

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-000741

10/10/2018

HON. SHERRY K. STEPHENS

CLERK OF THE COURT
T. DeRaddo
Deputy

MANISH THAKRAR

GREGORY G MCGILL

v.

SURENDRA PALA

GORDON S BUELER

GORDON S BUELER / BUELER JONES
L L P
1300 N MCCLINTOCK DR STE B4
CHANDLER AZ 85226
PAUL A CONANT
JUDGE STEPHENS

MINUTE ENTRY

East Court Building - Courtroom 712

8:58 a.m. This is the time set for a telephonic Oral Argument on the parties' Application for Attorneys' Fees. Appearing on behalf of Plaintiff is counsel, Gregory McGill. Appearing on behalf of Defendant/Counterclaimant, Surendra Pala, is counsel, Gordon S. Bueler.

A record of the proceedings is made digitally in lieu of a court reporter.

The Court has read and considered all briefing on Plaintiff's Application for Attorney's Fees and Costs, filed on September 23, 2018 and on Defendant's Application for Award of Attorneys' Fees and Costs, filed on September 24, 2018.

The Court notes that Mr. Bueler did not file a Response to Plaintiff's Application for Attorneys' Fees and Costs.

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Argument is heard on the motions.

IT IS ORDERED taking these matters under advisement.

9:23 a.m. Matter concludes.

LATER:

The Court has considered Plaintiff's Application for Attorney's Fees & Costs filed September 23, 2018, the Declaration of Counsel In Support of Plaintiff's Fee Application (with exhibits) filed September 25, 2018, Pala's Application for Award of Attorneys' Fees and Costs filed September 24, 2018, the Affidavit of Counsel in Support of Application for Award of Attorneys' Fees and Costs (with exhibits) filed September 24, 2018, the Response in Opposition to Pala's Application for Fees & Costs (with exhibits) filed October 8, 2018, Plaintiff's Notice of Errata Re Response to Pala Fee App filed October 9, 2018, and the oral argument conducted on October 10, 2018. No written response to Plaintiff's Application for Attorney's Fees & Costs was filed.

Following a bench trial, the Court found for the parties as follows.

Count One of the Complaint, Breach of Contract, in favor of Plaintiff Thakrar, damages are zero dollars.

Claim One of the Counterclaim, Breach of Fiduciary Duty, in favor of Counterdefendant Thakrar.

Claim Two of the Counterclaim, Breach of Contract, in favor of Counterclaimant Pala, damages are zero dollars.

Claim Five of the Counterclaim, Unjust Enrichment, in favor of Counterdefendant Thakrar.

Claim Six, of the Counterclaim, Accounting, in favor of Counterdefendant Thakrar.

Summary judgment was granted on another breach of contract claim in favor of Plaintiff Thakrar with damages in the total amount of \$11,906.35.

Plaintiff Thakrar seeks attorney fees of \$171,390.00 and taxable costs in the sum of \$4,940.51. Plaintiff argues he is entitled to attorneys' fees because he was the successful party on two breach of contract claims. In addition he argues the other claims which he defended

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successfully against arose out of a contract (the partnership agreements) citing to A.R.S. § 12-341.01 (in any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees). Plaintiff also seeks attorneys' fees pursuant to A.R.S. § 12-349 (the court shall assess reasonable attorney fees if a party unreasonably expands or delays the proceeding). Plaintiff argues Defendant Pala's unreasonable conduct throughout the five years this matter has been pending resulted in unnecessary delays and expenses. Plaintiff also argues he is entitled to court costs pursuant to A.R.S. § 12-341 (the successful party to a civil action shall recover from his adversary all costs expended or incurred therein unless otherwise provided by law).

Defendant Pala seeks attorneys' fees in the amount of \$49,143.00 and costs in the amount of \$2,123.68 as the successful party on one contract claim.

The Court finds the verdict forms reflect both parties prevailed on certain claims at trial. Plaintiff Thakrar prevailed on a summary judgment motion on a contract claim and Defendant/Counterclaimant Pala prevailed on appeal of that summary judgment ruling on other issues. Attorney fees were not ordered by the appellate court. The original attorneys' fees ordered by the Court in connection with granting the summary judgment motion were not included in the judgment entered on that contract count. Considering all facts and circumstances, the Court finds Plaintiff Thakrar was the prevailing party and some attorneys' fees should be awarded pursuant to A.R.S. § 12-341.01. The Court does not find Defendant/Counterclaimant Pala unreasonably expanded or delayed the proceedings and is declining to award attorneys' fees pursuant to A.R.S. § 12-349.

The Court has considered the merits of the parties' claims, whether litigation could have been avoided or the case could have settled, whether assessing fees against either of the parties would cause extreme hardship, which party prevailed with respect to the relief sought, whether the legal question presented was novel or had been previously adjudicated, and whether a fee award would discourage other parties with tenable claims from litigation. The Court finds the litigation could have been avoided or the case settled (Plaintiff Thakrar offered to settle prior to trial and Defendant Pala refused the offer), assessing attorneys' fees will cause some hardship to both parties, the legal questions presented were not novel and a fee award will not discourage other parties with tenable claims. The Court has also considered whether the amount of fees requested by Plaintiffs is disproportionate to the outcome of the case and finds it is somewhat disproportionate. The Court has also considered the reasonableness of the billing rate, the hours expended and the amount of the attorneys' fees requested. See A.R.S. §12-341.01, A.R.S. § 12-349, Rule 54 (g)(2), Ariz. R.Civ.P., *Berry v. 352 E. Virginia, L.L.C.*, 228 Ariz. 9, 13, 261 P.3d 784, 788 (App. 2011), and *ABC Supply, Inc. v. Edwards*, 191 Ariz. 48, 51, 952 P.2d 286, 290 (App. 1996), and *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927 (App. 1983).

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The Court also considered the written and oral objections from the opposing party to each application. See *Geller v. Lesk*, 230 Ariz. 624, 628 (App. 2012) (once the party requesting fees makes a prima facie case the fees are reasonable, the burden shifts to the opposing party to establish the amount requested is clearly excessive), *Canon School Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 431, 443, 868 P.2d 1014, 1026 (App. 1993)(opposing party must make specific objections with factual detail pointing out which particular billing entries are unreasonable) and *Smith v. American Express Travel Related Servs. Co.*, 179 Ariz. 131, 140, 876 P.2d 1166, 1175 (App. 1994)(an opponent must make more than sweeping and conclusory allegations to demonstrate unreasonableness of a fee request).

A superior court awarding attorneys' fees pursuant to A.R.S. § 12-341.01 has broad discretion to determine what fees are reasonable. The amount awarded need not equal or relate to the attorney fees actually paid or contracted. *Flood Control District of Maricopa County v. Paloma Investment Ltd. Partnership*, 230 Ariz. 29, 279 P.3d 1191 (App. 2012). There is no presumption that attorneys' fees should be awarded in a contested contract action. *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 694 P.2d 1181 (1985).

The Court has considered the qualities of the advocate for Defendant, the character of the work accomplished, the work actually performed by attorney for Defendant, and the result and benefits derived by Defendant. See *Burke v. Arizona State Retirement System*, 2016 Ariz. 269, 77 P.3d 444 (App. 2003) and *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927 (App. 1983).

The Court finds the billing rates set forth in the Plaintiff's application were reasonable and most of the hours expended were reasonably expended for the purpose stated in counsel's declaration.

The Court further finds the taxable costs awarded below were authorized by statute, were necessarily incurred, and the amounts requested were reasonable under the circumstances.

The Court finds attorney fees in the amount of \$74,500.00 and costs in the amount of \$3,400.00 are reasonable and should be paid to Plaintiff Thakrar by Defendant/Counterclaimant Pala.

Accordingly,

IT IS ORDERED awarding attorneys' fees to Plaintiff Thakrar in the amount of \$74,500.00 and costs in the amount of \$3,400.00.

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IT IS FURTHER ORDERED Plaintiff Thakrar shall submit a proposed form of judgment consistent with the verdicts, this minute entry and applicable law on or before **October 30, 2018**. Defendant/Counterclaimant Pala may submit an objection to the proposed form of order as provided in the Arizona Rules of Civil Procedure.