

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ALLMAND BROS., Inc.,	)	
	)	
Plaintiff,	)	4:12CV3199
	)	
v.	)	
	)	
APPLIED EQUIPMENT &	)	<b>MEMORANDUM</b>
ENGINEERING,	)	<b>AND ORDER</b>
	)	
Defendant.	)	
	)	

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In this diversity action alleging breach of contract and unjust enrichment, I granted Plaintiff's motion for summary judgment (Filing [20](#)) and concluded that judgment should be entered for Plaintiff and against Defendant in the amount of \$141,316 plus interest at the rate of 12 percent from March 22, 2012, through the date of judgment. However, I withheld issuance of final judgment pending disposition of any motion for attorney fees. (Filing [27](#).) Now pending before the court is Plaintiff's application for attorney fees, which requests \$6,700 in attorney fees and expenses and \$403.75 in taxable costs. (Filing [30](#).)

Nebraska law applies to determine whether Plaintiff is entitled to an award of attorney fees. *Schaffart v. ONEOK, Inc.*, 686 F.3d 461, 475 (8<sup>th</sup> Cir. 2012) (in diversity case, court applies choice-of-law rules of Nebraska, the forum state; under Nebraska law, attorney fees are procedural and therefore governed by law of forum state); *Johnson Intern. Co. v. Jackson Nat'l Life Ins. Co.*, 812 F. Supp. 966, 982 (D. Neb. 1993) (Nebraska law applied to determine whether plaintiff was entitled to award of attorney fees, even though another state's substantive law applied; federal district court was sitting in Nebraska and Nebraska considers its attorney fee statutes as procedural).

“[T]he general rule in [Nebraska] is that attorney fees may be recovered only when provided by statute, or where the uniform course of procedure has been to allow recovery.” *Parkert v. Lindquist*, 693 N.W.2d 529, 531 (Neb. 2005) (quoting *Quinn v. Godfather’s Investments*, 348 N.W.2d 893 (Neb. 1984)). See also *Stewart v. Bennett*, 727 N.W.2d 424, 429 (Neb. 2007). I have not located, nor has Plaintiff cited, any Nebraska statute or course of procedure which would allow the recovery of attorney fees in this breach-of-contract action, especially since no one argues that the parties’ claims and defenses are frivolous or brought in bad faith. See *Lamb Eng. & Constr. Co. v. Nebraska Public Power Dist.*, 103 F.3d 1422, 1434 (8<sup>th</sup> Cir. 1997) (“We find no Nebraska statute which provides for recovery of attorney fees in a contract action.”); *Stewart*, 727 N.W.2d at 430 (“By implication, in § 25-824, the Legislature has made a statement of public policy against granting attorney fees in actions that are not frivolous.”); *Neb. Rev. Stat. § 25-824(2)* (“in any civil action commenced . . . in any court of record in this state, the court shall award as part of its judgment . . . reasonable attorney’s fees . . . against any attorney or party who has brought or defended a civil action that alleges a claim or defense which a court determines is frivolous or made in bad faith”).

Accordingly, I shall deny Plaintiff’s application for attorney fees (Filing [30](#)) and enter final judgment.

IT IS ORDERED:

1. Plaintiff’s application for attorney fees (Filing [30](#)) is denied;
2. Final judgment will be entered, by separate document, for Plaintiff and against Defendant in the amount of \$141,316, plus pre-judgment interest at the rate of 12 percent from March 22, 2012, through the date of judgment and post-judgment interest calculated in accordance with [28 U.S.C. § 1961](#) from and after the date of judgment to the date of payment;

3. Regarding Plaintiff's request for costs (Filing [30](#)), Plaintiff should file a verified bill of costs with the Clerk of Court within 30 days after the entry of judgment consistent with the requirements set forth in [NECivR 54.1](#).

DATED this 9<sup>th</sup> day of September, 2013.

BY THE COURT:

*Richard G. Kopf*

Senior United States District Judge

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