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Fall 9-17-2014

Davis Lee Companies, LLC Final Judgment and  
Order on Motion to Hold Defendant Steven N.  
Aninye in Contempt

Alice D. Bonner  
*Superior Court of Fulton County*

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**COPY**

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

IN OFFICE  
SEP 17 2014  
SUPERIOR COURT  
FULTON COUNTY, GA  
NL

Davis Lee Companies, LLC, )  
)  
Plaintiff, )  
)  
v. )  
)  
Steven N. Aninye, )  
)  
Defendant. )  
)

Civil Action No. 2012-CV-221751

Bus 1

**FINAL JUDGMENT AND ORDER ON MOTION TO HOLD DEFENDANT STEVEN N. ANINYE IN CONTEMPT**

Before the Court is the Motion of Plaintiff Davis Lee Companies, LLC, to Hold Defendant Steven N. Aninye in Contempt for Failure to Comply with the Court's Order Enforcing Settlement ("Motion for Contempt") and Plaintiff's Request For Attorney's Fees. Upon consideration of the argument, the brief submitted in support of the motion, and the record in this case, the Court finds as follows:

On February 5, 2014, the Court held a hearing on Plaintiff's Motion to Enforce the Settlement between Davis Lee Companies, LLC ("DLC") and Steven N. Aninye ("Aninye"), at which Aninye was present and testified.

On March 5, 2014, the Court granted Plaintiff's Motion to Enforce the Settlement finding that Aninye was bound by the terms of the negotiated settlement. The Court found that the parties memorialized their negotiated settlement in the following six interrelated documents: (1) Resolution Agreement; (2) Resolution Agreement Note; (3) Resolution Agreement Note Guaranty; (4) Confidentiality Agreement; (5) Revised Zorah, LLC Operating Agreement; and (6) Release of Zorah and Aninye (collectively the

“Settlement Agreement”). The parties were ordered to execute the agreed upon settlement and all related documents.

Since the entry of the March 5, 2014, Order granting Plaintiff’s Motion to Enforce the Settlement, DLC has repeatedly attempted to compel Aninye to comply with the Order without success. Therefore, on June 5, 2014, Plaintiff filed its Motion for Contempt. The Motion for Contempt requested judgment against Aninye and attorneys’ fees in accordance with O.C.G.A. §13-6-11 and other applicable law. Aninye did not respond. A show cause hearing on the motion was scheduled for July 30, 2014.

Aninye did not appear at the show cause hearing. Counsel for and a representative of DLC appeared, and presented argument on the motion. At the end of the hearing, DLC requested the entry of a judgment against Aninye.

Plaintiff filed its Request for Attorney’s Fees in connection with the Motion for Contempt on September 5, 2014. The request seeks fees associated with the negotiation of the Settlement Agreement and Aninye’s refusal to comply with the Order enforcing the settlement.

“In cases of contempt the trial judge is vested with discretion in determining whether [her] orders have been violated and how such infringements should be treated...” *Friday v. Friday*, 294 Ga. 687, 691 (2014) (quoting *Burke v. Burke*, 263 Ga. 141, 142 (1993)). While this Court does not condone Aninye’s behavior, and finds it offensive and disrespectful to the Court and the other party in this law suit, the Court declines to hold Aninye in contempt under the circumstances of this case. Accordingly, Plaintiffs’ Motion for Contempt is **DENIED**.

Further, because DLC's request for attorney's fees is based on Aninye's conduct during the litigation, O.C.G.A. § 9-15-14(b) applies. *See Stone v. King*, 196 Ga. App. 251, 252 (1990). It is within the Court's discretion to assess attorney fees and costs of litigation under O.C.G.A. § 9-15-14(b). *See McKemie et al. v. City of Griffin*, 272 Ga. 843, 844 (2000). Again, this Court does not approve of Aninye's conduct during the final part of this litigation, and finds it offensive to both the Court and to the Plaintiff. However, the Court does not believe that an award of attorney's fees would further the ends of a just final result in this case and finality for all parties. Therefore, Plaintiff's Request for Attorney's Fees is **DENIED**.


However, "either of the parties is entitled to a final judgment based on the terms of the agreement of settlement so as to render certain the termination of the case." *Bankers Fidelity Life Ins. Co. v. O'Barr*, 108 Ga. App. 220, 222 (1963). A settlement agreement is a contract. *DeRossett Enterprises, Inc. v. General Elec. Capital Corp.*, 275 Ga. App. 728, 729 (2005). "When a party breaches a material term of a contract...and the other party is damaged thereby, compensation for actual damages is a right and remedy available to the damaged party by law unless the contract provides otherwise." *Centex-Rodgers Const. Co. v. McCann Steel Co., Inc.*, 206 Ga. App. 827, 828 (1992). "The measure of damages is the amount which will compensate the injured party for a loss which a fulfillment of the contract would have prevented or the breach of it entailed." *Operations Management Intern., Inc. v. City of Forsyth*, 288 Ga. App. 469, 472 (2007).

DLC sought judgment for damages in the amount of \$200,004.00 against Aninye in its Motion for Contempt and at the July 30, 2014, show cause hearing. The

Settlement Agreement calls for Zorah, LLC, to pay DLC a total of \$200,004.00 through twelve installments of \$16,667.00. Aninye, as the sole manager of Zorah, LLC, can authorize Zorah, LLC, to make the required payments and was required to do so by the Settlement Agreement. Further, Aninye is the guarantor of the payments under the Resolution Agreement Note Guaranty of the Settlement Agreement.

Aninye has refused to perform in accordance with the Settlement Agreement as enforced by the Court on March 5, 2014. Therefore, Aninye is in material breach of the Settlement Agreement. Because of Aninye's breach, DLC has not received the \$200,004.00 owed to it. Accordingly, the Court **HEREBY ENTERS FINAL JUDGMENT** against Defendant Steven N. Aninye in the amount of **\$200,004.00**.

**So ORDERED and ADJUDGED this 17<sup>th</sup> day of September, 2014.**

  
for ALICE D. BONNER, SENIOR JUDGE  
Superior Court of Fulton County  
Atlanta Judicial Circuit

**Copies to:**

| <b>Attorney for Plaintiffs</b>  | <b>Defendant</b>  |
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