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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Loretta Cheeks,

No. CV-12-01543-PHX-JAT

9
10 Plaintiff,

ORDER

11 v.

12 General Dynamics Corporation, General
13 Dynamics C4 Systems, Inc.,

14 Defendants.
15

16 Pending before the Court are Defendant General Dynamics C4 Systems'
17 ("GDC4S") Motion for Attorneys' Fees (Doc. 110) and Plaintiff Loretta Cheeks' (Ms.
18 "Cheeks") Motion to Strike Defendant's Motion for Attorney's Fees (Doc. 113). Both
19 Motions are fully briefed including a Response by Ms. Cheeks to the Motion for
20 Attorneys' Fees, a Reply by GDC4S to that Response, and a Response by GDC4S to the
21 Motion to Strike. The Court now rules on these Motions.

22 **I. MOTION TO STRIKE (Doc. 113)**

23 The Court first considers Ms. Cheeks' Motion to Strike because, if granted, it
24 would preclude consideration of GDC4S' Motion for Attorneys' Fees. Previously, the
25 Court entered an order granting summary judgment in favor of GDC4S on its
26 Counterclaim for Breach of Contract. (Doc. 105). In the Order, the Court authorized
27 GDC4S to file a Motion for Attorneys' Fees if the parties were unable to agree on a
28 reasonable amount of attorneys' fees and costs. (*Id.*). Later, GDC4S filed a Motion for

1 Attorneys' Fees, including an Affidavit of Defendant's counsel and an Itemization of
2 Attorneys' Fees. (Docs. 110-1 and 110-2). In her Response, Ms. Cheeks recognized that
3 GDC4S did not include a complete copy of the written fee agreement in its Motion for
4 Attorneys' Fees. (Doc. 111 at 10). With its Reply, Defendant's counsel included a copy
5 of its retention agreement with its client GDC4S. (Doc. 112-1). The retention agreement
6 included a cover page, an hourly rates section which demonstrated the hourly rate
7 charged by Defendant's counsel, a blended rate section dealing with issues of
8 employment litigation, and a final signature page of the agreement. (Doc. 112-1). Ms.
9 Cheeks moves to strike GDC4S' Motion for Attorneys' Fees. (Doc. 113).

10 **A. Legal Standard**

11 Local Rule of Civil Procedure ("Local Rule") 7.2 governs the filings of motions to
12 strike, and provides that "a motion to strike may be filed only if it is authorized by statute
13 or rule . . . or if it seeks to strike any part of a filing or submission on the ground that it is
14 prohibited (or not authorized) by a statute, rule, or court order." LRCiv 7.2(m)(1).

15 **B. Analysis**

16 Ms. Cheeks moves to strike GDC4S' Motion for Attorneys' Fees (Doc. 110) and
17 Reply (Doc. 112) under LRCiv 7.2(m)(1). Ms. Cheeks argues that GDC4S' Motion for
18 Attorneys' Fees was not authorized by a statute, rule, or court order. (Doc. 113 at 1).
19 Particularly, Ms. Cheeks claims that the Court should strike the Motion based on
20 GDC4S' lack of compliance with Local Rule 54.2(d)(2). Local Rule 54.2(d)(2) provides,
21 that "[a] complete copy of any written fee agreement, or a full recitation of any oral fee
22 agreement, must be attached to the supporting memorandum. If no fee agreement exists,
23 then counsel must attach a statement to that effect." LRCiv 54.2(d)(2). Ms. Cheeks
24 objects that GDC4S failed to provide a complete copy of its written fee agreement to its
25 Motion for Attorneys' Fees and produced a redacted version in its Reply.

26 In response, GDC4S argues that Ms. Cheeks Motion to Strike is inappropriate
27 because it has failed to establish that the Motion for Attorneys' Fees "is prohibited (or not
28 authorized) by a statute, rule, or court order" as required under Local Rule 7.2(m).

1 Furthermore, GDC4S' contends that its alleged lack of compliance does not mean that the
2 Motion for Attorneys' Fees is prohibited or not authorized.

3 In this case, the Court's summary judgment order allowed GDC4S to file a request
4 for fees pursuant to Local Rule 54.2. (Doc. 105 at 37). Thus, the Motion for Attorneys'
5 Fees was not "prohibited (or not authorized) by a statute, rule, or court order."
6 LRCiv 7.2(m). Because the motion for attorneys' fees was directly authorized by a court
7 order, a Local Rule 7.2(m) motion to strike does not apply. Whether the Motion for
8 Attorneys' Fees and the Reply comply with Local Rule 54.2 is a separate issue to be
9 considered at the Court's discretion when determining reasonable attorneys' fees.

10 Accordingly, the Court denies Ms. Cheeks' Motion to Strike (Doc. 113) and, now
11 considers GDC4S' Motion for Attorneys' Fees (Doc. 110).

12 **II. MOTION FOR ATTORNEYS' FEES (Doc. 110)**

13 GDC4S moves for an award in the amount of \$24,720.00 in its Motion for
14 Attorneys' Fees. (Doc. 110 at 10). Ms. Cheeks, in her Response, argues that GDC4S'
15 Motion for Attorneys' Fees should be denied in its entirety, Ms. Cheeks should be
16 declared the successful party, and Ms. Cheeks should be awarded her costs and attorneys'
17 fees. (Doc. 111 at 11). In its Reply, GDC4S suggests that Ms. Cheeks made no
18 meaningful challenge to its requested award, that GDC4S is entitled to reasonable
19 attorneys' fees, and that GDC4S should be awarded the \$24,720.00 requested for its
20 attorneys' fees. (Doc. 11 at 11).

21 **A. Appropriateness of Awarding Attorneys' Fees**

22 **1. Legal Standard**

23 **a. Local Rule of Civil Procedure 54.2**

24 Ms. Cheeks contests GDC4S' Motion for Attorneys' Fees (Doc. 110). She claims
25 Local Rule 54.2 does not apply to this case and, alternatively, that GDC4S failed to
26 comply with Local Rule 54.2.

27 Local Rule 54.2 provides the procedural mechanism for moving for
28 attorneys' fees. *See* LRCiv 54.2(b)–(e). This rule sets forth the required
content of the memorandum in support of the motion (including a

1 discussion of the reasonableness of the requested award), the necessary
2 supporting documentation (including a task-based itemized statement of
3 fees and expenses), and the format and description requirements of the
itemized statement. *Id.*

4 *Pure Wafer, Inc. v. City of Prescott*, No. CV-13-08236-PCT-JAT, 2014 WL 3797850 (D.
5 Ariz. July 29, 2014).

6 **b. A.R.S. § 12-341.01(A)**

7 GDC4S moves for attorneys’ fee pursuant to A.R.S. § 12-341.01(A) and the
8 confidentiality agreement between GDC4S and Ms. Cheeks. Pursuant to A.R.S. § 12-
9 341.01(A), “[i]n any contested action arising out of a contract, express or implied, the
10 court may award the successful party reasonable attorney fees.” A.R.S. § 12-341.01(A).
11 For purposes of awarding attorneys’ fees, “a contested action is one in which the
12 defendant has appeared and generally defends against the claims and demands made by
13 the plaintiff.” *Morrison v. Shanwick Int’l Corp.*, 804 P.2d 768, 775 (Ariz. Ct. App. 1990).
14 If the Court does find a party to be the “successful party” for purposes of the statute, the
15 Court then exercises its broad discretion in awarding reasonable attorneys’ fees. *See*
16 *Assoc. Indem. Corp. v. Warner*, 694 P.2d 1181, 1184 (Ariz. 1985) (en banc). In
17 exercising its discretion the Court considers, among other factors:

- 18 1. the merits of the claim or defense presented by the unsuccessful party;
- 19 2. whether the litigation could have been avoided or settled and the successful
20 party’s efforts were completely superfluous in achieving the result;
- 21 3. whether assessing fees against the unsuccessful party would cause an
22 extreme hardship;
- 23 4. whether the successful party did not prevail with respect to all of the relief
24 sought;
- 25 5. the novelty of the legal question presented; and
- 26 6. whether the award in the particular case would discourage other parties
27 with tenable claims or defenses from litigating or defending.

28 *American Const. Corp. v. Philadelphia Indem. Ins. Co.*, 667 F. Supp. 2d 1100, 1106–07

1 (D. Ariz. 2009) (citing *Assoc. Indem. Corp.*). No single factor can be determinative and
2 the court is to weigh all of the factors in its exercise of its discretion. *Wilcox v. Waldman*,
3 744 P.2d 444, 450 (Ariz. Ct. App. 1987).

4 **2. Analysis**

5 **a. Local Rule of Civil Procedure 54.2**

6 **i. Who Awards Attorneys' Fees: The Court or the**
7 **Jury?**

8 The Court granted summary judgment in favor of GDC4S with regard to the
9 counterclaim for breach of contract. (Doc. 105). The Order awarding summary judgment
10 on the counterclaim in favor of GDC4S also authorized a motion for attorneys' fees
11 pursuant to Local Rule 54.2. (Doc. 105 at 37). In her Response, Ms. Cheeks contends that
12 deciding damages under Local Rule 54.2 improperly denies her right to a jury trial where
13 a party seeks attorneys' fees as actual damages. Furthermore, Ms. Cheeks contends that
14 deciding damages under Local Rule 54.2 improperly denies her an opportunity to dispute
15 evidence of damages on summary judgment. The Court does not find these contentions
16 persuasive.

17 By awarding summary judgment to GDC4S on the counterclaim breach of
18 contract, the Court concluded that there was "no genuine dispute as to any material fact
19 and that the movant was entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).
20 Therefore, the Court held that no reasonable jury could have found differently with
21 respect to the breach of contract issue, which includes the actual damages element.
22 Despite the fact that no exact value was determined, the Court determined that "GDC4S
23 had undoubtedly suffered damages—in the form of attorneys' fees and costs—
24 proximately caused by Plaintiff's breach of contract." (Doc 105 at 12).

25 Any dispute as to the amount of attorneys' fees is resolved by the Court pursuant
26 to Local Rule 54.2. Thus, the Court finds that Local Rule 54.2 did not violate Ms.
27 Cheeks' right to a jury trial nor did it deny her the opportunity to dispute the amount of
28 attorneys' fees claimed by GDC4S.

1 signed by Ms. Cheeks as a condition of employment. That confidentiality agreement
2 between Ms. Cheeks and GDC4S expressly includes attorneys' fees as an actual cost to
3 be reimbursed by Ms. Cheeks in the event of non-compliance. (Doc. 91-1 at 47). The
4 Court reasoned that the attorneys' fees provision in the agreement made it foreseeable
5 that such fees were a consequence of violating the agreement terms. (Doc. 105 at 11–12).
6 In light of the fee provision, the Court determined that the proximately caused damages
7 element, required for a breach of contract, was present in this case. *Id.* The Court did not
8 separately address the issue of whether awarding attorneys' fees under the Arizona's fee
9 shifting statute alone would suffice as damages for a breach of contract claim.

10 GDC4S moves for attorneys' fees pursuant to both the fee provision in the
11 confidentiality agreement and A.R.S. § 12-341.01(A). Having determined the issue of
12 whether the attorneys' fees were damages for the purposes of breach of contract, the
13 Court now exercises its discretion in determining whether attorneys' fees are an
14 appropriate award. Based on the Court's findings, the confidentiality agreement was
15 previously recognized as an express and lawful contract (Doc. 105 at 12) making A.R.S.
16 § 12-341.01(A) applicable to the instant fee dispute.

17 In this case, the counterclaim was an action in which the Plaintiff appeared, and
18 which she generally defended against. GDC4S brought the counterclaim for breach of
19 contract which Ms. Cheeks then proceeded to answer and deny, bringing it within the
20 definition of a contested action.

21 In her Response to GDC4S' Motion for Attorneys' Fees, Ms. Cheeks contends that
22 GDC4S was not the "successful party," that attorneys' fees were not actual damages, and
23 that there were no damages available for the breach of contract. Based on her argument
24 that no damages were available, Ms. Cheeks suggests that GDC4S obtained no relief and
25 cannot be the successful party. (Doc. 111 at 6). The Court previously dealt with Ms.
26 Cheeks' argument that she is the successful party because there are missing elements in
27 the breach of contract counterclaim. *See* (Doc. 105). In the Order authorizing attorneys'
28 fees, the Court granted GDC4S' Motion for Summary Judgment with respect to the

1 breach of contract counterclaim. (Doc. 105). The Court determined that Ms. Cheeks’
2 breach of contract proximately caused GDC4S to suffer damages in the form of
3 attorneys’ fees and costs. (Doc. 105 at 12) Thus, based on the Court’s previous findings,
4 GDC4S is the “successful party” on said counterclaim.

5 The Court now exercises its discretion as to whether it will award attorneys’ fees
6 based upon the factors articulated in *American Contr. Corp. v. Philadelphia Indem. Ins.*
7 *Co.*, 667 F. Supp. 2d 110, 1106–1107:

8 **i. The merits of the claim or defense presented by the**
9 **unsuccessful party.**

10 GDC4S prevailed on the substantive merits of the breach of contract counterclaim.
11 The unsuccessful party, Ms. Cheeks, presented defenses that the contract was an overly
12 broad contract of adhesion and, in the alternative, that GDC4S could not establish
13 damages. The Court was not persuaded by either of these defenses. The Court granted
14 summary judgment in favor of GDC4S for the counterclaim, meaning the Court
15 determined that no reasonable jury could have found differently with respect to the
16 breach of contract issue. This factor weighs in favor of a fee award.

17 **ii. Whether the litigation could have been avoided or**
18 **settled and the successful party’s efforts were**
19 **completely superfluous in achieving the result.**

20 It was necessary for GDC4S to litigate this case to the end to vindicate its legal
21 right and recover damages. Furthermore, GDC4S argues that litigation was only
22 necessary because Ms. Cheeks’ refused to return the documents that were central to the
23 breach of contract counterclaim. Ms. Cheeks contends that GDC4S could have used
24 discovery tools to discover the entirety of the documents. (Resp. at 9). The Court finds
25 GDC4S’ argument persuasive in this case because the confidentiality agreement covered
26 the return of all documents, not just the discovery, and GDC4S required litigation to
27 enforce that contract. This factor weighs in favor of a fee award.

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1 any award. The Court already found that GDC4S was the successful party for the reasons
2 set forth in the Court’s determination on the breach of contract counterclaim. (Doc. 105)

3 Alternatively, Ms. Cheeks claims that the damages in the counterclaim were
4 merely nominal. Though the value of damages had not yet been deduced at the time of
5 granting summary judgment, the harm suffered by GDC4S was not nominal as it was
6 established by the non-nominal attorneys’ fees which are now at issue. The Court finds
7 the arguments, that GDC4S’ damages were nominal and that no reasonable fee amount
8 should be granted, unpersuasive.

9 **b. Hourly Billing Rate**

10 “Under Arizona Law, ‘in corporate and commercial litigation between fee-paying
11 clients, there is no need to determine the reasonable hourly rate prevailing in the
12 community for similar work because the rate charged by the lawyer to the client is the
13 best indication for what is reasonable under the circumstances of a particular case.’”
14 *Hummingbird Defense Systems, Inc. v. Ye*, No. CV-06-2151-PHX-JAT, 2007 WL
15 4200751, at *4 (D. Ariz. 2007) (quoting *Schweiger*, 673 P.2d 927, 931–32).

16 Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (“Ogletree”) represented GDC4S
17 and billed at a “blended rate” of \$335.00 per hour for the combined efforts of two
18 shareholders and an associate. (Doc. 110-1 at 4, ¶ 28). This “blended rate” was
19 discounted from the billable rate of \$425.00 per hour for the shareholder in the retention
20 agreement. (Doc. 112-1 at 8). Ogletree separately charged GDC4S \$160.00 per hour for
21 billed services of a paralegal with 12 years of experience. Furthermore, attorney
22 Townsend, a shareholder at Ogletree, avers that her firm “charged GDC4S rates that are
23 reasonable and generally in accordance with rates charged by other lawyers in the
24 community with similar experience and education.” (Doc. 110-1 at 4, ¶ 25).

25 Ms. Cheeks did not raise an objection to the billing rates set forth by GDC4S.
26 Therefore, the Court finds the billable rates recited above reasonable, and any fees
27 awarded herein will be pursuant to the rates described above.

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1 claimed.

2 In sum, the Court finds the billing rate and hours expended are reasonable in this
3 case. Therefore, the Court awards GDC4S the full \$24,720.00 requested from Ms.
4 Cheeks.

5 **III. CONCLUSION**

6 Based on the foregoing,

7 **IT IS ORDERED** that Plaintiff's Motion to Strike GDC4S' Motion for
8 Attorneys' Fees (Doc. 113) is DENIED.

9 **IT IS FURTHER ORDERED** that Defendant's Motion for Attorneys' Fees
10 (Doc. 110) is GRANTED.

11 **IT IS FURTHER ORDERED** awarding Defendant, GDC4S \$24,720.00 in
12 attorneys' fees from Plaintiff, Ms. Cheeks.

13 Dated this 28th day of October, 2014.

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17 James A. Teilborg
18 Senior United States District Judge
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