

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Plaza 75 Shopping Center, LLC,
Plaintiff,
v.
Big Lots Stores, Inc.,
Defendant.

No. CV10-0592-PHX-DGC

ORDER

Plaintiff Plaza 75 Shopping Center, LLC (“Plaintiff” or “Plaza 75”) filed suit against Defendant Big Lots (“Defendant” or “Big Lots”) for breach of a commercial lease agreement. Doc. 1-1 at 4. After judgment was entered on its behalf (Doc. 47), Big Lots filed a motion for attorneys’ fees (Doc. 49). The Court denied the motion without prejudice pending resolution of the then-pending appeal. Doc. 54. The judgment was affirmed on appeal (Doc. 55), and Big Lots has now filed a renewed motion for attorneys’ fees and costs (Doc. 56 at 2). The motion is fully briefed and no party has requested oral argument. The Court will grant the motion in part.

I. Entitlement and Eligibility.

Big Lots seeks attorneys’ fees and costs pursuant to the parties’ lease agreement and A.R.S. § 12-341.01. Doc. 56. Section 40 of the lease agreement provides that “[i]n the event either Landlord or Tenant is required to enforce the provisions of this Lease, then the prevailing party shall be entitled to court costs and reasonable attorney’s fees from the non-prevailing Party as the court may award.” Doc. 56 at 3; Doc. 37-1, Ex. A at

1 39. An award of attorneys' fees required by contract is mandatory, *Bennett v. Appaloosa*
2 *Horse Club*, 201 Ariz. 372, 378, 35 P.3d 426, 432 (Ariz. Ct. App. 2001), enforced
3 according to the terms of the contract, *F.D.I.C. v. Adams*, 187 Ariz. 585, 931 P.2d 1095,
4 1108 (Ariz. Ct. App.1996), and subject to the requirement of reasonableness, *see*
5 *Gametech Int'l, Inc. v. Trend Gaming Sys., L.L.C.*, 380 F. Supp. 2d 1084, 1088 (D. Ariz.
6 2005).

7 Under A.R.S. § 12-341.01(A), the court may award reasonable attorney fees to the
8 successful party in a contested action arising out of a contract. The Court retains
9 discretion to limit any award to a reasonable amount. *McDowell Mt. Ranch Cmty. v.*
10 *Simmons*, 216 Ariz. 266, 269-70, 165 P.3d 667, 670-71 (Ariz. Ct. App. 2007).

11 Plaza 75 does not dispute Big Lots' entitlement to attorneys' fees and costs.
12 Doc. 59. The Court finds that Big Lots is entitled to an award of fees and costs and will
13 proceed to examine the reasonableness of the award requested.

14 **II. Reasonableness.**

15 Big Lots seeks attorneys' fees and costs in the amount of \$28, 563.¹ Doc. 60 at 1.
16 Plaza 75 contends it would be unreasonable to include attorneys' fees for certain time
17 expenditures, and objects to the reasonableness of legal assistant Lori McAdoo's hourly
18 rate. Doc. 59 at 1-3. Plaza 75 also requests that any award in favor of Big Lots be
19 reduced by \$875 in sanctions previously awarded to it. Doc. 34.

20 **A. Fees Incurred in Preparing for Settlement Conference.**

21 Plaza 75 argues that it would be unreasonable for any award of attorneys' fees in
22 Defendant's favor to include fees incurred in preparing for the settlement conference that
23 was vacated because Defendant made a late request to appear telephonically, or in
24 preparing a settlement conference memorandum which was never shared with Plaintiff.

25
26 ¹ Big Lots' originally sought an award in the total amount of \$29,184. Doc. 56 at
27 1. Plaza 75 objected to fees incurred for time expended by Lori McAdoo on May 26,
28 2011, to "[p]repare documents for oral argument on summary judgment." Doc. 59 at 1.
In its reply, Big Lots acknowledged the entry was included in error and withdrew \$621
from its original request. Doc. 60 at 1.

1 Doc. 59 at 2. Specifically, Plaza 75 objects to fees incurred for time spent preparing for
2 the settlement conference on July 29 and 30, 2010 (Doc. 59 at 2-3), and not to fees
3 incurred for time spent preparing for the settlement conference prior to July 29, 2010 (*see*
4 Doc. 57-1, Ex. A at 3-4). Big Lots contends it is entitled to these fees “because the
5 surprise cancellation of the settlement conference was neither invited nor desired by Big
6 Lots.” Doc. 60 at 3.

7 On June 9, 2010, with agreement by the parties, the Court referred a settlement
8 conference to Magistrate Judge Lawrence Anderson and directed the parties to contact his
9 office for a date and time for the conference. Doc. 17. On June 15, 2010, after the
10 parties had failed to contact his office, Judge Anderson set a settlement conference for
11 August 6, 2010. Doc. 19. On July 29, 2010, Big Lots filed a motion seeking relief from
12 having to appear physically at the settlement conference, arguing that its willingness to
13 participate was based on Big Lots’ representative being allowed to appear electronically.
14 Doc. 21 at 2. In response, Judge Anderson cancelled the settlement conference. Doc. 23.

15 Big Lots alleges that Judge Anderson scheduled the conference “[b]efore the
16 parties had an opportunity to contact Judge Anderson” (*Id.* at 2), but Judge Anderson
17 waited eight days after the referral for the parties to contact him (Doc. 34 at 2). Big Lots
18 also argues that it did not receive Judge Anderson’s order requiring the presence of a
19 corporate representative until its counsel returned from vacation on July 26, 2010
20 (Doc. 60 at 3), but this argument is contradicted by the record. Judge Anderson’s order –
21 titled “Settlement Conference Order” – was entered on June 15, 2010 (Doc. 19), and the
22 time sheets for Big Lots’ counsel contain an entry for June 29, 2010 that reads: “[r]eview
23 settlement conference order.” Doc. 57-1, Ex. A at 3. Big Lots’ motion a month later was
24 untimely and resulted in cancellation of the settlement conference. The Court therefore
25 finds Big Lots’ request for fees incurred in preparing for the conference on July 29 and
26 30 to be unreasonable. The Court will subtract \$558. Doc. 59 at 2.

27 **B. Fees Incurred in Responding to Motion for Sanctions.**

28 Plaza 75 contends that “it would be unfair and unreasonable for any award of

1 attorneys' fees in Defendants' favor to include attorneys' fees incurred for time drafting a
2 response to Plaintiff's Motion for Sanctions, which was granted by the Court, and which
3 arose out of Defendant's late request to appear telephonically rather than in person."
4 Doc. 59 at 2. Plaza 75 specifically objects to the inclusion of \$386 in fees for time spent
5 drafting the response to Plaza 75's motion for sanctions. *Id.*; Doc. 57-1, Ex. A at 4. Big
6 Lots does not respond. The Court will subtract \$386. Doc. 59 at 2.

7 As a sanction, the Court awarded Plaintiff \$875 in attorneys' fees for work related
8 to the settlement conference. Doc. 34. That order called for the award to be reduced
9 from the prevailing party's attorneys' fees. *Id.* at 8. Big Lots argues that the \$875
10 sanction award should not be subtracted from its award because sanctions were not
11 appropriately awarded. Doc. 60 at 3. The Court disagrees and will subtract \$875.

12 **C. Reasonableness of Lori McAdoo's Rate.**

13 Big Lots seeks \$1,980 for nine hours expended by paralegal Lori McAdoo at a rate
14 of \$220 per hour. Doc. 57 at 2; Doc. 57-1, Ex. A. Plaza 75 objects to the rate as
15 unreasonable, and the Court agrees. In its discretion, the Court finds \$150 to be a
16 reasonable hourly rate for experienced paralegals in this area. Accordingly, the Court
17 will subtract \$630.²

18 **IT IS ORDERED** that Defendant's motion for attorneys' fees and costs (Doc. 56)
19 is **granted in part**. Defendants are awarded attorneys' fees and costs of \$26,114.

20 Dated this 21st day of November, 2012.

21
22
23 

24 _____
25 David G. Campbell
26 United States District Judge

27 _____
28 ² The Court arrived at this number by subtracting \$150 from \$220, and then multiplying the nine hours expended by Ms. McAdoo.