

Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
Telephone (302) 255-0665

Date Submitted: March 21, 2007

Date Decided: June 12, 2007

Douglas A. Shachtman, Esquire
Douglas A. Shachtman & Associates
1200 Pennsylvania Avenue, Suite 302
Wilmington, DE 19806

William W. Erhart, Esquire
800 King Street, Suite 302
Wilmington, DE 19801

RE: *Ciappa Construction, Inc. v. Innovative Property Resources, LLC*
Upon Plaintiffs' Motion for Attorney's Fees and Costs
GRANTED in part and DENIED in part.
C.A. No. 05L-07-035

Dear Counsel:

Following a bench trial in this matter, the Court awarded plaintiffs, Ciappa Construction, Inc. and Michael Ciappa, an *in rem* mechanics lien judgment and an *in personam* judgment against Defendants.¹ The Court also awarded plaintiffs attorney's fees and costs for prosecuting the mechanics lien and defending against the counterclaim.² The Court directed plaintiffs to submit an affidavit, detailing the amounts requested. Defendants' motion for reargument on the issue of

¹ *Ciappa Const., Inc. v. Innovative Property Resources*, 2006 WL 2979372, at *3 (Del. Super.).

² *Id.*

attorney's fees was denied by the Court.³ During the hearing on the parties' motion for reargument, the Court awarded expert costs to the plaintiffs as well.⁴

On November 6, 2006, plaintiffs submitted an affidavit, itemizing the attorney's fees and costs. Following the hearing on the motions for reargument, plaintiffs supplemented the submission with specific deductions for the items related to the Court of Common Pleas action. Pursuant to the Court's grant of expert costs, plaintiffs also provided a separate itemization for those amounts. On March 19, 2007, defendants filed objections to several, enumerated items to which plaintiffs replied on March 21, 2007.

1. *Attorney's Fees*

Plaintiffs' affidavit sought reimbursement for \$47,445.42 for attorney's fees, including legal assistant time. In their letter, dated December 19, 2006, plaintiffs voluntarily reduced this amount by \$1,176.50 for time spent on the Court of Common Pleas matter. Defendants further seek to reduce this amount by \$1,029.00, for fees related to the Court of Common Pleas action. Plaintiffs do not object to this request; however, the Court notes that the amount defendants dispute for March 6, 2006, was previously reduced by plaintiffs. Defendants also object to the time billed by plaintiffs' counsel for his legal assistant as an unnecessary expense. Delaware courts have routinely included fees charged for a legal

³ *Ciappa Const., Inc. v. Innovative Property Resources, LLC*, 2007 WL 914640, at *2 (Del. Super.).

⁴ Hearing Tr. 43:1-8, Dec. 18, 2006.

assistant's time when granting attorney's fees.⁵ Therefore, the time billed for plaintiffs' counsel's legal assistant will not be deducted. Accordingly, plaintiffs are granted \$45,407.92 in attorney's fees.

Defendants also dispute the time plaintiffs' counsel spent preparing for the counterclaim and lost opportunity theory. Plaintiffs' counsel's timesheets do not parse the time by issue, so defendants randomly determined how much time plaintiffs' counsel should have spent on these issues. Defendants' argument is too speculative and, therefore, rejected.

Defendants also seek to reduce the attorney's fees incurred by plaintiffs prior to July 7, 2005, the date in which defendants claim, by implication, they breached the parties' contract. This date represents defendants' release of the potential buyer from the contract to purchase the Hazeldell property. Plaintiffs argue that they are entitled to these fees, because their attorney was performing a preliminary investigation and development of the case prior to July 7, 2005. Defendants' request is unsupported by the record, which indicates that there were events preceding July 7, 2005 reasonably related to defendants' breach of contract.

2. *Expert Costs*

Plaintiffs' letter, dated January 4, 2007, requested a total of \$7,396.40 for expert fees and costs. This amount includes \$3,387.90 for expert fees and deposition transcription costs and \$4,008.50 for related attorney's fees. Defendants object to the expert-related attorney's fees as duplicative, because these

⁵ *Fiocchi of America, Inc. v. Smith*, 1999 WL 463970, at *2 (Del. Super.); *Hindt v. 400 DuPont Associates*, 1995 WL 717606, at *1 (Del. Super.); *In re First Interstate Bancorp Consol. Shareholder Litigation*, 756 A.2d 353, 364 (Del. Ch. 1999); *In re Diamond Shamrock Corp.*, 1989 WL 17424, at *3 (Del. Ch.).

amounts were included with Plaintiffs' general request for attorney's fees. Plaintiffs concede this point, but argue that they are double-dipping in the event that one category of fees is eliminated on appeal. Plaintiffs cannot hedge their bets at the risk of a double penalty to the defendants. Accordingly, plaintiffs can only recover attorney's fees once.

The remainder of plaintiffs' request reflects the fees charged by plaintiffs' experts for deposition appearances and the related court reporting costs. At the July 28, 2006 hearing on plaintiffs' motion in limine, the Court indicated that it would consider awarding plaintiffs all experts costs they incurred in refuting defendant's claim of alleged engineering and construction defects. The Court refused to allow defendant's experts to testify as to these alleged defects, but only after plaintiffs' experts exposed the fatal deficiencies in that proffered testimony. The plaintiffs were forced to hire experts to establish these flaws. And, consequently, the Court will award plaintiffs \$3,387.90 for these expert fees and deposition transcription costs.

3. *Costs*

Plaintiffs are also seeking \$6,672.96 in costs, not including the \$150 paid to the arbitrator in the Court of Common Pleas matter or the \$96.25 incurred for the arbitration transcript. Plaintiffs' costs include the amounts paid for courier services, photocopying, facsimile transmissions, court filing fees, electronic filing fees, process server fees, parking, travel, postage, and computerized legal research. The authority to grant costs to a prevailing party is derived from Superior Court Civil Rule 54 and 10 *Del. C.* § 5101. Courts have interpreted these provisions to

permit a party to recover the court costs required by the Prothonotary.⁶ Courts have specifically rejected requests for reimbursement for costs such as photocopying, which are for the benefit of the party, not the Court.⁷ Additionally, costs for deposition transcripts that are not introduced into evidence are excluded from reimbursement, pursuant to Rule 54(f). For that reason, plaintiffs' reimbursable costs are limited to the following:

Superior Court fee for filing Complaint	\$175.00
Sheriff's fee for serving Complaint	60.00
Superior Court filing fee, ⁸ dated 7/24/2006	225.00
Superior Court filing fee, dated 8/24/2006	<u>150.00</u>
Total	\$610.00

IT IS SO ORDERED.

Jan R. Jurden
Judge

cc: Prothonotary

⁶ *Nygaard v. Lucchesi*, 654 A.2d 410, 412 (Del. Super. 1994); *Maconi v. Price Motorcars*, 1993 WL 542571, at *2 (Del. Super.).

⁷ *Maconi*, 1993 WL 542571, at *2 (citing *Ripsom v. Beaver Blacktop*, 1989 WL 1147336, at *1 (Del. Super.); see also *James v. Collison*, 2006 WL 4010212, at *1 (Del. Super.); *Casson v. Halpen*, 2001 WL 1474791, at *3 (Del. Super.); *Hutchinson v. Fish Engineering Corp.*, 204 A.2d 752, *753 (Del. Ch. 1964).

⁸ The Court did not award costs for Lexis Nexis or Virtual Docket filing fees, because this matter was not an E-File case.