

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

PIRTEK USA, LLC,

Plaintiff,

v.

Case No: 6:16-cv-1302-Orl-37TBS

MICHAEL J. TWILLMAN, DOLORES M.
TWILLMAN and DONALD J. TWILLMAN,

Defendants.

ORDER

This case comes before the Court on Pirtek USA's Motion for Payment, by Defendants, of its Attorneys' Fees Pursuant to the Franchise Agreement (Doc. 65), and Pirtek USA, LLC's Motion for Withdrawal of its Motion for Attorney's Fees, [Doc. 65], Without Prejudice, or in the Alternative, for an Enlargement of Time for the Filing of the Fees Motion (Doc. 83). Defendants oppose both motions (Docs. 78, 84).

On October 26, 2016, Plaintiff moved for payment of its attorney fees incurred in pursuit of a preliminary injunction against Defendants (Doc. 65). Plaintiff argues that the recovery of its fees is authorized by the parties' franchise agreement (Id. at 2-3).

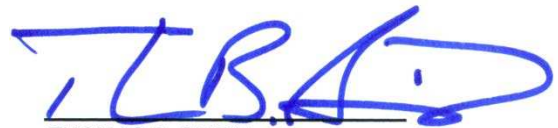
Defendants oppose the motion on the grounds that: (1) it is time-barred; (2) the motion is deficient because it does not state the amount of fees sought; (3) the contractual fee provision is unconscionable; and alternatively, (4) the motion is premature (Doc. 78).

Plaintiff has reconsidered its motion for fees and now "accepts [Defendants'] argument that its request for such fees is premature and that it should seek such fees at the conclusion of the case." (Doc. 83 at 1). Accordingly, Plaintiff has asked the Court for permission to withdraw its fee motion (Id.). Defendants oppose this request on the ground

that their argument regarding the prematurity of the motion is only made in the alternative and the Court should decide the fee motion now, on the merits (Doc. 84).

Allowing Plaintiff to withdraw its motion will not delay the proceedings or prejudice Defendants. Cf. D.H. Pace Co. v. AOD Group, LLC, Case No. 1:12-cv-3854-WSD, 2013 U.S. Dist. LEXIS 162744, at *3 (N.D. Ga. Nov. 15, 2013). Accordingly, Plaintiff's motion to withdraw (Doc. 83) is **GRANTED**, and the Clerk is directed to **TERMINATE** the motion for attorney's fees (Doc. 65) without prejudice to refile at a later date (Doc. 65). This Order does not adjudicate any of Defendants' arguments why the motion for attorney's fees should not be granted.

DONE and ORDERED in Orlando, Florida on December 1, 2016.



THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to Counsel of Record