

- The employer's ability to pay; and
- Whether claimant's counsel has received or expects to receive compensation from any other source.

Id. (citing *General Motors Corp. v. Cox*, 304 A.2d 55 (Del. 1973); Del. Lawyers' Rules of Prof'l Conduct R. 1.5(a)).

After consideration of Plaintiff's Affidavit of Attorney's Fees, Defendants' Response, the factors enumerated *infra*, and for the following reasons, the Court finds that the attorney's fees requested by Plaintiff in this case are reasonable. The time and labor spent by Plaintiff's Counsel on this matter were reasonable. Plaintiff's claim was was, on its face, a very simple breach of contract action. However, after filing the Complaint, Plaintiff's Counsel was required to investigate Defendants' erroneous claim of payment, prepare and attend the pretrial conference, prepare and respond to Defendants' untimely filed counterclaim, prepare and attend trial, and prepare the Court requested post trial memoranda of law and affidavit of attorney's fees. Plaintiff Counsel's calculation of attorney's fees is based on the reasonable reduced hourly rate of $175.00 per hour, a competitive rate in light of Counsel's twenty plus years of experience. Moreover, review of Counsel's timesheet shows that Counsel utilized his time in an very efficient manner. For example, based on the time sheet submitted, Counsel prepared his extremely helpful post trial memoranda of law from start to finish in, at worst, five hours.

Finally, Defendants' arguments included in the Response are without merit. Plaintiff filed the Complaint in this matter over two years ago, on December 2, 2010. In the Complaint, Plaintiff requested that the Court award attorney's fees, and attached the Maintenance Declaration and Deed providing for the award of such fees. Even assuming, *arguendo*, that this was not sufficient to place Defendants on notice of Plaintiff's intent to seek a fee award,

Plaintiff's Counsel orally told Defendants that he intended to seek attorneys fees at the pretrial conference on April 18, 2011, almost one year before trial. Plaintiff's Affidavit of Attorney's Fees at *2. In Defendants' Response, they argue that Plaintiff only provided them with vague references to the amount of fees, including a statement on the record at the pretrial conference that the fees incurred at that time were roughly $600.00. Defendants' Response at *6.

Even assuming Plaintiff did not provide the Defendants with an exact amount of fees at this time, this does not *ipso facto* prove that Plaintiff acted unreasonably in settlement discussions. The Court is satisfied that Plaintiffs statement, on the record at the pretrial conference was a sufficiently definite statement on which to reach an appropriate settlement. Further, if the Defendants were willing to settle the case at this time, it defies logic that they would continue to litigate this case for over a year, knowing Plaintiff intended to seek fees, and reasonably expect that the amount of these fees would remain stagnant.

Similarly, Defendants argument that they were treated harsher than similarly situated Bayview residents does not persuade the Court that the fees requested are unreasonable because the argument is wholly unsubstantiated. Defendants cite specific settlement amounts and claim that those cases were similar to this case. Despite their seemingly intimate knowledge of these cases, Defendants proffer no proof in support of their argument such as pleadings, dockets or executed settlement documents from those cases establishing: (1) that factually, procedurally, and legally those cases are similar; and (2) that the amount of attorney's fees included in the settlements entered in those cases were in the proffered amounts.

III. Order

For the foregoing reasons, the Court hereby amends its March 15, 2012 Order and judgment previously entered in this matter to include the award of attorney's fees and costs to Plaintiff in the amount of $4,825.73.

IT IS SO ORDERED this 30th day of April, 2012.

John K. Welch, Judge

/jb

cc: Ms. Tamu White, CCP, Chief Civil Clerk