

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

March 25, 2008

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Re: ***The Reserves v. Crystal Properties***
C.A. No. 05C-11-011-RFS

Dear Counsel:

I have reviewed the letters on the attorney's fees request by Plaintiffs' counsel. Plaintiffs seek \$183,325.00 in fees and \$1,597 in costs. Defendants concede the hours and work done on the case as outlined in the affidavit submitted by Mr. McNally in support of an award. The objections focus on two points: (1) should the fees be reduced by the lack of success on certain of plaintiffs' claims, and (2) are the fees limited to twenty percent (20%) of the amount adjudged for principal and interest by 10 *Del.C.* § 3902?

Independently, I have reviewed the factors which govern fee applications.¹ In this regard, the litigation was not open and shut. The underlying purchase and sale agreement was complex, and the issues were contentious. The situation called for skilled counsel to devote a significant amount of time and to bring the Superior Court action to a close. Plaintiffs successfully obtained a Declaratory Judgment concerning Defendants' responsibilities for additional infrastructure expenses together with a damages award. The legal issues were more challenging than usual given the interplay with the parallel Court of Chancery suit.

During the time before and after suit, the real estate market declined significantly. With this pressure, Plaintiffs' counsel had to pursue the case diligently which precluded other fee generating work. The fee rate is not contested, and it is within the rate customarily charged for similar cases. The amount involved is significant both by establishing Defendants' legal responsibility to be at forty-two and one quarter percent (42.25%) and by entering a \$603,959.12 judgment.

Although Plaintiffs achieved overall success, the results were mixed. Plaintiffs sought \$1,198,130 in damages.² The award of \$603,959.12 is fifty and four tenths percent (50.4%) of the total demand. A substantial part of the difference represents the worth of the land exchanged by Plaintiffs instead of cash to reduce infrastructure costs. The value of the lots was determined to be one half of what Plaintiffs asserted, \$750,000 rather than \$1,500,000. However, Plaintiffs' time was not largely occupied in this point. Also, it is difficult to distinguish pretrial efforts from later successful and unsuccessful

claims. All arise from the proverbial ball of wax and are intertwined. Plaintiffs did not succeed in their fraud claims, and offsets reduced the demand. These are discussed in the bench ruling of January 3, 2008. Upon consideration, the fee award will be reduced by thirty-five percent (35%) rather than fifty and four tenths percent (50.4%) to \$119,161.25.³

As required, I have considered the reputation of Plaintiffs' counsel which is excellent. The fee arrangement called for a lower than usual hourly rate. Plaintiffs reserved the right to seek additional fees from the Court. The client paid \$93,155.44 in fees, and Plaintiffs' counsel is entitled to a premium given the risks of litigation. Defendants do not challenge the basic arrangement which is reasonable under the circumstances.

Concerning Defendants' ability to pay, it is uncertain if the limited liability companies will acquire this capacity. They have no independent value beyond the equity in the property. Certainly, the principals have personal assets which can satisfy the award. Presently, the property is subject to a mortgage foreclosure sale instituted by Defendants' lender, Severn Savings Bank, FSB. While personal liability was not imposed, if the principals decide to avoid a Sheriff's Sale or to buy it back, then their personal assets would be pledged to secure the money for their limited liability companies and thereby save their investment. This would be so for either the Severn foreclosure or should Plaintiffs execute on their judgment.

The second question concerns whether or not 10 *Del.C.* § 3902 sets a twenty percent (20%) limitation. Given my decision, that point is moot as the fee award is in a lesser amount.⁴

Considering the foregoing, Plaintiffs are awarded \$119,161.25 in fees, plus \$1,597 in costs for a total amount of \$120,758 for fees and costs.⁵

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

ENDNOTES

1. The award of reasonable attorney's fees involves the exercise of judicial discretion, after consideration of the following factors: (1) time and labor required, the novelty and difficulty of 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 would 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 experience, reputation and the ability of the lawyers or lawyers performing the services; (8) whether the fee is fixed or contingent; (9) the ability to pay; and (10) whether counsel has received or expects to receive compensation from any other source. *General Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973).
2. \$2,835,810.70 was claimed as total expenses relating to Defendants' property. Their 42.5% share would be \$1,198,130.
3. The calculations are $183,325 \times .35 = \$64,163.75$; $183,325 - \$64,163.75 = \$119,161.25$.
4. The calculations are $\$603,959.12 \times .20 = \$120,792$ in fees under the statute.
5. The costs would not be reduced as they are incurred fully in filing suit.