

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

Atterol, Inc., a Delaware Corporation,	:	C.A. No. 02-01-053
Lee Smutz and Eileen Smutz, his	:	
Wife,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
John D. Wingart and	:	
Rhonda L. Wingart,	:	
	:	
Defendants.	:	

Defendants' request for attorney's fees and costs

Submitted: June 8, 2005

Decided: June 9, 2005

Defendants' request for attorney's fees and costs is granted.

Andre M. Beauregard, Esquire, Brown, Shields, Beauregard & Chasanov, Post Office
Drawer B, Rehoboth Beach, Delaware 19971, Attorney for Plaintiffs.

James D. Griffin, Esquire, Griffin & Hackett, P.A., Post Office Box 612, Georgetown,
Delaware 19947, Attorney for Defendants.

Trader J.

In this civil action I award John D. Wingert and Rhonda L. Wingert (Wingert) attorney's fees and costs in the amount of \$6791.11.

The relevant facts are as follows: Atterol filed a civil action against Wingert for the return of the deposit in connection with the sale of Magnolia's Restaurant property and business located at Cedar Neck Road, Oceanview, Delaware. The trial in this case was held on May 11, 2005 and by opinion of this court dated May 23, 2005, I held that Atterol had breached the contract and that Wingert may retain the deposit as liquidated damages. For a more complete statement of the facts, see the prior opinion of the Court. Since Wingert prevailed in the trial of the case, the defendant's attorney has requested reasonable attorney's fees pursuant to the contract.

The general rule is that each party must bear his/her attorney's fees and expenses of litigation unless there is a contractual or statutory basis for liability. *Safeway Stores v. Chamberlain Protective Services*, 451 A.2d 66 (D.C. Cir.1982); *Thomas v. Marta*, 1990 WL 35292 at *2 (Del. Super.). In fact, the law courts may not order the payment of attorney's fees as part of the costs paid by the losing party unless the payment of such fees is authorized by some provision of statute or contract. *Casson v. Nationwide Ins. Co.*, 455 A.2d 361 (Del. Super. 1981). In this case, paragraph 12 of the contract states that "in the event of dispute under the contract, the unsuccessful party is liable for the other party's attorney's fees." Therefore, the assessment of attorney's fees in this case is authorized by the contract executed by the parties.

In determining the assessment of reasonable attorney's fees, the court should consider the eight factors enumerated in Rule 1.5 of the Professional Rules of Conduct. These factors are as follows:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the service; and (8) whether the fee is fixed or contingent.

As to these various factors, I consider primarily factors 1, 3, 4 and 7. This case has been pending in the Sussex County Court of Common Pleas for at least three years. In this case, it was necessary for the defense counsel to make a motion to vacate the default judgment and argue the matter before the Commissioner. Additionally, it was necessary for him to argue a review of the Commissioner's decision before Judge Clark. Thereafter discovery was undertaken, a pretrial conference was held, and the trial of the case was held on May 11, 2005. Wingert's attorney has spent almost thirty-three hours in connection with this case. Addressing factors 3 and 7, Mr. Griffin is a lawyer with good reputation in Sussex County with considerable experience in civil litigation. Since Wingert prevailed in a civil action involving \$25,000, Mr. Griffin obtained a favorable result for his client.

Mr. Griffin has presented an affidavit for costs and attorney's fees in the amount of \$6791.11. He has conceded that \$350.00 should be deducted from the requested amount and deducting that amount from \$6791.11 modifies the request to \$6441.11.

Considering the factors enumerated in Rule 1.5, I conclude that the request for attorney's fees and costs is justified and reasonable. Therefore, I award Wingert

attorney's fees and costs in the amount of \$6441.11 to be entered by the clerk of the court as a judgment in this case.

IT IS SO ORDERED.

Merrill C. Trader
Judge