

RENDERED: AUGUST 8, 2008; 10:00 A.M.  
 NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2006-CA-001842-MR

SMITH RENTAL ENTERPRISES, INC.

APPELLANT

APPEAL FROM WHITLEY CIRCUIT COURT  
v. HONORABLE JERRY D. WINCHESTER, JUDGE  
ACTION NO. 04-CI-00840

JEFF STEWART

APPELLEE

OPINION  
VACATING IN PART  
AND REMANDING

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BEFORE: DIXON, LAMBERT, AND STUMBO, JUDGES.

DIXON, JUDGE: Smith Rental Enterprises, Inc. (“Smith”), appeals from a judgment and order of the Whitley Circuit Court denying Smith’s motion for attorney’s fees following a jury verdict in Smith’s favor. After reviewing the record, we vacate in part and remand for further proceedings.

On May 17, 2004, Appellee, Jeff Stewart (“Stewart”) executed a lease agreement to rent a home owned by Smith at 1000 Nile Street in Corbin, Kentucky. In the following months, Smith learned that Stewart allowed a dog to live inside the house, in violation of the lease agreement. On November 19, 2004, Smith filed a complaint against Stewart in Whitley Circuit Court, alleging Stewart breached the lease agreement and damaged the residence. Stewart filed an answer, and the parties engaged in the discovery process.

A jury trial commenced on October 13, 2005. Smith sought damages for painting, carpet cleaning, and carpet replacement. The jury unanimously found that Stewart breached the lease agreement and awarded Smith damages of \$273.60 for carpet cleaning. Thereafter, pursuant to the terms of the lease, Smith tendered a motion requesting attorney’s fees for itemized services totaling \$1,250.00.<sup>1</sup> The court summarily denied the motion without explanation. On July 20, 2006, the court rendered a final judgment on the jury verdict. This appeal followed.

Smith contends the court abused its discretion by denying reasonable attorney’s fees. We agree.

It is well-settled that “attorney fees are not allowable as costs, nor recoverable as an item of damages” unless expressly provided by statute or contract. *Cummings v. Covey*, 229 S.W.3d 59, 61 (Ky. App. 2007). In the case at bar, the lease agreement provided a contractual basis for Smith to recover attorney’s fees:

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<sup>1</sup> The motion actually requested \$1,450.00 in fees; however, Smith concedes that figure was a mathematical error.

19. ATTORNEY'S FEES: Should Lessor deem it necessary or appropriate to retain an attorney for the collection of rent, damages or to enforce or defend any provision of this lease, Lessee agrees to pay, in addition to his other obligations hereunder, all expenses, including court and appellate costs and reasonable attorney's fees, in the event Lessor prevails in said litigation.

Smith contends that, since the jury found Stewart breached the lease agreement, the court was obligated to award Smith reasonable attorney's fees. Stewart, on the other hand, contends it was within the court's discretion to deny attorney's fees.

The attorney's fee provision of the lease is unambiguous, and Stewart does not challenge the validity of the lease. Consequently, pursuant to the plain language of the lease, once the jury found that Stewart breached the lease agreement, Stewart became liable for Smith's reasonable attorney's fees. *Cf. King v. Grecco*, 111 S.W.3d 877, 883 (Ky. App. 2002) (Where a statute mandated attorney's fees upon finding of liability, the court was obligated to award fees to damaged party). In *Capitol Cadillac Olds, Inc. v. Roberts*, 813 S.W.2d 287, 293 (Ky. 1991), our Supreme Court stated:

The trial judge is generally in the best position to consider all relevant factors and require proof of reasonableness from parties moving for allowance of attorney fees. In exercising its discretion, a trial court should require parties seeking attorney fees to demonstrate that the amount sought is not excessive and accurately reflects the reasonable value of bona fide legal expenses incurred.

“The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.”

*Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004) (citation and internal quotation marks omitted). After considering the arguments of the parties, we conclude that Smith, as the prevailing party, was entitled to a reasonable award of attorney's fees pursuant to the agreed-upon terms of the lease. Consequently, the trial court abused its discretion by arbitrarily denying Smith's motion for attorney's fees.

We vacate the order of the Whitley Circuit Court denying attorney's fees and remand for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

David O. Smith  
Marcia A. Smith  
Corbin, Kentucky

BRIEF FOR APPELLEE:

K. David Kersey  
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