

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 09-cv-01988-PAB-KMT

RYAN ARCHER,
HEATHER ARCHER,
DR. CRAIG CHAN,
HERB GULLINGSRUD,
CAROL GULLINGSRUD,
DAVID HANNA,
COLLEEN HANNA,
DANIEL HOGAN,
DIANE HOGAN,
ROBERT MIHALIK,
PATRICIA MIHALIK,
SUSAN KILLMAN
LARRY NELSON,
ANNETTE NELSON,
LARRY SCOTT,
LYNN SCOTT,
WILLIAM SHANAHAN,
LISE SHANAHAN,
DONNA WOLOSIN, and
JAMES WOLOSIN,

Plaintiffs,

v.

WALLACE DARLING,
DANA LYNN ROCK,
SCOTT McDOWELL,
LAKEWOOD HILLS INVESTMENTS, LLC,
UNIVERSAL REAL ESTATE INVESTMENTS CORPORATION,
SUNTRUST MORTGAGE, INC.,
QUADSTAR MORTGAGE, LLC, a/k/a NEW COLORADO MORTGAGE, LLC, and
DOES 1-10,

Defendants.

ORDER

This matter is before the court on “Motion for Plaintiffs’ Attorney’s Fees Against Defendant Scott McDowell” (“Motion”) [Doc. No. 330, filed January 27, 2011].

On January 7, 2011, District Judge Philip A. Brimmer ordered that

Scott McDowell shall pay the reasonable attorney’s fees and costs incurred by plaintiffs in seeking entry of default against him and on opposing his motion to set aside. Plaintiffs and Mr. McDowell shall endeavor to reach a stipulation regarding a reasonable amount and shall seek imposition of the award by joint motion on or before January 21, 2011. If the parties are unable to reach a stipulation, plaintiffs shall file, on or before January 28, 2011, a motion which includes a statement of attorney’s fees and costs claimed to have been incurred as a result of seeking default against Mr. McDowell and in responding to his motion to set aside.

See Order, [Doc. No. 240] entered on January 7, 2011 at 5, ¶ 3. Although directed by Judge Brimmer to attempt a stipulation as to the amount of fees to be awarded, the parties were unable to come to a stipulation. (Mot. at 4.) The plaintiffs filed their Motion as directed by the District Court together with a billing outlining the description of service or cost dated January 20, 2011 [Doc. No. 330-1] and the Affidavit of Michael A. Alfred in Support of Motion for Attorney Fees Against Defendant Scott McDowell [Doc. No. 330-2]. Defendant Scott McDowell refused to stipulate to the calculation of fees, however, filed no response or objection to the Motion.

Plaintiffs request fees and costs in the amount of \$2,950.00 for researching, drafting, reviewing and filing for the entry of default and the opposition to the motion to set aside entry of default against defendant Scott McDowell. (Mot. ¶ 4.) Nine (9) hours were billed at \$250 per

hour for the associate attorney, and two (2) hours were billed at \$350 per hour for the reviewing attorney. (*Id.*)

In *Robinson v. City of Edmond*, 160 F.3d 1275 (10th Cir.1998), the Tenth Circuit reviewed the approach to be used in calculating an award of attorney's fees, stating:

To determine the reasonableness of a fee request, a court must begin by calculating the so-called "lodestar amount" of a fee, and a claimant is entitled to the presumption that this lodestar amount reflects a "reasonable" fee. The lodestar calculation is the product of a number of attorney hours "reasonably expended" and a "reasonable hourly rate."

Id. at 1281. The analysis has two components: first, whether the hours billed "were 'necessary' under the circumstances", *id.*; and second, whether the hourly rate charged "is the prevailing market rate in the relevant community." *Guides, Ltd. v. Yarmouth Group Property Mgmt., Inc.*, 295 F.3d 1065, 1078 (10th Cir. 2002).

Based on the court's experience with the fees and rates of attorneys practicing in the District of Colorado federal court, the court finds the hourly rates charged by the associate attorney and the reviewing attorney to be reasonable and in line with prevailing market rates. Further, the hours expended are also reasonable given the complexity of the case and the number of plaintiffs represented. Presumably Defendant McDowell does not disagree since he filed no objection to either the hourly rate or the number of hours expended on the project.

Therefore, it is **ORDERED**

Plaintiffs' "Motion for Plaintiffs' Attorney's Fees Against Defendant Scott McDowell"
[Doc. No. 330] is **GRANTED**. Plaintiffs are awarded attorneys fees against Scott McDowell in
the total amount of \$2,950.00.

Dated this 4th day of April, 2011.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge