IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

LYON VILLA VENETIA LLC, et al.,	:	
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	:	
Plaintiffs,	:	
	:	Case No. 351307-V
v.	:	
	:	
CSE MORTGAGE LLC, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

This case is before the court on remand from the Court of Special Appeals. In an unreported opinion, the appellate court affirmed this court's decision on the merits, which dismissed the plaintiffs' claims in the Second Amended Complaint in their entirety. However, the appellate court vacated this court's award of attorneys' fees in favor of the defendants under a contractual fee-shifting clause, and remanded for further proceedings. *Lyon Villa Venetia LLC, et al. v. CSE Mortgage LLC, et al.*, No. 1860, September Term, 2012 (March 11, 2014).

The court held a status hearing with counsel on October 28, 2014. At that hearing, counsel for the plaintiffs requested additional time to prepare. The court granted the request and set an evidentiary hearing for January 29, 2015, with briefs to be filed by January 23, 2015.

As will be discussed below, at the heart of this case is a contractual fee-shifting clause negotiated by and between two sets of extremely sophisticated parties in connection with a $35 million real estate loan. The court has reviewed all of the memoranda, affidavits and exhibits filed by the parties in connection with the January 2015 hearing. The court also has re-reviewed the materials previously submitted in connection with the original award of attorneys' fees, as well as the docket entries, pleadings, exhibits, and other papers filed in the now eleven-jacket

court file. For the reasons discussed below, the defendants' request for attorneys' fees and costs will be granted.[1]

I.

Factual Background

This complex commercial real estate litigation started on August 19, 2011, when a California real estate developer, Lyon Villa Venetia, LLC and certain of its affiliates, (collectively, "Villa Venetia")[2] sued three defendants: (1) CapitalSource Finance LLC, the original lender in this case; (2) CSE Mortgage LLC, an affiliate of and successor to CapitalSource Finance LLC, (collectively, "CapitalSource");[3] and (3) NorthStar Realty Finance Corporation ("NorthStar").[4] All of the claims asserted by Villa Venetia in each of its complaints arise out of the original Villa Venetia Loan Agreement ("Original Loan Agreement"), dated May 25, 2004, and the Tenth Modification to that agreement ("Tenth Loan Modification"), dated January 31, 2010.

The gist of the original complaint was that CapitalSource had sold the plaintiffs' 2004 loan to NorthStar and that the alleged sale violated plaintiffs' rights under a right of first refusal

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[1] In making its findings, the court has carefully considered all of the exhibits and affidavits submitted by the parties under Title 5 of the Maryland Rules. As the trier of fact, the court "may believe or disbelieve, accredit or disregard, any evidence introduced." *Great Coastal Express, Inc. v. Schruefer*, 34 Md. App. 706, 725 (1977); *see Bereano v. State Ethics Comm'n,* 403 Md. 716, 747 (2008). Every factual statement in this opinion is a factual finding, even if the word "finding" is not used in the sentence.

[2] The affiliates were parties to the original $35 million loan transaction and the Tenth Modification of the loan, which is the subject of this lawsuit.

[3] Both CapitalSource defendants are former or current wholly owned subsidiaries of Capital Source, Inc., a Delaware corporation, which is a publicly traded company. The parent was not sued and the internal structure of the parent, albeit complex and interesting, is not germane to this case.

[4] The plaintiffs subsequently amended their complaint to add various NorthStar affiliates, NS Advisors LLC, NS Servicing LLC, NS/CSE Holding LLC and NRFO Sub-REIT Corp. The details of the relationships among these entities are unimportant and they will be referred to collectively simply as NorthStar.

contained in the Tenth Loan Modification. NorthStar promptly filed a motion to dismiss, or in the alternative for summary judgment, contending that the transaction documents between NorthStar and CapitalSource, including those filed by both companies with the Securities and Exchange Commission, demonstrated that NorthStar did not purchase the plaintiffs' loan.

In 2010, NorthStar entered into a transaction with CapitalSource in which NorthStar received a subordinated equity interest in a Collateralized Debt Obligation, along with delegated management and servicing rights for the dozens of loans contained in that securitization. Included in that securitization was the commercial real estate loan that CapitalSource had made to the plaintiffs in 2004. CapitalSource agreed to indemnify NorthStar against all claims arising from the transaction. The operative documents established that NorthStar simply purchased delegated management and servicing rights to a pool of loans, including plaintiffs' loan, all of which had been securitized years earlier and held by a securitization trust.[5] There never was a sale of the plaintiffs' loan as alleged in the original complaint.

The plaintiffs then filed a series of amended complaints and shifted their legal theories. As to CapitalSource, the plaintiffs' new theory was that they were fraudulently induced to enter into the Tenth Loan Modification because the earlier securitization made it virtually impossible for them to exercise their right of first refusal. As to NorthStar, the plaintiffs proceeded under a theory of unjust enrichment.

After a hearing on May 22, 2012, the court dismissed the plaintiffs' claims against NorthStar with prejudice and without leave to amend. The court rejected the plaintiffs' claim that NorthStar somehow induced the plaintiffs to mistakenly believe that the NorthStar transaction would trigger the right of first refusal but did not tell plaintiffs that such an impression was

[5] This transaction is described in a Form 8-K, filed by CapitalSource, with the SEC on July 14, 2010, which is well over a year before the plaintiffs filed their original complaint in this case. The transaction also is described in NorthStar's Form 8-K, filed with the SEC on July 14, 2010.

incorrect. Despite multiple hearings, the plaintiffs offered the court no cognizable basis for concluding that NorthStar was somehow unjustly enriched by receiving fees for the work NorthStar performed for servicing the loans that had been securitized.

After a hearing on May 9, 2012, the court granted CapitalSource's motion for summary judgment as to all of the plaintiffs' claims. The principal basis for this ruling was the plain language of the release contained in the Tenth Loan Modification of May 14, 2010. Section 5.2 of the Tenth Loan Modification provides in relevant part:

> As of the date hereof and as of the Effective date, each Borrower, for itself and its successors and assigns (collectively, the "Borrower Parties") hereby fully and forever releases, discharges and acquits Lender and its parent, subsidiary, affiliate and predecessor corporations, and their respective past and present officers, directors, shareholders, partners, attorneys, legal representatives, agents and employees, and their successors, heirs and assigns and each of them, of and from and against any and all claims, demands, obligations, duties, liabilities, damages, expenses, indebtedness, debts, breaches of contract, duty or relationship, acts, omissions, misfeasance, malfeasance, causes of action, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and remedies therefor, chooses in action, rights of indemnity or *liability of any type, kind, nature, description or character whatsoever, and irrespective of how, why or by reason of what facts, whether known or unknown, whether liquidated or unliquidated* (collectively, "Claims") which any of such Borrower Parties may now have, or heretofore have had against any of said persons, firms or entities, by reason of, arising out of or based upon conduct, events or occurrences on or before the Recordation . . . .

(Emphasis added).

In short, after numerous hearings and extensive discovery, all of the plaintiffs' claims against CapitalSource and NorthStar were dismissed, without leave to further amend. However, before the plaintiffs' claims were dismissed, CapitalSource filed a counterclaim for attorneys' fees based upon the release and indemnification provisions of the Original Loan Agreement and the fee-shifting provisions of the Original Loan Agreement and the Tenth Loan Modification.

After a hearing on September 14, 2012, the court granted summary judgment in favor of CapitalSource on its counterclaim. The court then held a bench trial on September 14, 2012, on the issue of the amount of attorneys' fees and, in a written opinion dated October 16, 2012, rendered an award in favor of the defendants.

The Appeal

Three questions were before the Court of Special Appeals: first, did the trial court err in granting summary judgment against the plaintiffs; second, did the trial court in awarding attorneys' fees to the defendants; third, did the trial court err in awarding a specific sum to the defendants? In its unreported opinion, the Court of Special Appeals said: "We answer the first and second questions in the negative. However as to the third question, we find that the court erred in determining the amount awarded." (Slip Op. at p. 9).[6] As a consequence, the issue before this court on remand is the appropriate amount of an award of attorneys' fees and costs, including fees for the appeal.[7] (Slip Op. at p. 28).

The appellate court's criticisms of this court's fee award begin on page 25 of its opinion. Although this court apparently understood the relevant factors, it "erred in evaluating reasonableness under certain factors." (Slip Op. at p. 25). According to the appellate court, this court did not sufficiently explain how or why the plaintiffs' conduct of the litigation, and the repeated need for court involvement, affected the reasonableness of the defendants' legal fees. The appellate court also was concerned that this court improperly allocated some burden to the plaintiffs' to "disprove" the reasonableness of the hourly rates charged by the defendants'

[6] Specifically carved out of the remand by the appellate court was the amount this court awarded to the defendants with respect to NorthStar under the indemnity provision. (Slip Op. at p. 28). The amount of the award based solely on the bills passed through by NorthStar will not be revisited as that issue was decided against the plaintiffs on direct appeal.

[7] The plaintiffs continue in this court to challenge the defendants' entitlement to any fee shifting, but that question has been settled on direct appeal and this court cannot revisit that question.

lawyers. The appellate court also questioned why this court did not, in its view, "inquire into the reasonableness of billing $500 per hour for a fifth year associate." (Slip Op. at p. 25). Finally, the appellate court was concerned about the magnitude of the fee award "where the time and energy spent can not (sic) be easily gleaned from the record and observations at trial alone." (Slip Op. at p. 27).

II.

Entitlement to Attorneys' Fees

Although the defendants' entitlement to a reasonable award of fees and costs is now settled, their sources bear noting in the context of this case. The defendants presented two bases for its request for attorneys' fees, § 5.4 of the Original Loan Agreement, and § 6.10 of the Tenth Loan Modification.

Section 5.4 of the Original Loan Agreement provides, in pertinent part:

> Borrower shall pay, whether or not the closing of the Loan occurs, all costs and expenses incurred by Lender or any of its Affiliates, from time to time, including documentation and diligence fees and expenses, all search, audit, appraisal, recording, professional and filing fees and expenses and all other out-of-pocket charges and expenses (including UCC and judgment and tax lien searches and UCC filings and fees for post-Closing UCC and judgment and tax lien searches, if required by Lender), all internal and portfolio management fees (including of Capital Analytics) and *expenses and reasonable attorneys' fees and expenses actually incurred (including costs and expenses of in-house counsel allocated by Lender)... (*e) *in defending or prosecuting any actions, claims or proceedings arising out of or relating to Lender's transactions with Borrower...If Lender or any of its Affiliates uses in-house counsel for any of the purposes set forth above or any other purposes under this Agreement or any other Loan Document for which Borrower is responsible to pay or indemnify, Borrower expressly agrees that its Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel* selected by Lender or such Affiliate in its sole discretion for the work performed. In addition and without limiting the foregoing, Borrower shall pay all taxes (other than taxes based upon or measured by Lender's income or revenues or any personal property tax), if any, in connection with the

> issuance of any Note and the recording of the security documents and financing statements therefor and pursuant to the Security Documents. Lender may, at its written election, pay any such fees out of the Capital Expenditure Reserve.

(Emphasis added).

Section 6.10 of the Tenth Loan Modification provides, in pertinent part:

> Borrower shall reimburse Lender for all sums paid or advanced under or pursuant to this Agreement or the Existing Loan Documents (including, but not limited to, costs of appraisals, environmental investigations and reports, survey and other title costs), *reasonable attorneys' fees and expenses incurred by Lender in connection with the enforcement of Lender's rights under this Agreement and each of the other Existing Loan Documents, including, without limitation, reasonable attorneys' fees and disbursements for trial, appellate proceedings,* out-of-court workouts and settlements or for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys' fees incurred in bankruptcy and insolvency proceedings such as in connection with seeking relief from stay in a bankruptcy proceeding. Borrower's reimbursement obligation shall be part of the indebtedness secured by the Existing Loan Documents. Borrower specifically acknowledges that, due to the complexity of the Loan, the real estate development sophistication of Borrower and the difficulties contemplated in enforcement of Lender's remedies, Lender, to protect its interest properly and completely in the event of Borrower's default, shall be entitled to retain attorneys of Lender's choice at such attorneys' customary fee rates and that Lender shall be entitled to complete and full reimbursement of reasonable attorneys' fees. *Without limitation, all references to attorneys' fees and costs shall include all costs and expenses of in-house counsel allocated to Lender.*

(Emphasis added).

The defendants contended that both of the above-quoted contractual provisions authorize an award of attorneys' fees in this case, including an award for the work performed by in-house counsel. The plaintiffs contended that § 5.4 of the Original Loan Agreement applies only to third party indemnity claims. They further contended that § 6.10 of the Tenth Loan Modification is inapplicable because, they assert, CapitalSource is not the "lender" under that agreement.

Applying the objective rule of contract interpretation, this court concluded the meaning of § 5.4 to be plain and unambiguous and provided for fee-shifting in this case. The court also rejected the plaintiffs' argument that CapitalSource was not the "lender" under the Tenth Loan Modification. The plaintiffs sued both CSE Mortgage LLC and CapitalSource Finance LLC in the Second Amended Complaint, which is the operative pleading. The Tenth Loan Modification recited that the agreement was made by and between the plaintiffs and "CSE Mortgage LLC, a Delaware Limited liability company, as successor to CapitalSource Finance LLC, a Delaware limited liability company ('Lender')." It is plain from reading this document that these defendants were the "lender," as defined in the Tenth Loan Modification and, therefore, may enforce its provisions, including § 6.10.

As a fallback position, the plaintiffs argued that § 6.10 is limited to circumstances in which CapitalSource is the aggressor, *i.e.*, the party who started the lawsuit. They seize on the language "in connection with the enforcement of lender's rights under this Agreement. . . ." This court rejected that contention, as well.

In short, the plaintiffs litigated every aspect of the defendants' contractual entitlement to receive reimbursement for reasonable attorneys' fees, including its indemnity obligation to NorthStar.

III.

Legal Principles in Contractual Fee Shifting Cases

In *Monmouth Meadows Homeowners Ass'n, Inc. v. Hamilton*, 416 Md. 325 (2010), the Court of Appeals expressly rejected the lodestar method – common in statutory fee shifting – for evaluating attorneys' fee requests under a contractual fee shifting provision.[8] The Court instead

[8] On October 17, 2013, the Maryland Court of Appeals adopted new rules related to attorneys' fees. For cases commenced on or after January 1, 2014, these new rules shall apply: new Title 2, Chapter 700; new

adopted the eight factor test set forth in Rule 1.5(a) of the Maryland Lawyers' Rules of Professional Conduct.

> The factors of Rule 1.5(a) are:
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> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
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> (2) the likelihood that acceptance of the employment will preclude other employment of the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) time limitations imposed by the client or circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

In addition to the Rule 1.5(a), factors, trial courts also may consider the amount of the fee requested in relation to the dollar amount recovered (or the value of the opponent's claim that is defeated), the terms of any fee agreement between the paying party and its counsel, and any other factor that reasonably relates to the attorneys' fees requested in the specific case before it.[9]

Rule 3-741; new Appendix: Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses; and the amendments to Rules 1-341, 2-305, 2-433, 2-603, and 3-305. These rules do not apply to this action, which commenced well before December 31, 2013, the effective date of the new rules.

[9] Determining the amount of attorneys' fees, including the hourly rate is neither an exact science nor a "cook book" exercise. As the Fourth Circuit has cogently observed, "the determination of a 'market rate' in the legal profession is inherently problematic, as wide variations in skill and reputation render the usual laws of supply and demand largely inapplicable." *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990). This is particularly true in the Washington Metropolitan area.

CR-RSC Tower I, LLC v. RSC Tower I, LLC, 429 Md. 387, 465 (2012); *Monmouth Meadows*, 416 Md. at 337-38; *Diamond Point Plaza Ltd. P'ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 757-58 (2007).

A trial court may also consider its familiarity with the case and its own experience in similar types of cases litigated in the jurisdiction in which it serves. *David Sloane, Inc. v. Stanley G. House & Assocs., Inc.*, 311 Md. 36, 53 (1987); *Milton Co. v. Council of Unit Owners of Bentley Place Condo.*, 121 Md. App. 100, 121-22 (1998); *see also Sczudlo v. Berry,* 129 Md. App. 529, 551 n. 3 (1999) ("Of course, the court, as an experienced trial judge and former lawyer of longstanding, is qualified to opine as to reasonableness of attorney's fees based on familiarity with the time and effort of counsel as evidenced by the presentations in the proceedings before the court."); *Foster v. Foster*, 33 Md. App. 73, 77 (1976) (the trial judge "may rely upon his own knowledge and experience in appraising the value of an attorney's services" (footnote omitted)).[10]

The court will draw upon its familiarity with this case and with similar cases litigated before it in Montgomery County, particularly cases designated as Business & Technology cases under Md. Rule 16-205. This is not to say that the defendants need not produce legally sufficient evidence on the quantum, quality and reasonableness of their charges. The court's knowledge is not a substitute for evidence, for which the defendants bear the burden of persuasion. The party

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[10] In *Mullaney v. Aude*, 126 Md. App. 639, 663 (1999), Judge Sally Adkins, now a member of the Court of Appeals, said: "Trial judges are in the best position to know, from their experience on and off the bench, what constitutes a reasonable hourly rate for attorneys in their jurisdiction." In that case, the trial court had awarded attorneys' fees as part of a sanction in a discovery matter under Md. Rule 2-433. The appellate court in its unreported opinion in this case seems to disagree with this statement by Judge Adkins. (Slip Op. at p. 27). It also questions the case she cites, *Jenkins v. Cameron & Hornbostel*, 91 Md. App. 316 (1992), because the *Jenkins* case dealt with an award under Md. Rule 1-341. This court does not understand why a trial judge can use his or her knowledge of market rates, or the reasonableness of the overall attorneys' fees charged, in one type of case but not in another. The distinction, if there is one, is lost on this court.

seeking to shift fees has the burden to produce evidence sufficient to justify their award under the same standards of proof applicable to contract damages. *Bankers & Shippers. Ins. Co. of New York v. Electro Enters., Inc.*, 287 Md. 641, 661 (1980). Instead, this knowledge properly is used as a "market check" on the reasonableness of the evidence presented in this case under Rule 1.5(a).

The level of billing detail that must be provided by the party seeking attorneys' fees generally is within the discretion of the trial court, but that detail must be sufficient to evaluate the work for which compensation has been requested. Although there is no specific amount of detail that is required in every case, attorneys "should make their billings as detailed as reasonably possible, so that the client, and any other person who might be called upon to pay the bill, will know with some precision what services have been performed." *Diamond Point*, 400 Md. at 760. What is key is to ensure that there is sufficient information, given the type of case and the nature of the claims, from which the court can make an informed judgment. *See id.* at 761 ("It is not reasonable to expect the lawyer to have in tow an industrial engineer with a stop watch to measure how much time was devoted to one claim or another.").

Ordinarily, when considering a request in a contractual fee shifting case, the court employs a two-step analysis. First, the party seeking an award must prove their entitlement to attorneys' fees by a preponderance of the evidence and under the same standards as proof of contractual damages. The burden at all times remains with the proponent of the fee claim. *Diamond Point*, 400 Md. at 761; *Maxima Corp. v. 6933 Arlington Dev. Ltd. P'ship*, 100 Md. App. 441, 453-54 (1994). The mere compilation of hours recorded by lawyers, multiplied by hourly rates, is an insufficient measure. Among other things, there must be proof of the type of services rendered, as well as the necessity of those services in the context of the specific

litigation. *See Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 457-59 (2008); *Long v. Burson*, 182 Md. App. 1, 29 (2008); *Maxima*, 100 Md. App. at 453-54. But "[d]etermining reasonableness does not require that this Court examine individually each time entry and disbursement." *Aveta Inc. et al v. Bengoa*, No. 3598-VCL, 2010 WL 3221823, at *6 (Del. Ch. Aug.13, 2010) (footnote omitted).

Second, as noted above, the court must evaluate the evidence supporting or opposing the fee award under the standards of Rule 1.5(a), along with other pertinent factors. "The party requesting fees has the burden of providing the court with the necessary information to determine the reasonableness of its request." *Myers v. Kayhoe*, 391 Md. 188, 207 (2006). But there is no fixed litany the trial judge needs to consider in every case or otherwise recite in order to properly evaluate the fee request in light of the record of the proceedings. Instead, what is important is to carefully analyze the information before the court, relate it to the facts of the case and make findings as to reasonableness. *See Carroll Indep. Fuel Co. v. Washington Real Estate Inv. Trust*, 202 Md. App. 206, 237-40 (2011); *Cong. Hotel Corp. v. Mervis Diamond Corp.*, 200 Md. App. 489, 499-502 (2011).

There is some sentiment in the reported decisions to the effect that, unlike statutory fee shifting cases, contractual fee shifting "does not carry with it the notion that the importance of the right vindicated will justify an expenditure of attorney time that is *hugely disproportionate* to the dollar amount at issue in the case." *Monmouth Meadows*, 416 Md. at 337 (Emphasis added). To that effect, the Court of Appeals has directed that "trial judges should consider the amount of the fee award in relation to the principal amount in litigation, and this may result in a downward adjustment." *Id.*

To be sure, a trial judge must consider proportionality under Rule 1.5(a), but in a contractual fee shifting case, the degree of success does not necessarily predominate over the other factors under the Rule. Although degree of success is important, it is simply one factor in a court's analysis. Delaware case law is particularly useful in properly balancing these factors given the volume of complex business litigation it encounters. In *Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242 (Del. 2007), the Supreme Court of Delaware expressly rejected a strict proportionality or predominance argument under rules that are identical to Maryland's Rules. *Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242, 248 (Del. 2007).[11] The Delaware Court of Chancery likewise has rejected an analysis that focuses too heavily on the result in a contractual fee shifting case. *Aveta Inc. et al v. Bengoa*, No. 3598-VCL, 2010 WL 3221823, at *6 (Del. Ch. Aug. 13, 2010).

It is also important to recognize that, unlike fees shifted under a statute which are imposed on the parties by a political body such as a legislature, attorneys' fees under a contract are an item of damages (or potential damages) for which the parties specifically bargained, an item of damage expected to be recovered in the event of a breach of that agreement. This is especially true in cases in which the agreement in question is a negotiated one between sophisticated parties, as opposed to a take-it-or leave-it contract such as a consumer credit card agreement or the cable bill.

In this case, the court finds that the parties are sophisticated commercial real estate entities who certainly knew what their contracts meant at the time they signed them. In negotiating their agreements, the parties were represented by lawyers well-versed in commercial

[11] In *Mahani*, the Delaware Court of Chancery awarded the plaintiff $16,500.06 in damages for breach of contract and $103,454.50 for attorneys' fees. *See Mahani*, 935 A.2d at 245. The Delaware Supreme Court affirmed this decision. *Id.* at 247-48.

real estate matters, and who were by no means "forced" to agree to any particular term in an agreement, much less fee shifting. But they did, the court finds, specifically bargain for fee shifting in the event of litigation.

Contract-based fee shifting, especially in commercial or business cases, truly is a matter of mutual assent between the parties to a contract. In other words, when deciding upon the total consideration for a business transaction, sophisticated parties ordinarily take into account the likelihood of litigation in the event of a dispute. The recovery of attorneys' fees in that event, therefore, is a contemplated item of contractual damage. The recovery of attorneys' fees and costs is part of the expectation interest as much as any other part of the consideration and should be respected by a court unless plainly unreasonable. Although the fees and costs requested must be reasonable under Rule 1.5(a), reasonableness should be measured with reference to the scope and nature of the specific litigation and contractual provision at hand.

Also pertinent is the agreement between the clients and the lawyers, as contemplated by factor 8 of Rule 1.5(a). Although the terms of a fee agreement between a lawyer and his client "cannot absolve the [c]ourt of its duty to determine a reasonable fee; on the other hand, an arm's length agreement, particularly with a sophisticated client, as in this instance, can provide an initial 'rough cut' of a commercially reasonable fee." *Wisconsin Inv. Bd. v. Bartlett*, No. Civ.A. 17727, 2002 WL 568417, at *6 (Del. Ch. April 9, 2002) (Chandler, C.), *aff'd*, 808 A.2d 1205 (Del. 2002); *see Danenberg v. Fitracks, Inc.*, 58 A.3d 991, 997 (Del. Ch. 2012) (quoting *Bartlett*, 2002 WL 568417, at *6). In cases such as this one, where there has no assurance that fees would be shifted, or that any specific amount would be recovered, the prospect that a party – especially a sophisticated corporate party – will front its own expenses is an additional incentive for that litigant to ensure that counsel does not engage in any unnecessary or excessive efforts.

Danenberg, 58 A.3d at 997 (discussing and applying Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct).

With these principles in mind, the court's findings on remand are set out below.[12]

IV.

The Amount of the Fee Award

In support of the fee request, the defendants have submitted detailed billing statements from counsel showing, among other things, the nature of the work performed, the date on which it was performed, the timekeeper, the hourly rate for attorney time, and a listing of items of expense. The court finds the information submitted by the defendants, qualitatively and quantitatively, to be detailed and informative.

At trial on September 14, 2012, the defendants introduced into evidence: (a) invoices from outside counsel, which were billed at discounted, negotiated rates; (b) invoices from the electronic discovery vendors and other law firms -- also at discounted rates -- retained to assist with the extensive electronic discovery requests propounded by the plaintiffs (many of which were granted by the court over the defendants' objections); (c) documents showing the allocation of time spent by the defendants' in-house lawyer assigned to the matter, in accordance with the parties' fee shifting agreement; and (d) invoices of expert witnesses, which were subject to a negotiated fee cap.[13]

These documents were described and discussed during the testimony of Kori Ogrosky, at the evidentiary hearing held on September 14, 2012. Among other things, Ms. Ogrosky testified that she joined the defendants as an in-house attorney in 2005 and was promoted to General

[12] The court has considered all of the factors of Rule 1.5(a) in making its findings.

[13] Trial Exhibits 1-14; 16-34.

Counsel in 2011.[14] Ms. Ogrosky also testified that she works with other in-house attorneys to select and supervise outside attorneys and litigation vendors.[15] As part of her responsibilities, she approves or rejects recommendations for the selection and payment of counsel.[16] Invoices from outside litigation counsel are processed using billing software from Tymetrix.[17] This state-of the art software[18] analyzes time entries and flags any entries that appear to be inconsistent with the client's outside counsel guidelines.[19] After computer processing through Tymetrix, each invoice is then reviewed by two individuals, an in-house attorney and a business person. Any item that is inconsistent with the billing guidelines or believed to be unreasonable can be rejected.[20]

The defendants' in-house lawyers are required to account for and to record their time spent on specific matters just like outside counsel are required to do.[21] The business reason is that the defendants, when acting as lenders – which they did in this case – bill this expense to the borrower under the parties' loan agreements.[22]

The only in-house lawyer in this case who billed was Joanne Fungaroli, who was Associate General Counsel in charge of the selection of counsel, management and strategy of the

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[14] Tr. September 14, 2012, 99:18-100:5.

[15] Tr. 100:3 – 101:6.

[16] Tr. 100:6 – 100:23.

[17] Tr. 101:4 – 101:25.

[18] Tymetrix is a task based billing system first developed in 1994. Its e-billing program has been used by major corporations and other entities since 1997. *See* www.tymetrix.com.

[19] Tr. 101:8 – 101:25.

[20] Tr. 101:8 – 101-25.

[21] Tr. 103:4 – 103:11.

[22] Tr. 101:5 – 103:11.

case, and electronic discovery.[23] From September 2011 – April 2012, Ms. Fungaroli billed 150 hours, at an hourly rate of $600, the same charged for outside counsel partners.[24] Ms. Ogrosky took over Ms. Fungaroli's responsibilities on April 2012, but Ms. Ogrosky did not bill for her work. The court finds that the hourly rate billed for Ms. Fungaroli was reasonable, as were the tasks she performed. *See PLCM Grp. v. Drexler*, 22 Cal. 4th 1084, 1094 (Cal. 2000) ("We discern no basis for discriminating between counsel working for a corporation in-house and private counsel engaged with respect to a specific matter or on retainer. Both are bound by the same fiduciary and ethical duties to their clients.")

The defendants also paid legal fees for two outside law firms hired as lead counsel. The defendants initially retained Patton Boggs as lead outside counsel from September 2011 through November 2011.[25] The defendants negotiated a 20% discount in the rate charged by Patton Boggs.[26] Subsequently, in October 2011, the defendants retained Bingham McCutchen to replace Patton Boggs as lead outside counsel.[27] For this law firm, the defendants negotiated discounted, blended hourly rates of $600 for partners and $500 for associates.[28] At trial, Ms. Ogrosky testified that this represented "a really good deal" and a "very good rate."[29] This court agrees.

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[23] Tr. 104:14 – 25.

[24] Tr. 106:10 – 108:8.

[25] Tr. 109:22 – 25.

[26] Tr. 110:2 – 111:7.

[27] Tr. 111:17 – 19.

[28] Tr. 111:20 – 112:22.

[29] Tr. 111:23 – 112:14.

As part of the electronic discovery in this case, the defendants retained Nelson Mullins, a South Carolina law firm, to conduct the initial review, privilege review, and redaction of the 2.59 gigabytes of data collected.[30] The defendants paid this law firm an hourly rate of $70 for privilege review and a flat rate of $1.52 per document for initial review.[31] At trial, Ms. Ogrosky testified that these were "very good competitive rate[s]" compared to what other vendors charged.[32] Notably, the plaintiffs do not argue that these rates were unreasonable. Instead, they argue that the amount of time spent by Nelson Mullins, "on its face, appears extraordinary."[33] The court disagrees with the plaintiffs' position. The substantial amount of data exchanged between the parties required a proportional amount of time to review it for both relevance and privilege. The plaintiffs in this case demanded the defendants to turn everything over to them, even documents of marginal or questionable relevance. Although the defendants tried to narrow the plaintiffs' discovery requests, the plaintiffs insisted on extremely broad document production. Even after the court narrowed the scope of the plaintiffs' claims, the plaintiffs still demanded broad discovery. The court finds that the time spent by Nelson Mullins reviewing the data was reasonable.

The defendants retained the Greensledge Group to rebut the plaintiffs' expert on damages calculations.[34] The defendants negotiated a $25,000 cap on the fees paid to Greensledge. The plaintiffs made no objections to the defendants' decision to hire an expert or to the costs incurred

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[30] Tr. 119:4 – 121:16.

[31] Tr. 121:19 – 122:16.

[32] Tr. 122:3 – 16.

[33] *See* plaintiffs' memorandum in response to defendants' claims for attorney's fees, docket entry # 281, at page 10.

[34] Tr. 125:10 – 126:3.

in this respect. At trial, Ms. Ogrosky testified that the $25,000 paid represented a discount from the $32,640 Greensledge would have charged for this work.[35]

CapitalSourse indemnified NorthStar for $286.908.46 in fees and costs incurred by Hunton & Williams in defending against the action brought by the plaintiffs. At trial, Ms. Ogrosky testified that CapitalSource reviewed the invoices from Hunton & Williams, determined they were reasonable and consistent with the market rate for similar services, and reimbursed NorthStar the full amount.[36] The Court of Special Appeals concluded that the reimbursement of the cost of indemnifying NorthStar was appropriate, and not an abuse of discretion by this court. (Slip Op. at p. 28).

In advance of the remand hearing on fees, Ms. Ogrosky submitted an affidavit, dated January 23, 2015, in support of the defendants' renewed request for attorneys' fees and costs. The affidavit is accompanied by 24 exhibits setting out in detail the attorneys' fees and expenses incurred by the defendants from September 2012 through November 2014. These fees and costs amount to $345,735.22. In her affidavit, she again described her company's internal review process and detailed the fees incurred by the defendants subsequent to the original fee award.

Ms. Ogrosky was tendered for cross-examination by the defendants at the January 2015 hearing. The plaintiffs declined the invitation despite the fact that Ms. Ogrosky was present in the courtroom for the entire hearing and was available for examination at any time during the hearing. The court finds the January 2015 affidavit of Ms. Ogrosky, like her trial testimony of September 2012, to be reliable and credible. It is made on personal knowledge and shows affirmatively that Ms. Ogrosky is competent to testify as to the matters set forth therein. The

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[35] Tr. 126:5 – 20.

[36] Tr. 129:20 – 132:15.

court finds the facts set forth in the affidavit, and the accompanying exhibits, to be true. The court finds that the defendants paid all of the invoices in full.

As the Court of Special Appeals observed, Slip Op. at p. 25, this case did not go to trial. Normally, in complex business litigation cases, nearly all of the important work is done before trial. It is this pre-trial work and effort that results in a great majority of complex business litigation cases settling and not proceeding to trial. This case was not the exception. All the important work was also done pre-trial. The plaintiffs fully and hotly litigated this case at every turn in the pre-trial phase. In fact, the plaintiffs continued litigating this case intensely, despite the fact that the theory set out in the original complaint was simply untrue,[37] and despite the fact that their claims, even after morphing, were dismissed by the court.

It goes without saying that the pre-trial work costs money. In this case, all of the expenses incurred by the defendants were the direct and proximate result of the plaintiffs' endless charges of wrongdoing and broad discovery demands. The plaintiffs took advantage of the breath of discovery allowed under Md. Rule 2-402(a) despite repeated objections by the defendants. It is problematic that the plaintiffs now object to paying for a cost they brought upon themselves.

Hourly Rates

The plaintiffs contend that the hourly rates charged by the defendants' lawyers are unreasonably high. In support of this contention, the sole piece of evidence the plaintiffs point to is the declaration of Michael Barmettler, a lawyer admitted to practice in California since 1996. Mr. Barmettler is the general counsel to and an officer of the plaintiff limited liability companies.

[37] For example, in the original complaint, plaintiffs alleged the defendants sold their loan, yet this was demonstrably false. The plaintiffs, without checking publicly available information, accused the defendants of doing something they did not do. A reasonable investigation, had it been conducted by the plaintiffs, would have shown the impossibility of their factual allegations.

The court does not find Mr. Barmettler's declaration to be persuasive. The court finds it to be devoid of pertinent evidentiary detail and lacking in a cogent understanding of the facts of this case, or how the facts of the case relate to the attorneys' fee request. In a word, it is not helpful to the fact finder.[38]

In addition to the evidence cited above, the court also has the benefit of the affidavit of William D. Cravens, dated January 23, 2015. According to this affidavit, the agreement between the defendants and its outside lawyers called for discounted, blended rates; $600 per hour for partners and $500 per hour for associates. The standard or actual rates, from 2011-2014, for the lawyers who spent the lion's share of time on this case are as follows:

Attorney	**2011 Standard Hourly Rate**	**2012 Standard Hourly Rate**	**2013 Standard Hourly Rate**	**2014 Standard Hourly Rate**
David J. Butler[39] (Partner)	$830	$865	$910	$945
William S.D. Cravens[40] (Partner)	$650	$675	$700	$730
Margaret Sheer[41] (Associate)	$500	$550	$590	$655

[38] By way of example only, Mr. Barmettler criticizes the charge by one attorney, Bryan M. Killian, of 44 hours for preparing for oral argument before the Court of Special Appeals. Mr. Killian graduated from Harvard Law School in 2005 and then clerked both for Judge Paul V. Niemeyer of the Fourth Circuit and Justice Antonin Scalia of the Supreme Court. Mr. Killian, in fact, argued the appeal in this case. The court finds that the time spent on this case by Mr. Killian was reasonable, to say the least.

[39] Mr. Butler graduated from Georgetown University Law School in 1975.

[40] Mr. Cravens graduated from Washington & Lee Law School in 1998.

[41] Ms. Sheer graduated from the University of Texas Law School in 2005.

The court finds that the blended, discounted hourly rates negotiated by the defendants when they hired outside counsel to defend them after the plaintiffs filed this case in 2011, for multiple causes of action – including fraud, are reasonable and worked substantially to the defendants' economic advantage. The court finds that despite the "on-going" nature of the case prosecuted by the plaintiffs, the defendants benefited substantially from the locked-in, discounted rates they negotiated with their outside law firm. In a case such as this one, where the amount of time employed by partners is going to be significant, blended rates provide a material fee discount because partners complete the most important tasks. This locked rate not only benefitted the defendants. The locked rates, in complex business cases like this one, undoubtedly also worked to the plaintiffs' economic advantage. In other words, the savings the plaintiffs were going to benefit from, if they lost (as they did), were negotiated on their behalf by their adversaries (the defendants). Regardless of how many more years of litigation are left in this case, defense counsel can only charge $600 per hour for partners and $500 per hour for associates (even if their standard hourly rate is higher). The plaintiffs, as the party that did not prevail, get the benefit of paying attorneys' fees to the defendants, under a fee shifting provision, at a substantially discounted rate.

The court also finds that the fee concessions were negotiated from defense counsel by a sophisticated consumer of legal services (the defendants). This finding is not unimportant because, in the business world, sophisticated consumers of legal services simply do not pay for unreasonable legal fees; they have many choices and are not reluctant to take their business elsewhere.

Contrary to the plaintiffs' suggestion, the federal District Court of Maryland fee schedule is not suitable to cases of this nature. That schedule was last modified in 2008 and is based

largely on rates then charged in Baltimore, not the Washington, D.C. metropolitan area. Initially, the fee schedule was developed for statutory fee shifting cases, not contract-based business litigation. Although federal judges and magistrate judges use the fee schedule in routine civil cases, they do not invariably follow the schedule in complex business litigation.

The plaintiffs contended at the January 2015 hearing that it was legally impermissible for the court to draw upon its prior experience in comparable cases in arriving at reasonable hourly rates, or anything else for that matter. This court disagrees. In addition to the evidence submitted by the defendants, and as part of the weighing process, the court is permitted to draw on its own experience in similar complex commercial cases in ascertaining both reasonable hourly rates and the reasonable value of an attorney's services. As former Judge Joseph Murphy has stated, along with other competent evidence, "the chancellor may rely on his own knowledge and experience in appraising the value of an attorney's services." *Milton Co. v. Council of Unit Owners of Bentley Place Condo.*, 121 Md. App. 100, 121 (1998) (quoting *Foster v. Foster*, 33 Md. App. 73, 77 (1976)).

This court recently had occasion to consider the question of reasonable hourly rates in complex commercial real estate litigation. In *White Flint Express Realty Limited Partnership LLLP v. Bainbridge St. Elmo Bethesda Apartments, LLC*, 2014 MDBT 1 (April 3, 2014), this court found that rates of $725 per hour and $675 per hour for partners were reasonable, and that $495 per hour and $485 per hour for senior associates were reasonable. The court also is aware of, and considers for guidance, that the federal courts in the Eastern District of Virginia, in complex civil cases, have found hourly rates for partners between $685 - $625 and hourly rates for associates of $525 - $495 also to be reasonable. *See, e.g., Taylor v. Republic Services, Inc.*, No. 1:12-CV-00523-GBL, 2014 WL 325169, at *5-6 (E.D. Va. Jan. 29, 2014); *Tech Systems,*

Inc. v. Lovelen Pyles, No. 1:12-CV-374, 2013 WL 4033650, at *7 (E.D. Va. Aug. 6, 2013) ($475 held to be reasonable hourly rate for partner work); *Vienna Metro LLC v. Pulte Home Corp.*, No. 1:10-cv-00502 (E.D. Va. August 24, 2011). *See also SunTrust Mortg., Inc. v. AIG United Guar. Corp.*, 933 F. Supp. 2d 762, 773-74 (E.D. Va. 2013) ($695 held to be a reasonable rate for partner work in the Richmond, Virginia area).

This court's experience for nearly a decade in business cases in Montgomery County, Maryland, under Md. Rule 16-205, confirms that experienced lawyers handling complex litigation matters in this court routinely charge their business clients substantially more than the hourly rates charged by the plaintiffs' local firm.[42] The court rejects the plaintiffs' contention that the hourly rates are excessive in light of the prevailing rates charged by local firms. The court finds that both the partner rate and the associate rate are fair and reasonable.

It may well be that the hourly rates of local firms (i.e., those solely with an office in Montgomery County) are less than even the "discounted" hourly rates charged by defense counsel in this case.[43] But that is neither the end nor the whole of the inquiry of determining a reasonable hourly rate. Notably, the plaintiffs' first law firm in this case was not a local firm. Between the filing of the original complaint on August 19, 2011 until the preparation for summary judgment in August 2012, the plaintiffs were represented by two partners (along with associates) from the District of Columbia office of Womble, Carlyle Sandridge & Rice ("Womble Carlyle"), which is a large regional law firm with offices in fourteen cities. At the first evidentiary hearing held in September 2012, the plaintiffs refused to disclose the amount of

[42] Even at these lower rates, the plaintiffs' local firm still charged nearly $100,000 for one appeal.

[43] Notwithstanding the possibility that local firms may charge at rates that are lower than the discounted rates charged by defense counsel in this case, it is worth noting that the senior partner at the Brault firm charged an hourly rate of $500. *See* Michael Barmettler's affidavit. The difference between this rate and the $600 hourly rate charged by the partners for the defendants is not very significant.

fees billed by Womble Carlyle, their trial attorneys for over a year, or their hourly rates. At the January 2015 hearing, the plaintiffs pointed to an affidavit, dated January 23, 2015, of Michael Barmettler, a California lawyer who is their general counsel,[44] which was filed on January 23, 2015. In that affidavit, Mr. Barmettler identified the hourly rates charged by its lawyers in this case,[45] but did not state the total number of hours incurred by its attorneys, the total amount of legal fees charges, the numbers of lawyers who worked on the case or any relevant subset of those numbers.

Assignment of Work

The court finds that defense counsel appropriately assigned more junior attorneys such as Ms. Sheer, with a lower billing rate, to assist lead attorneys during the conduct of the litigation. As well, to reduce the cost of document production, the defendants used contract lawyers (at much reduced rates) to assist in the review and assembly of the innumerable documents generated during discovery in response to the plaintiffs' document request. The plaintiffs do not dispute how the defendants decided to assign the work in this case. The court finds that the defendants assigned the work appropriately and in a cost-efficient manner.

Time Spent

Notwithstanding the fact that the case was resolved without a trial, this lawsuit has consumed an enormous amount of time. Approximately 230,000 documents were produced in

[44] As noted earlier, the plaintiffs, all Delaware-chartered limited liability companies, are affiliated real estate companies with expertise, according to its public website (www.lyoncommunities.com) in "development, construction management, acquisitions, asset repositioning, debt & equity capital financing and property management." The company headquarters (brick and mortar) is in Newport Beach, California.

[45] The Womble Carlyle partners billed at $575 per hour and $450 per hour. A senior associate at that firm billed at $420 per hour. The affidavit does not disclose if these rates were standard rates, discounted rates or determined on some other basis.

electronic discovery alone.[46] The court spent a significant amount of time considering and ruling on the motions filed by the parties. The plaintiffs filed five motions to compel, and one cross motion to compel.[47] The plaintiffs also filed two motions to strike or dismiss,[48] one motion for a protective order,[49] one cross-motion for summary judgment,[50] and one motion in limine.[51] The defendants filed four motions to dismiss,[52] three motions for a protective order,[53] a motion to strike jury demand,[54] two motions to quash a subpoena,[55] and two motions for summary judgment.[56] In total, twenty-four contested motions were filed and the court held seven days of pre-trial hearings that included telephone conferences with the parties. The court heard motions on January 6, 2012, February 8, 2012, February 14, 2012, March 14, 2012, May 9, 2012, May 21, 2012, and September 14, 2012.

The plaintiffs argue that the amount of time spent on the production of documents was "extremely excessive and unreasonable."[57] The plaintiffs ignore, however, that part of the reason

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[46] Tr. 119:4 – 10.

[47] *See* docket entries #63, #109, #155, #163, #204, #232.

[48] *See* docket entries #73, #134.

[49] *See* docket entry #186.

[50] *See* docket entry #234.

[51] *See* docket entry #238.

[52] *See* docket entries #23, #80, #81, #170.

[53] *See* docket entries #41, #106, #153.

[54] *See* docket entry #48.

[55] *See* docket entries #105, #152.

[56] *See* docket entries #151, #217.

[57] *See* plaintiffs' memorandum in response to defendants' claims for attorney's fees, docket entry # 281, at page 8.

why the defendants spent a significant amount of time on discovery in the first place was because the plaintiffs insisted on broad discovery requests even when the defendants asked to narrow down those requests.[58] Mr. Barmettler, in his affidavit, states that it was excessive and unreasonable for the defendants to spend over 500 hours on pre-trial motions that were not ruled in the defendants' favor. The plaintiffs have not cited any authority, however, requiring the court to discount an award of attorneys' fees based on the number of motions the defendants lost when the defendants were ultimately the prevailing party in the case. Mr. Barmettler also points out that the 265 hours spent by the defendants in connection with the appeal "seems quiet excessive." In this complex commercial real estate litigation, with numerous court jackets and exhibits, with an enormous amount of discovery exchanged between the parties, where numerous legal questions were briefed, argued and decided, it was not unreasonable for the defendants to employ a significant amount of time to assure their success on appeal on every issue challenged by the plaintiffs.[59]

In its analysis of reasonableness under Rule 1.5(a), the court also compared the amount originally placed at issue by the plaintiffs to the amount of fees requested by the defendants. The plaintiffs sought an amount of no less than $24,742,855 in damages. (Second Amended Complaint, DE #156). The defendants seek 2,560,541.40 in attorneys' fees and expenses. Although at first blush this amount may appear high for a case that did not proceed to trial, the amount expended was driven by the plaintiffs' litigation conduct. I find that the defendants seek an award with a reasonable relationship to the amount originally at issue and commensurate with

[58] The plaintiff's position in this regard is analogous to a person who runs over someone else with a car and then complains that the medical expenses related to saving that person's life are too high. But for the plaintiffs' decision to file a lawsuit in the first place and then litigate in the manner that they did, the attorneys' fees and costs in this case would have been zero.

[59] The plaintiffs' appellate brief identifies seven (7) "questions presented," which challenged every major decision made by this court.

their need to respond to the plaintiffs' discovery demands and other litigation tactics. *See Reisterstown Plaza Assocs. v. Gen. Nutrition Ctr., Inc.*, 89 Md. App. 232, 246 (1991). As demonstrated by the invoices admitted into evidence, the defendants incurred the bulk of fees and expenses in an effort to defend against the plaintiffs' varying allegations.[60]

Another important factor in assessing the reasonableness of the defendants' fees is the results achieved for the clients. All claims were dismissed against the defendants on summary judgment after its counsel successfully argued that the release provision in § 5.2 of the Tenth Loan Modification was applicable to the allegations in the second amended complaint. (May 9, 2012 Hearing Tr. at 43:2-14; 44:10-12). The plaintiffs did not prevail on a single claim. By the time of trial, the defendants' counterclaim for attorneys' fees was all that remained to be decided by the court.

It is unquestionable that the "experience, reputation, and ability" factor plays an important role in the court's assessment of the reasonableness of the defendants' fees. Both the plaintiffs and the defendants are sophisticated corporate participants, with a lot at stake in this litigation, including reputation risk. It is logical that both parties would retain counsel with the best experience, reputation, and ability. The defendants lead counsel has been a commercial litigator for well over twenty years. The lead defense law firm is a well-known national firm with an impressive reputation throughout the legal community. The experience of defense counsel, both partners and associates, was evident to the court throughout the case, and counsel remained professional and well prepared throughout the proceedings.

[60] This is not a case similar to *Monmouth Meadows*, 416 Md. at 341 ("In the present case, more than one half of the fees are associated with pursuing additional attorney fees in a case where there has been little or no opposition and constituted 'ordinary litigation[.]'")

Degree of Success Achieved

As noted, the plaintiffs sought nearly $25 million in damages. Their multiple complaints included causes of action for breach of contract, fraud, negligent misrepresentation tortious interference with an existing contract, and unjust enrichment. The plaintiffs also requested an award of attorneys' fees and cost believing, presumably, that the contract documents made such available to them in the event they prevailed on the merits. All of the plaintiffs' causes of action and prayers for relief were dismissed, with prejudice, and this court's decision on the merits was affirmed on appeal. But for the claims asserted by the plaintiffs, and the efforts they forced the defendants' to expend to defeat them, the defendants would not have spent a dime in defense costs.

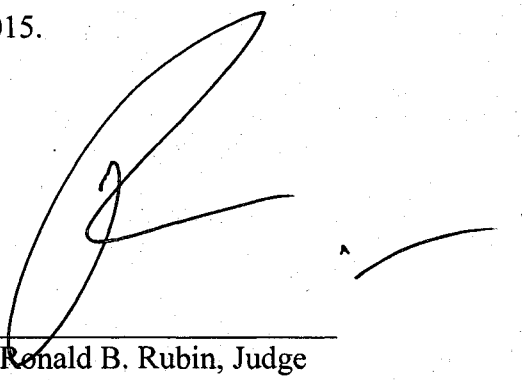
Conclusion

The court has concluded that no adjustments to the fee request are appropriate in this case, in the exercise of judicial discretion. The court well understands that it has the discretion to adjust downward fees and costs, whether item-by-item, category-by-category or by a percentage reduction. This court has done so in other cases. However, after careful reflection, the court concludes that to do so here would simply be arbitrary and, therefore, unfair. This court sees no reason to cut a lawyer's bill, just so that it can be said, for purposes of appeal or otherwise, that the bill was cut. If this court believed that cuts were necessary, it would have made them.

For the reasons set forth above, the defendants are awarded reasonable attorneys' fees and costs of $2,560,541.40 for the period August 2011 through July 2012 and $345,735.22 for the period August 2012 through October 2014. This amount shall be reduced by $124,315.49, to reflect an amount received by the defendants in partial satisfaction of the earlier judgment. The

Clerk is directed to enter judgment in favor of the defendants, and against the plaintiffs, in the amount of $2,781,961.13.

It is SO ORDERED this 19th day of February, 2015.



Ronald B. Rubin, Judge