

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WE SELL RESTAURANTS, INC.
Plaintiff

2019CV329269

VS.

DOMINIQUE MADDOX
EATS RESTAURANT BROKERS LLC
Defendant

ORDER ATTORNEYS FEES PURSUANT TO O.C.G.A. §9-15-14(b)

This order will deal with Plaintiff's request for attorneys fees under various theories, and it will endeavor to set out the detail and rationale for such award that is required in this State. This Court also notes for the record the broader issue at hand which is the rancid atmosphere created by Defendant that permeated this litigation and was obvious to this Court.

FINDINGS OF FACT

1.

On October 29, 2020, this Court entered a detailed Order Striking Answer and Imposing Permanent Injunction (the "October Order"). The October Order set forth the conduct of Defendant Maddox which gave rise to the Court's striking Defendants' Answer and entering a default judgment in favor of Plaintiff.¹ The Court hereby incorporates the October Order as if it were repeated verbatim herein.

2.

The Court reserved the issue of attorneys fees under O.C.G.A. §9-11-37 in its Order on Several Motions of September 24, 2020 and in its October Order.

3.

On February 24, 2021, Plaintiff submitted its Application for Attorneys Fees and

¹ Defendant attempted to appeal the October Order, but the Court subsequently dismissed the appeal for unreasonably delaying the filing of the transcript.

Costs accompanied by the Affidavit of lead counsel Ms. Kimberly Worth². On August 9, 2021, Plaintiff submitted its Supplement to Application for Attorneys Fees and Costs. Furthermore, the Court held a hearing on August 13, 2021 and heard from Ms. Worth stating in her place. The Court offered counsel for Defendants, twice, the opportunity to cross-examine Ms. Worth as to her affidavits and statements regarding Plaintiff's fees, and both times counsel for Defendants declined the opportunity to cross-examine.

4.

The total fees expended by Plaintiff in both prosecuting and defending this matter have been greater than \$332,752.36. Plaintiff has expended the sum of \$192,088.74 after the initial hearing in this matter in which Defendants' eventually unsubstantiated claims of forgery and witness harassment were introduced. This case started out as a breach of contract case, among other things. Defendant Maddox asserted at a hearing in this case on November 22, 2019 that his signature on one or more contracts was forged, and further asserted that one of Plaintiff's representatives was illegally harassing a key witness in the case. The sum of at least \$192,088.74 in fees were therefore attributed to having to defend those claims by Defendants.

5.

Plaintiff has expended an additional \$43,110.37 in fees and expenses for having to pursue the dismissal of the appeal which was clearly attributable to Defendants' failure to order the transcript on a timely basis and for arguing Defendants' insistence on a jury trial. The Court hereby incorporates the Supplemental Affidavit of Kimberly Worth filed on August 9, 2021.

6.

Plaintiff has incurred costs in the amount of \$11,045.24 in expert fees and travel expenses for having to defend against Defendants' specious forgery claims.

7.

Therefore, based upon the record before the Court, the statement of counsel, and the argument of counsel, the Court makes the following conclusions of law and order:

CONCLUSIONS OF LAW

8.

It is this Court's obligation under O.C.G.A. §9-15-14 to set forth not only the findings

² The facts set forth in Ms. Worth's Affidavit of February 24, 2021 are incorporated herein by reference. Except through argument of counsel, the same are uncontroverted.

of fact giving rise to an award of fees, but also conclusions of law. See, e.g., Garrett v. Department of Human Services, 355 Ga. App. 714 (2020).

9.

This case falls squarely under O.C.G.A. §9-15-14(b):

(b) The court may assess reasonable and necessary attorney’s fees and expenses of litigation in any civil action in any court of record if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under Chapter 11 of this title, the “Georgia Civil Practice Act.” As used in this Code section, “lacked substantial justification” means substantially frivolous, substantially groundless, or substantially vexatious.

10.

The Court has cited above and in the October Order the specific, intentional, unfounded, harassing and delaying tactics of Defendants in this case. These tactics have amounted to the very definition of “substantially frivolous, substantially groundless and substantially vexatious.” The Court has done so by specific references to the uncontroverted evidence in this record through its previously incorporated order and evidence. Defendants’ behavior has been willful and intentional. Furthermore, when given the opportunity to present evidence in contravention or to cross examine the evidence submitted by lead counsel in this case, Defendants did not do so.

11.

The amounts specifically found by the Court are found in the evidence and sworn testimony in this case.

12.

Pretermitted the issue of whether Plaintiff’s fees must be found to be reasonable under the various theories submitted, they are.

13.

Plaintiffs seek that this award be made jointly and severally against Defendants and their original attorney Stephen Robinson. Mr. Robinson did not appear for the hearing on August 13, 2021 despite having received notice of same as counsel of record. Furthermore,

there may be some question as to whether Mr. Robinson, who was subpoenaed to appear at a previous hearing, was informed to be present for today's hearing. The Court does not reach this issue.

14.

Plaintiff has not presented any evidence, other than conjecture, that any overt acts were taken by counsel that were not done so as the result of his representation of Defendants. Accordingly, this Court declines the request to make this award jointly and severally against Mr. Stephen Robinson.

15.

Plaintiff is hereby awarded the sum of and judgment is hereby entered in the amount of \$246,245.02 against Defendants jointly and severally. Said sum shall be due and payable within thirty (30) days of this Order.

SO ORDERED this 18th day of August, 2021.



JUDGE JANE C. BARWICK
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT