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Order Awarding Attorney Fees and Expenses of Litigation to Plaintiff Michael Macke (Macke)

Alice D. Bonner

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Under O.C.G.A. § 9-15-14(d), “attorney’s fees and expenses of litigation awarded shall not exceed amounts which are reasonable and necessary for defending or asserting the rights of a party.” A court may also assess against a party the “fees and expenses of litigation incurred in obtaining an order of court pursuant to [O.C.G.A. § 9-15-14].” O.C.G.A. § 9-15-14(d). “An award of attorney’s fees or expenses of litigation under [O.C.G.A. § 9-15-14] shall be determined by the court without a jury and shall be made by an order of court which shall constitute and be enforced as a money judgment.” O.C.G.A. § 9-15-14(f).

At the hearing on April 3, 2013, Macke entered into evidence an exhibit which summarizes the amounts billed by Raley & Sandifer, P.C., as well as heavily redacted invoices from the law firm of Raley & Sandifer, P.C. The invoices reflect the amounts Macke was billed for the firm’s work on this matter, in its entirety, without specifically breaking out the time incurred for work performed only in defending the abusive litigation counterclaim (with the exception of work done from March 16, 2013 and April 3, 2013 when Macke’s counsel worked exclusively in preparation for the instant fee request).

Macke’s attorney, Brian Raley, testified to the amounts Macke was billed for defending against Zions’ abusive litigation counterclaim. Zions objected to the introduction of the invoices as not sufficiently specific to support his request for attorneys’ fees and cross-examined Raley about his billing practices and the invoices submitted into evidence.


After hearing oral arguments and reviewing the evidence presented during the April 3, 2013 hearing, the Court finds that an award of \$14,350.59 “exceed[s] amounts which are reasonable and necessary for defending or asserting the rights of a party.” The defect in Zions’ abusive litigation counterclaim is legal in nature and does not necessitate an award for the

expenses of fact discovery. The Court further finds the time records submitted by Macke to be an insufficient basis on which to deduce the time spent solely in litigating Zions' counterclaim for abusive litigation.

Based upon the foregoing, this Court **ORDERS** Zions to pay a total amount of \$5,000.00 for attorney's fees and expenses of litigation to Macke under O.C.G.A. § 9-15-14. This award consists of:

1. Attorney's fees and expenses, in the amount of \$3,014.00, for the costs of litigation incurred from March 16, 2013 to April 3, 2013, for obtaining this order under O.C.G.A. § 9-15-14(d); and
2. An award of \$1,986.00 under O.C.G.A. § 9-15-14(d) for fees incurred from May 13, 2011 to March 15, 2013, for Macke's time spent defending against Zions' abusive litigation counterclaim after Macke notified Zions, in writing, that Zions' claim lacked substantial justification.

SO ORDERED this 8th day of April, 2013.


ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

Attorneys for Plaintiff

G. Brian Raley, Esq,
Kathryn E. Thomson, Esq.
Raley & Sandifer, PC
2650 Resurgens Plaza
945 East Paces Ferry Road
Atlanta, Georgia 30326
braley@raleysandifer.com
kthomson@raleysandifer.com
404-995-9000

Attorneys for Defendant Zions First National Bank

Eric Jon Taylor, Esq.
Andrea Perry Block, Esq.
Parker Hudson Rainer & Dobbs LLP
1500 Marquis Two Tower
285 Peachtree Center Avenue, N.E.
Atlanta, GA 30303
etaylor@phrd.com
eanderson@phrd.com
dbyrnside@phrd.com
404-523-5300