

IN THE UTAH COURT OF APPEALS

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John F. Stout dba Pioneer Roofing Co.,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	Case No. 20040641-CA
)	
v.)	F I L E D
)	(September 15, 2005)
Creekside East Condominium Homeowners Association,)	2005 UT App 387
)	
Defendant and Appellant.)	

Third District, Salt Lake Department, 030917317
The Honorable Timothy R. Hanson

Attorneys: Loren M. Lambert, Midvale, for Appellant
Gregory P. Hawkins and Rick L. Sorensen, Murray, for Appellee

Before Judges Billings, Bench, and Thorne.

BILLINGS, Presiding Judge:

Appellant Creekside East Condominium Homeowners Association (Creekside) challenges a jury verdict and the trial court's award of attorney fees in favor of John Stout dba Pioneer Roofing Co. (Pioneer). We affirm.

Creekside asserts that the trial court abused its discretion when it refused to compel Pioneer to respond to various interrogatories and requests for production of documents. The trial court ruled that these discovery requests were vague, ambiguous, and overbroad. We review the denial of a motion to compel discovery under an abuse of discretion standard. See Pack v. Case, 2001 UT App 232, ¶16, 30 P.3d 436.

We agree with the trial court that each of Creekside's discovery requests was vague, ambiguous, or overbroad. Because Creekside did not limit its interrogatories and request for production to a certain period of time, Pioneer would have been required to produce the requested information accumulated during the twenty years that Pioneer has been in business. Furthermore, because of the broad and ambiguous nature of the interrogatories

and requests, Pioneer would have been required to produce information not relevant to the underlying dispute.

Creekside also argues that the trial court abused its discretion by denying its request to extend the cutoff date for discovery. Specifically, Creekside argues that it was conducting settlement negotiations, filing recusal requests, and filing a motion to compel, and thus, the trial court should have extended the discovery deadline. The trial court concluded that "[o]f these, only the pendency of a motion to compel could have potentially hindered the discovery from progressing[, but] . . . [Creekside] (for unknown reasons) has taken no further steps to complete its discovery in the months following[]" the court's order on the motion to compel. We agree. Creekside could have redrafted its discovery requests as the trial court suggested to narrow the scope of its requests, but it failed to do so. Because we "will not find abuse of discretion [in a discovery matter] absent an erroneous conclusion of law or where there is no evidentiary basis for the trial court's ruling," Askew v. Hardman, 918 P.2d 469, 472 (Utah 1996), we cannot say that the trial court abused its discretion in denying this motion.

Creekside further argues that the trial court abused its discretion by awarding Pioneer attorney fees. We review "the trial court's determination as to who was the prevailing party under an abuse of discretion standard." R.T. Nielson Co. v. Cook, 2002 UT 11, ¶25, 40 P.3d 1119. Because "[t]his question depends, to a large measure, on the context of each case, . . . it is appropriate to leave this determination to the sound discretion of the trial court." Id. Creekside argues that it is the prevailing party and thus should have been awarded attorney fees. Specifically, Creekside stated that while the jury awarded Pioneer \$31,865.00, it also awarded Creekside \$4200.00, and thus, it could also have been considered the prevailing party. However, the trial court stated that it

considered [Creekside's] theory that it is the prevailing party and finds it unpersuasive. Under the case law recited in [Creekside's] brief, it is undoubtable that [Pioneer] prevailed on the significant issues in this litigation and that [Creekside's] success (both in terms of monetary recovery and legal issues presented) was nominal.

There is nothing in the record to persuade us otherwise, and Creekside has failed to demonstrate that the trial court abused its discretion in awarding attorney fees to Pioneer.

Creekside next contends that the trial court abused its discretion by determining that Pioneer's attorney fees were reasonable and not excessive. To prevail on a claim that the trial court abused its discretion when it awarded attorney fees, Creekside "must 'marshal the evidence in support of the [trial court's] findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be against the clear weight of the evidence, thus making them clearly erroneous.'" Eggett v. Wasatch Energy Corp., 2004 UT 28, ¶38, 94 P.3d 193 (alteration in original) (citations omitted). However, Creekside has failed to marshal any evidence in support of the trial court's findings and merely opines as to reasons why it disagrees with the trial court's findings. Accordingly, we accept the trial court's findings regarding the reasonableness of Pioneer's attorney fees and conclude that the trial court did not abuse its discretion.

Pioneer requests attorney fees on appeal. "As the prevailing party, [Pioneer] is entitled to recover attorney fees incurred on appeal based on the parties' agreement. We therefore remand to the trial court to determine the appropriate amount of attorney fees incurred by [Pioneer] on appeal." R.T. Nielson, 2002 UT 11 at ¶27.

Accordingly, we affirm the trial court's denial of Creekside's motion to compel and its award of attorney fees to Pioneer. We also remand for a determination of appropriate attorney fees on appeal.

Judith M. Billings,
Presiding Judge

WE CONCUR:

Russell W. Bench,
Associate Presiding Judge

William A. Thorne Jr., Judge