

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

FILED  
U.S. DISTRICT COURT  
AUGUSTA DIV.

2021 JAN 19 P 2:38

WHITESELL CORPORATION,

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Plaintiff,

CLERK M. Aris  
SO. DIST. OF GA.

v.

CV 103-050

ELECTROLUX HOME PRODUCTS, INC.,  
HUSQVARNA, A.B., and HUSQVARNA  
OUTDOOR PRODUCTS, INC.,

Defendants.

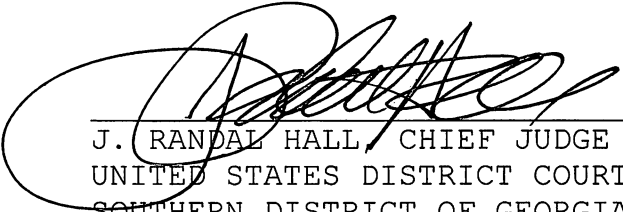
ORDER

On December 11, 2020, the Court granted Defendants' motion for summary judgment on Plaintiff Whitesell Corporation's claim for expenses of litigation under O.C.G.A. § 13-6-11 based upon the fact that Whitesell had not designated an expert witness on the issue as required. (Doc. No. 1433.) On December 18, 2020, Whitesell filed a motion to strike Defendants' counterclaims for expenses of litigation under O.C.G.A. § 13-6-11 (Count VI of their respective Answers) based upon their failure to designate appropriate experts. In response, Defendants state that they "do not oppose an Order in the form of summary judgment disposing of the § 13-6-11 counterclaims for the reasons stated in the Court's Order of December 11, 2020 because it is Defendants' view that there is no good faith basis for opposing such an Order." (Doc. No. 1440, at 2.)

Rather than get bogged down, as the parties have, in the technicalities of the appropriate procedural mechanism by which the Court may dispose of the counterclaims, the Court notes that it may grant summary judgment on its own after identifying for the parties material facts not in dispute. See Fed. R. Civ. P. 56(f)(3). Having fully litigated the issue and with their concession, the Court concludes that Defendants are fully apprised of the circumstances upon which their counterclaims for expenses of litigation cannot stand in the case. The Court further concludes that summary judgment should be granted in favor of Plaintiff Whitesell on said counterclaims.

Upon the foregoing, Plaintiff Whitesell's motion to strike Defendants' claims for expenses of litigation under O.C.G.A. § 13-6-11 (doc. no. 1436) is **DENIED**. The Court, *sua sponte*, grants summary judgment against Defendants on their counterclaims for expenses of litigation because without expert testimony on the issue, they would not be able to establish their claims as a matter of law.

**ORDER ENTERED** at Augusta, Georgia, this 19<sup>th</sup> day of January, 2021.



J. RANDAL HALL, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA