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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 SUNTRUST BANKS, INC.,

11 Plaintiff,

12 v.

13 BE YACHTS, LLC et al.,

14 Defendants.

CASE NO. C18-840 MJP

ORDER GRANTING PLAINTIFF'S  
MOTION FOR ATTORNEYS'  
FEES;

REQUIRING ADDITIONAL  
INFORMATION

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16 THIS MATTER comes before the Court on Plaintiff's Motion for Attorneys' Fees. (Dkt.  
17 No. 69.) Having read the Motion, the Response (Dkt. No. 71), the Reply (Dkt. No. 72), and the  
18 related record, the Court GRANTS the motion but ORDERS Plaintiff to submit additional  
19 information in support of its attorneys' fees.

20 **Background**

21 In 2013 Defendant Edward Balassanian through his wholly-owned company, Be Yachts  
22 LLC, borrowed \$1,800,000.00 from SunTrust Banks to fund the purchase of a 63-foot luxury  
23 yacht. Mr. Balassanian signed a SunTrust Marine Installment Note, First Preferred Ship  
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1 Mortgage, and a Borrowing and Guaranty Resolution personally guaranteeing the \$1,800,000  
2 debt. After Defendants defaulted, Plaintiff repossessed the Yacht on February 12, 2016. On  
3 March 10, 2017, the Yacht was sold for \$1,050,000, significantly less than the \$1,752,761.86  
4 Defendants still owed on the Note.

5 On June 11, 2018, Plaintiff sued Defendants to recover the deficiency judgment. Plaintiff  
6 brought claims for breach of contract and breach of the implied duty of good faith and fair  
7 dealing, seeking the \$857,979.60 deficiency, accrued interest, costs, and attorneys' fees.  
8 Defendants asserted counterclaims for failure to use reasonable care in the preservation of  
9 collateral, failure to hold a commercially reasonable sale, and for damages and rights under  
10 Washington's Uniform Commercial Code, RCW 62A.9A-625.

11 On June 30, 2020, following a two-and-a-half-day bench trial, the Court found that  
12 Plaintiff was entitled to judgment in its favor in full, awarding Plaintiff \$797, 979.60.60. (Dkt.  
13 Nos. 67-68.) Plaintiff now brings the present Motion, seeking \$267,551.00 in attorneys' fees.

#### 14 Discussion

15 "Under the so-called 'American rule,' a prevailing party generally cannot recover  
16 attorneys' fees from the losing party." Ulloa v. QSP, Inc., 271 Va. 72, 81 (2006). "However,  
17 parties are free to draft and adopt contractual provisions shifting the responsibility for attorneys'  
18 fees to the losing party in a contract dispute." Id. The Court must apply state law in interpreting  
19 an attorneys' fees provision of a contract. Franklin Financial v. Resolution Trust Corp., 53 F.3d  
20 268, 273 (9th Cir.1995). Plaintiff's Motion is based on the attorneys' fees provision of the First  
21 Preferred Ship Mortgage, which provides:

22 Mortgagee may sue any or all parties liable on the Note, jointly and severally, for  
23 the deficiency in any appropriate state or federal court and in the event of suit,  
24 recover costs and attorneys' fees.

1 (Dkt. No. 69, Declaration of Isaak Hurst (“Hurst Decl.”), Ex. 4, ¶ 7.)

2 As an initial matter, Defendants argue that the Mortgage and its attorneys’ fee provision  
3 was superseded by the SunTrust Marine Installment Note, Disclosure Statement and Security  
4 Agreement (the “Note”), which includes the following provision: “[This Note] represents the  
5 entire agreement between the parties and supersedes any prior or contemporaneous oral or  
6 written understanding or representation.” (Dkt. No. 71, Ex. 1, Declaration of Anna Johnsen  
7 (“Johnsen Decl.”), Ex. 1.) Because the Mortgage was executed on the same day, Defendants  
8 contend the Note controls. (Dkt. No. 71 at 3.) Plaintiff counters that because at least two  
9 separate provisions of the Note reference the Mortgage, it was incorporated by reference.  
10 (Johnsen Decl., Ex. 1 at 6.) The Court agrees. In signing the Note, Defendants acknowledged  
11 that the Bank had a Preferred Ship Mortgage on the collateral (Id. at 4), and agreed to the  
12 following provision:

13 If you ask, I will sign any other document you want to have filed or recorded for  
14 the purpose of perfecting the security interest I am giving you in this Note  
15 including all documents necessary for you to have a properly filed, recorded and  
16 perfected Preferred Ship Mortgage on the collateral.

17 (Id.) And because the Mortgage and the Note are incorporated, the Court considers the terms of  
18 the agreements together, including the Parties’ agreement that any dispute under the contract is  
19 to be governed by Virginia law. (Id. at 7.); see also Plunkett v. Plunkett, 271 Va. 162, 167  
20 (2006) (finding that where a document is incorporated by reference, the court must consider the  
21 terms of the agreements together). Because the attorneys’ fees clause in the Mortgage controls,  
22 the Court does not reach Defendants’ arguments regarding whether a separate provision in the  
23 Note, not applicable to this case, is ambiguous or “strange.” (See Dkt. No. 71 at 6-7.)

24 Next, Defendants argue the Mortgage was an adhesion contract and was thus  
unconscionable. (Dkt. No. 71 at 5-6.) “[A]n inequitable and unconscionable bargain” is “one

1 that no man in his senses and not under a delusion would make, on the one hand, and as no fair  
2 man would accept, on the other.” Flint Hill Sch. v. McIntosh, No. 181678, 2020 WL 33258, at  
3 \*5 (Va. Jan. 2, 2020) (citing Smyth Bros.-McCleary-McClellan v. Beresford, 128 Va. 137, 170  
4 (1920). For there to be unconscionability, the “inequality must be so gross as to shock the  
5 conscience.” Id. (citing Smyth Bros., 128 Va. at 170). One factor to consider in determining  
6 whether a contractual provision is unconscionable is whether the contract is an adhesion contract.  
7 Id.

8 Defendants rely exclusively on the recent Virginia Supreme Court case, Flint Hill, in  
9 support of their argument. In Flint Hill, the mother of a child enrolled in a private school sought  
10 declaratory judgment that the attorneys’ fees clause in the contract was unenforceable. Flint Hill  
11 Sch. v. McIntosh, No. 181678, 2020 WL 33258, at \*1 (Va. Jan. 2, 2020). The provision required  
12 parents to pay “all attorneys’ fees and costs incurred by Flint Hill School in any action arising  
13 out of or relating to this Enrollment Contract.” Id. In upholding the circuit court, the Virginia  
14 Supreme Court concluded that the attorneys’ fees provision was so broad as to be  
15 unconscionable, “especially considering the signatories (the parents of students) would have to  
16 pay the School’s attorneys’ fees even if the School was the one to initiate a proceeding  
17 eventually found to be without merit.” Flint Hill Sch. v. McIntosh, No. 181678, 2020 WL  
18 33258, at \*6 (Va. Jan. 2, 2020).

19 The attorneys’ fee provision in this case is easily distinguishable from the one at issue in  
20 Flint Hill. Here, the provision is limited to lawsuits against “parties liable on the Note,” and then  
21 only when there is a deficiency. (Hurst Decl., Ex. 4, ¶ 7.) This provision is sufficiently limited  
22 to a situation where the borrower has breached the contract and the Bank has already taken  
23 several steps to recover its loan; the provision is not unreasonably broad. Neither have  
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1 Defendants demonstrated that the inequality between the parties was “so gross as to shock the  
2 conscience,” as Mr. Balassanian—who created Be Yachts, LLC to limit his tax liability before  
3 obtaining the mortgage on the Yacht—could not be described as an unwitting consumer.

4 Finally, Defendants challenge whether Plaintiff was the prevailing party. While Plaintiff  
5 prevailed at trial, Defendants argue that Plaintiff is requesting attorneys’ fees for unsuccessful  
6 claims and motions. Under Virginia law, “A prevailing party who seeks to recover attorneys’  
7 fees pursuant to a contractual provision such as the one before us has the burden to present a  
8 prima facie case that the requested fees are reasonable and that they were necessary.” W.  
9 Square, L.L.C. v. Comm’n Techs., Inc., 274 Va. 425, 433 (2007). A prevailing party “is not  
10 entitled to recover fees for work performed on unsuccessful claims.” Ulloa, 271 Va. at 82.  
11 Plaintiff has the burden to establish to a reasonable degree of specificity those attorneys’ fees  
12 associated with its prevailing claim. Id.

13 The Court finds that Plaintiff is entitled to attorneys’ fees, but on its present submission it  
14 has not met its burden of demonstrating to a reasonable degree of specificity those attorneys’  
15 fees associated with its prevailing claim. Plaintiff has submitted 120 pages of declarations and  
16 exhibits; nearly 75 of those pages are individual billing entries, many of which have been  
17 redacted. The Court finds that in order to meet its burden, Plaintiff must submit specific,  
18 unredacted evidence of work performed solely on Plaintiff’s successful claim. Plaintiff may not  
19 recover attorneys’ fees for time spent on unsuccessful motions, such as its Motion for Partial  
20 Summary Judgment (Dkt. No. 16), or for the second Rule 30(b)(6) deposition, where the Court  
21 ordered Plaintiff to provide “one or more additional 30(b)(6) witnesses at its expense who will  
22 testify for the corporation.” (Dkt. No. 52 at 7 (emphasis added).) Plaintiff also may not recover  
23 the time Mr. Armstrong spent “getting up to speed,” especially where that time was duplicative  
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1 of work performed by Mr. Hurst, a lawyer from the same firm. However, the Court does not find  
2 it unreasonable that Plaintiff was represented by two attorneys at trial, or during trial  
3 preparations.

4 **Conclusion**

5 Therefore, Plaintiff's Motion for Attorneys' Fees is GRANTED in part. Plaintiff is  
6 ORDERD to provide short, unredacted, declarations and exhibits that include billing entries for  
7 successful motions or claims by **October 9, 2020**. Plaintiff's pending Motion for a Bill of Costs  
8 (Dkt. No. 70) will be re-noted for the same day.

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10 The clerk is ordered to provide copies of this order to all counsel.

11 Dated September 28, 2020.

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13 Marsha J. Pechman  
14 United States Senior District Judge