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## Robert L. Nix Order on Motion for Attorney's Fees

John J. Goger

*Fulton County Superior Court Judge*

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**IN THE SUPERIOR COURT OF FULTON COUNTY  
BUSINESS CASE DIVISION  
STATE OF GEORGIA**

ROBERT L. NIX,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action File No. 2014CV253536
	)	
CARTER BROTHERS SECURITY	)	
SERVICES, LLC,	)	
	)	
Defendant.	)	

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**ORDER ON MOTION FOR ATTORNEY’S FEES**

Plaintiff Robert Nix (“Nix”) filed a Motion for Attorney’s Fees and Brief Support Thereof (the “Motion”) against Carter Brothers Security Services, LLC (“CBSS”) and the following law firms: (i) Robert L. Arrington; (ii) Darren Summerville; (iii) The Summerville Firm, LLC; (iv) Tricia P. Hoffler; and (v) Edmond, Lindsay & Hoffler, LLP (collectively, the “Law Firms”) (collectively, “Respondents”). Nix argues Respondents filed and pursued frivolous, baseless counterclaims completely lacking in any factual or legal merit and has “gone on a legal rampage against multiple witnesses and parties related to the transaction at issue in the [case].” Nix seeks \$222,506.96 for fees and costs incurred.

O.C.G.A. § 9-15-14(a) requires the Court to award reasonable and necessary attorney’s fees and expenses “to any party against whom another party has asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position, or against that party’s attorney, or against both in such a manner that is just.” O.C.G.A. § 9-15-14(a); *see also Haggard v. Board of Regents*, 360 S.E.2d

566 (1987). Further, subsection (b) of the statute gives the court discretion to assess these reasonable and necessary attorney's fees if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, that lacked substantial justification, was interposed for harassment or delay, or unnecessarily expanded the proceedings by other improper conduct. See O.C.G.A. § 9-15-14(b). The statute defines "lacked substantial justification" to mean substantially frivolous, substantially groundless, or substantially vexatious. "OCGA § 9-15-14(b) permits, but does not require, the trial court to award attorney fees when the requirements of that Code section are met." *Gibson Law Firm, LLC v. Miller Built Homes, Inc.*, 327 Ga. App. 688, 690 (2014) (citation omitted).

An award under O.C.G.A. § 9-15-14 is appropriate where the offending party knew or could have determined with a minimum amount of diligence that its position had no basis. See *Stancil v. Gwinnett Cty.*, 259 Ga. 507, 508 (1989). When considering whether a party's litigation actions lacked substantial justification, a court may look to whether any claim asserted therein "either had some factual merit or presented a justiciable issue of law." *Moore v. Harris*, 201 Ga. App. 248, 249 (1991). Even in situations where the court determines that a Complaint was brought in good faith, but lacks as a matter of law any reasonable or substantial justification, a court may find that awarding attorney's fees under O.C.G.A. § 9-15-14 is proper. *Id.*

Here, CBSS and the Law Firms asserted counterclaims that were ultimately dismissed on summary judgment in this Court's Order dated August 29, 2016, including a RICO claim, a conspiracy to commit RICO claims, and a breach of fiduciary duty claim. CBSS's counterclaims for breach of contract and indemnification remain pending. The Court finds there was no factual basis for bringing these counterclaims. Thus, Nix is entitled to an award of attorneys'

fees under O.C.G.A. § 9-15-14 for fees incurred in defending these counterclaims which lacked substantial justification.

Nix also claims CBSS has vexatiously targeted several key witnesses by bringing separate legal actions against them. For instance, CBSS brought civil actions against SunTrust and John Thombley, an accountant for D&N, for fraud. CBSS has also purportedly reported two witnesses to law enforcement agencies for purported illegal activity. Regardless whether or not the allegations made against these witnesses have merit, the allegations and separate lawsuits did not impermissibly expand the proceedings at issue in this lawsuit.

As such, the Motion for Attorney's Fees is hereby **GRANTED** to the extent Plaintiff seeks attorneys' fees incurred from defending the counterclaims for which there was no factual basis, i.e., the counterclaims for RICO violations, conspiracy to commit RICO violations, and breach of fiduciary duty. Otherwise, **DENIED**.

Respondents object to the amount of attorneys' fees claimed. "When awarding attorney fees under O.C.G.A. § 9-15-14, 'the trial court must limit the fees award to those fees incurred because of the sanctionable conduct.'" *Gibson Law Firm, LLC v. Miller Built Homes, Inc.*, 327 Ga. App. 688, 691 (2014) (quoting *Fedina v. Larichev*, 322 Ga.App. 76, 81(5) (2013)). "Thus, 'lump sum' or unapportioned attorney fees awards are not permitted in Georgia." *Id.* Nix's Counsel submitted affidavits stating their fees and expenses. However, the invoices submitted in support of this total include time for responding to discovery requests, discussing case management and settlement options with opposing counsel, and attending depositions of witnesses who likely would have been deposed even in the absence of the baseless counterclaims. The invoices also include time spent in defense of separate lawsuits—specifically, the SunTrust and Thombley cases. Thus, the parties are **ORDERED** to confer and

determine a reasonable amount of fees and expenses Plaintiff incurred as the result of defending against the unsubstantiated counterclaims within ten (10) days of this Order. The amount of fees and expenses must strictly relate to Plaintiff's work in defending against the amended counterclaims which were dismissed from the case on summary judgment. The fees associated with the defense of these claims should be categorized by which Law Firm was representing CBSS at the time the fees were incurred.

SO ORDERED this 1 day of <sup>March</sup>~~February~~, 2017.

  
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JUDGE JOHN J. GOGER  
Superior Court of Fulton County  
Business Case Division  
Atlanta Judicial Circuit

**Copies to:**

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