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Fulton County Superior Court

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

RUNZHOU ZHANG, CRAIG STUDER, HZS USA, LLC, and ZHP, LLC,	
Plaintiffs/Respondents,	CIVIL ACTION NO. 2014CV243669
v.	
SCOTT HOSTETLER,	Bus. Case Div. 3
Defendant/Petitioner.	

ORDER ON DEFENDANT SCOTT HOSTETLER'S MOTION TO ENFORCE JUDGMENT

The above styled matter is before the Court on Defendant/Petitioner Scott Hostetler's ("Hostetler") Motion to Enforce Judgment. Hostetler asserts Plaintiffs/Respondents Runzhou Zhang, Craig Studer, HZS USA, LLC and ZHP, LLC (collectively the "HZS Parties") have failed to satisfy several obligations required of them pursuant to Arbitrator Katherine Hope Gurun's ("Arbitrator") Final Award issued in the JAMS arbitration styled Scott Hostetler v. HZS USA, LLC, ZHP, LLC, Runzhou Zhang and Craig Studer, Arbitration No. 1440004537 ("the Arbitration").[1] The Final Award was initially issued on March 25, 2016, was corrected by the Arbitrator on April 8, 2016,[2] and was confirmed and made the judgement of this Court in the Final Order and Judgment entered on the record on October 5, 2016 ("Judgment"). On appeal the Court of Appeals of Georgia affirmed the Judgment without a written opinion pursuant to Court of Appeals Rule 36.

[1] The facts and procedural history of this litigation are set forth in the Court's Final Order and Judgment and will not be repeated herein.
[2] "Final Order" as used herein references the Arbitrator's Final Award as corrected on Apr. 8, 2016.

The HZS Parties, in turn, oppose Hostetler's motion, asserting they have fully and in good faith complied with the Final Award, the "enforcement" Hostetler seeks is actually an attempt to improperly modify the Final Award and the Court's Judgment, and Hostetler' requests for further relief are not supported by the evidence.

ANALYSIS AND CONCLUSIONS OF LAW

The Motion to Enforce Judgment and the parties' related briefs and affidavits generally set forth five issues for consideration: (1) whether Hostetler is entitled to post-judgment interest on the stipulated attorneys' fees and costs incurred in the Arbitration and to an award of his additional attorney's fees and costs incurred in this proceeding following the Arbitration under a Prevailing Party Provision in the parties' Settlement Agreement; (2) whether the HZS Parties timely and adequately removed Hostetler's name from their properties; (3) whether the HZS Parties timely and adequately removed Hostetler's name from their electronic or printed materials; (4) what obligations the HZS Parties owe to Hostetler regarding a $257,000 liability owed to HZSC Realty; and (5) how the parties should proceed to identify, image and remediate Hostetler's personal intellectual property and trade secrets from HZS's servers. Having considered the entire record, the Court addresses each issue below.

(1) Post-Judgment Interest and Post-Arbitration Attorney's Fees and Costs

Regarding attorney's fees and costs, the Settlement Agreement dated October 7, 2014, which gave rise to the Arbitration proceedings and this action provides:

> In any action or proceeding brought by a Party to enforce any provision of this Settlement Agreement, the prevailing Party shall be entitled to recover the reasonable costs and expenses incurred by it in connection with that action or proceeding, including, but not limited to attorneys' fees.[3]

("Prevailing Party Provision").

[3] Confidential Settlement Agreement and Mutual release ("Settlement Agreement"), §33.

On the issue of costs of expenses, including attorney fees, the Arbitrator's Final Award provides:

> At the close of the Hearing both Parties exchanged, submitted, and stipulated as to their respective attorney fees as well as their other costs and expenses, including the cost of the Arbitrator. As a result of this Final Award, I find that the Claimant, as the prevailing Party, is entitled to recover his reasonable costs and expenses including attorney fees associated with this Arbitration...Claimant as the prevailing Party shall be entitled to recover the reasonable costs and expenses incurred by it.[4]

In the Judgment, the Court awarded Hostetler the stipulated costs and expenses submitted at the Arbitration which totaled $822,022.00[5] and expressly stated "[t]he monetary sums awarded in the Order and Judgment shall accrue post-judgment interest as provided under Georgia law."[6] However, Hostetler asserts the HZS Parties owe outstanding accrued interest on the attorney's fee award totaling $28,399.02 (with daily interest accruing at the rate of $146.39 per day). Further, Hostetler asserts he has incurred additional attorneys' fees and costs since the Arbitration (specifically from March 1, 2016, through July 31, 2018) totaling $207,798.45[7] which he claims is owed to him pursuant to the Arbitrator's and this Court's finding that he, as the prevailing party, is "entitled to recover the reasonable costs and expenses incurred by [him]."

With respect to interest, the HZS Parties assert Hostetler is not entitled because it is not part of the Final Award or Judgment and, in any event, he improperly calculated the interest from the date of the Final Award rather than from the date of the Judgment. They also argue the additional attorney's fees and costs sought by Hostetler are not part of the Final Award or Judgment and therefore cannot be awarded. The HZS Parties further contend Hostetler is not entitled to a "significant portion" of the additional fees sought because they were unnecessarily

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4 Final Award, pp. 36, 38.
5 Judgment, p. 6.
6 Judgment, p. 7.
7 Holley Aff. (Sept. 17, 2018), ¶7.

incurred as a result of his counsel's "repeated failures" to respond to their requests to address the requirements of the Final Award such that those fees are "per se unreasonable." Finally, the HZS Parties complain that certain time entries are redacted and others are too general or vague to determine whether the time and costs were reasonable and, thus, they do not support an attorneys' fee award.

Having considered the record, the Court finds Hostetler is entitled to post-judgment interest on the stipulated costs and expenses incurred by him in the Arbitration calculated from the date the Judgment was entered on the record, October 5, 2016, through the date payment was made by the HZS Parties, December 5, 2016. *See* O.C.G.A. §9-9-15 ("Upon confirmation of the award by the court, judgment shall be entered in the same manner as provided by Chapter 11 of this title and be enforced as any other judgment or decree"); Airtab, Inc. v. Limbach Co., LLC, 295 Ga. App. 720, 673 S.E.2d 69 (2009) (contractor that was awarded damages in arbitration with subcontractor, and that obtained confirmation of the award by trial court, was entitled to post-judgment interest on the amount awarded; upon confirmation, the arbitration award was enforceable as any other judgment, including the accrual of post-judgment interest); West v. Jamison, 182 Ga. App. 565, 356 S.E.2d 659 (1987) (following arbitration of dispute between architect and general partner, architect was entitled to post-judgment interest following confirmation of favorable arbitration award). It appears that the total accrued interest during the intervening period, $8,929.79, was paid by the HZS Parties on Dec. 5, 2016 such that no further interest is due to Hostetler.

Further, the Court finds that Hostetler is entitled to his reasonable costs and fees, including attorney's fees, incurred following the Arbitration. The Prevailing Party Provision in the Settlement Agreement clearly provides for the payment of such fees to the "prevailing Party"

in any proceeding to enforce the Settlement Agreement.[8] The Arbitrator expressly found as the "prevailing Party" Hostetler was entitled to "recover the reasonable costs and expenses incurred by [him]."[9] In his Petition to Confirm Arbitration Award, Hostetler expressly requested not only the stipulated attorneys' fees and costs incurred by him in the Arbitration, but also an award of his "reasonable costs and attorneys' fees incurred in this proceeding pursuant to the terms of the Settlement Agreement."[10] Finally, insofar as the Court granted Hostetler's Petition to Confirm Arbitration Award and the Court of Appeals affirmed that Judgment, it cannot be disputed that Hostetler is the "prevailing Party" in this proceeding.[11] Thus, the Court finds that as the "prevailing Party" Hostetler is entitled to his reasonable costs and expenses incurred in this matter following the Arbitration. *See* Johnson Real Estate Investments, L.L.C. v. Aqua Industrials, Inc., 282 Ga. App. 638, 643, 639 S.E.2d 589, 595 (2006) (holding trial court that denied petition to vacate arbitration award and granted motion to confirm the arbitration could award reasonable attorney's fees incurred in trial court proceedings based on prevailing party provision in the parties' contract).

However, such fees and costs must still be "reasonable" pursuant to the governing Prevailing Party Provision. *See* Northside Bank v. Mountainbrook of Bartow Cty. Homeowners Ass'n, Inc., 338 Ga. App. 126, 128, 789 S.E.2d 378, 381 (2016). Hostetler seeks an additional $207,798.45 in attorneys' fees and costs incurred during the period of March 1, 2016, through July 31, 2018, and has submitted billing records in support.[12] Having considered the record and the invoices provided and after subtracting $7,211.00 for billing entries that included redactions for which sufficient explanation was not provided such that the reasonableness of those fees

[8] Confidential Settlement Agreement and Mutual release ("Settlement Agreement"), §33.
[9] Final Award, pp. 36, 38.
[10] Petition to Confirm Arbitration Award, Request for Relief at p. 6, ¶(e).
[11] Judgment, p. 7.
[12] Holley Aff. (Feb. 13, 2017), ¶¶ 11-12, Exs.

cannot be properly assessed, the Court finds that an award of additional attorney's fees and expenses of $200,587.45 is reasonable. *See* Sims v. G.T. Architecture Contractors Corp., 292 Ga. App. 94, 96, 663 S.E.2d 797, 799 (2008) (party seeking attorneys' fees and expenses must establish the reasonableness of those costs); Daniel v. Smith, 266 Ga. App. 637, 640, 597 S.E.2d 432, 437 (2004) (same). *See also* Georgia Cash Am., Inc. v. Strong, 286 Ga. App. 405, 412, 649 S.E.2d 548, 554 (2007) (the burden of establishing the existence of a privilege rests on the party asserting the privilege); Gen. Motors Corp. v. Conkle, 226 Ga. App. 34, 46, 486 S.E.2d 180, 191 (1997) (same). Accordingly, the Court hereby ORDERS the HZS Parties to pay Hostetler the sum of $200,587.45 in additional attorney's fees and costs incurred in this matter plus any accrued interest thereon as provided by Georgia law.

(2) Removal of Hostetler's Name from HZS's Properties

The Final Award provides:

> Respondents, at their cost, shall remove from any property, whether owned, rented or leased by Respondents and/or their agents and regardless of whether seen or used by their employees or any members of the public, any remaining signage or usage of Mr. Hostetler's name in English or Chinese characters, his photograph, and/or images of any of his built work which are not Landscape Department Intellectual Property, within 21 days from the receipt of this Final Award. Proof of such removal shall be provided to Claimant. Failure to do so shall result in the payment of the sum of$25,000 to Claimant no later than 30 days from the receipt of this Final Award.

Hostetler asserts the HZS Parties failed to satisfy this obligation within twenty-one days of the Final Award and, thus, remain obligated to pay the $25,000.00 fee plus accrued interest. Specifically, Hostetler contends that his name remained on the sign outside the door of HZS's registered office after April 15, 2016, as demonstrated in a picture taken on April 16, 2016, with a sign indicating "Hostetler Zhang Studer | HZS".[13]

[13] Hostetler Aff. (Dec. 12, 2017), ¶¶4-5, Ex. A.

The HZS Parties assert they timely removed Hostetler's name in English and Chinese characters from any remaining signage on their properties and confirmed same to Hostetler's counsel on April 23, 2016.[14] Studer avers that "[w]ith respect to signage, HZS removed Hostetler's name from signage at HZS office locations in China which were referenced in Hostetler's arbitration exhibits."[15] Additionally, with respect to the sign outside of HZS's registered office, they assert evidence presented during the Arbitration indicates the sign was covered. The HZS Parties have also submitted the affidavits of Joel Floyd and Larry Bentley who aver that a wooden HZS sign outside of an office located at 3069 Amwiler Rd., Atlanta, Georgia that was occupied by HZS from early 2006 until February 2015 had been covered by a white foam board then a solid sheet of white plastic and later a metal sign screwed into the door but they were repeatedly removed or vandalized in 2015, until Bentley finally chiseled off the engraved names and letters on the old wooden HZS door sign.

Having carefully considered the record, the Court finds the HZS Parties timely removed Hostetler's name from the signage on their properties. With respect to the sign at 3069 Amwiler Road, the record demonstrates the HZS Parties' lease on that property ended in February, 2015, and thereafter the owner of the property chose to cover the HZS sign while he attempted to re-lease the space. Particularly given the suspicious circumstances surrounding the removal or vandalism of the materials covering the sign, and the fact HZS no longer leased that property, the sign at 3069 Amwiler Road does not provide a basis for ordering the payment of the $25,000 non-compliance penalty set forth in Final Award.[16] Accordingly, Hostetler's Motion to Enforce Judgment is DENIED with respect to this aspect of the Final Award and Judgment.

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14 Studer Aff. (Sept. 20, 2018), ¶¶ 5(b), 6.

15 Studer Aff. (Sept. 20, 2018), ¶7.

16 Final Award, p. 36-37.

(3) Removal of Hostetler's Name from HZS's Electronic and Print Materials

The Final Award provides:

> Respondents, at their cost, shall remove from any electronic or printed material created or used by HZS any remaining references to Mr. Hostetler's name in English or Chinese characters, his photograph, and/or images of any of his built work which is not Landscape Department Intellectual Property within 21 days from the receipt of this Final Award. Proof of such removal shall be provided to Claimant. Failure to do so shall result in the payment of the sum of $25,000 to Claimant no later than 30 days from the receipt of this Final Award.

Hostetler, again, asserts the HZS Parties failed to satisfy this obligation within twenty-one days of the Final Award and, thus, remain obligated to pay the $25,000.00 penalty plus accrued interest. In particular, Hostetler avers HZS continued to use his name on HZS's corporate web pages for LinkedIn and Baidu Baike and on internet job postings after April 15, 2016.

The HZS Parties assert the referenced LinkedIn corporate webpage was created by a former employee, Andy Watson, who was hired by Hostetler and who remains the Administrator of the account so the HZS Parties cannot edit the page.[17] Regarding Baidu Baike, Studer avers HZS contacted the company instructing them and was advised, although the content of webpages could be modified "the entry and title could not be deleted or modified."[18] Regarding the job postings, Studer testified they are third-party sites that HZS does not control and which contain postings which were not made by HZS."[19]

The Court finds the HZS Parties timely complied with this portion of the Final Award. Notably, the Final Award only requires the HZS Parties to remove Hostetler's name from

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[17] Studer Aff. (Sept. 20, 2018), ¶¶ 14-20.

[18] Studer Aff. (Sept. 20, 2018), ¶¶ 9, 13.

[19] Studer Aff. (Sept. 20, 2018), ¶12.

electronic or printed materials "created or used by HZS". It does not appear the LinkedIn webpage, the Baidu Baike webpage or the job posting sites were "created or used" by HZS nor does it appear the HZS Parties have the ability to remove or modify those web pages. As such, the Motion to Enforce Judgment is DENIED with respect to this portion of the Final Award and Judgment.

(4) HZSC Realty Liabilities and Accounts Receivable

With regards to HZSC Realty's unpaid liabilities and accounts receivables, the Final Award provides in relevant part:

> Section 11(d) of the Settlement Agreement provided "HZS Shanghai shall retain ownership of all other Landscape Department assets and liabilities". At the time of the Settlement Agreement an outstanding receivable in the amount of approximately $257,000 was due to HZSC Realty to cover employee salaries and other operational costs which had not been paid for several months. Mr. Hostetler testified that this was discussed and it was agreed that the Respondents would accept this liability along with other liabilities of the Landscape Department. This amount, according [sic] Mr. Calleon and Mr. Villafranca, was never repaid. As described above, Respondents told the HZSC Realty employees that the Claimant was responsible for paying these accounts receivable, but there is no evidence to support this in any of the documentation and the Settlement Agreement is clear on its face…
>
> I conclude that the testimony establishes that accounts receivable due to HZSC Realty in the amount of approximately $257,000 remain unpaid and are solely the responsibility of the Respondents pursuant to Section 11(d) of the Settlement Agreement. ***Respondents should pay this amount due to HZSC Realty and its former employees immediately. I find that Claimant shall be <u>indemnified</u> by the Respondents and each of them for any portion of this liability.***[20]

Hostetler asserts the HZS Parties remain obligated to pay to HZSC Realty the outstanding amount of $257,000 plus applicable interest. The HZS Parties contend the Final Award and the Court's Judgment did not include an award of $257,000 to HZSC Realty. Although the Arbitrator did state that they "should pay this amount due to HZSC Realty and its former

[20] Final Award, pp. 23-24, 33-34 (emphasis added).

employees immediately", the HZS Parties assert the Arbitrator's language is suggestive rather than mandatory. Additionally, Hostetler's demand for arbitration did not include the amount and Hostetler does not have standing to pursue that amount, particularly since HZSC Realty was not a party to the Settlement Agreement, the Arbitration or this proceeding. Finally, the HZS Parties submitted the affidavit of Craig Studer and a letter regarding an unpaid loan HZS made to HZSC Realty, indicating that HZS would set off the $257,000 owed from the $250,000 loan that HZS made to HZSC Realty in December 2014.

The Court finds that as to Hostetler, the Arbitrator's Final Award only gave him a right to indemnification by the HZS Parties. Absent some showing that he is being pursued for HZSC Realty's liabilities such that the HZS Parties must indemnify him, but have failed to do so, no further relief as to Hostetler has been awarded or is warranted. Further, insofar as HZSC Realty is a separate entity that was not a party to the Arbitration or this action, Hostetler lacks standing to personally pursue payment of the $257,000 liability owed to HZSC Realty. The Motion to Enforce Settlement is, thus, DENIED on this issue.

(5) Hostetler's Personal Intellectual Property

Regarding Hostetler's personal intellectual property and trade secrets ("personal IP"), the Arbitrator made various findings relevant to this issue:

> With respect to the alleged misappropriation of intellectual property and trade secrets, the Settlement Agreement is clear that Respondents only are entitled to the Landscape Department Intellectual Property ***and not any other personal intellectual property or trade secrets of the Claimant...***
>
> In structuring the Settlement Agreement, the Parties realized that both the Claimant and Respondents would require access to the intellectual property and work product of the Landscape Department...The Settlement Agreement [Section 11(a)] provided that on the Effective Date, Mr. Hostetler and his wife, Livia, would execute an Intellectual Property Quitclaim Assignment to HZS Shanghai which granted HZS whatever right each of the Hostetlers may have had to the intellectual property of

the Landscape Department, "...***including but not limited to all sketches, photographs, renderings, designs, drawings, design materials, marketing collateral, or any other document or work product of any kind or description in any format, paper digital or electronic, related to any contracts or projects undertaken by the Landscape Department***." ("Landscape Department Intellectual Property"). In return, HZS granted to Mr. Hostetler a non-exclusive, royalty-free, perpetual license to use the Landscape Department Intellectual Property pursuant to an Intellectual Property License Agreement...

It must be noted that the Settlement Agreement did not grant to the Respondents any rights to ***Mr. Hostetler's personal intellectual property or trade secrets that predated the formation of HZS***. Claimant alleges that Respondents created a tortious plan to obtain all information contained on the HZSC Realty server including work product of the Landscape Department for which payment had not been made by HZS, and personal intellectual property and trade secrets belonging to Mr. Hostetler.

As discussed earlier, all of the production work of the Landscape Department of HZS was subcontracted to a Philippine company, HZSC Realty, founded by Mr. Hostetler; ***however Mr. Hostetler testified that he had used essentially the same production team (which became HZSC Realty) for a number of years before the establishment of HZSC Realty and as a result, all of his prior personal intellectual property and trade secrets were on the HZSC Realty server*** (many CDs of which, according to Mr. Hostetler's testimony, had been loaded onto the server by HZSC Realty employee Celso Caspe). This matter apparently was never discussed during the Settlement Agreement negotiations, and Mr. Hostetler testified that he saw no need for such discussion since he remained Chairman of HZSC Realty and expected to continue to work with the team there. ***Unfortunately, no detailed description of such material was provided to the Arbitrator beyond a general description of concepts, production, and images of built work completed prior to the formation of HZS.*** Mr. Villafranca also testified that ***images and materials belonging to the Claimant*** were on the server as the server had never changed from the period before the formation of HZS until the time it was imaged by the Respondents. He further testified that later, when he looked at the server image which had been brought to Shanghai there were many familiar projects, but that the server content looked different and did not contain as many projects as he expected...

With respect to the alleged misappropriation of Mr. Hostetler's personal intellectual property and trade secrets, testimony has established that such personal intellectual property was on the HZSC Realty server which was imaged by the Respondents, and should be on the server which is in the

> care, custody and control of Mr. Zhang's counsel. ***As Respondents have no right to such property, I find that Mr. Hostetler's personal intellectual property is to be returned forthwith…***
>
> At Respondents' cost, Mr. Hostetler, his counsel, and a technical firm of his choice shall be given access to the server sent from HZS (Shanghai), to the offices of Arnall Golden Gregory in Atlanta, Georgia, for the purpose of imaging and restoring the files contained therein within seven days of the receipt of this Final Award. To the extent any personal intellectual property of Mr. Hostetler is found in those files, such personal intellectual property shall be imaged by him, for his exclusive use, and no image of those files shall be retained or used in any way by Respondents. Any files in the possession of HZS which contain such personal intellectual property shall be overwritten under the supervision of the Claimant, his counsel, and a technical advisor.[21]

Hostetler asserts he retained Kroll to conduct the imaging, restoration and remediation of the HZS servers containing his personal IP. He contends the HZS Parties remain obligated to participate with Kroll in removing his personal IP from all of their servers, and to reimburse him for the $64,917.98 that he has already paid Kroll along with any additional expenses related to the remediation.[22] Further, Hostetler asserts he has incurred $5,019.68 in out-of-pocket costs as part of the process of personally reviewing the HZS server data to identify his personal IP.[23]

The HZS Parties assert the foregoing sums were not included in the Final Award and Judgment, have not been properly supported by evidence, and/or are related to activities that fall outside of the identification and remediation of Hostetler's intellectual property. Additionally, they assert the Arbitrator made no determination as to what particular materials constitute personal IP exclusively owned by Hostetler such that an evidentiary hearing is necessary to establish what images or materials constitute Hostetler's personal IP.

To the extent the HZS Parties assert an evidentiary hearing is now necessary to establish what particular intellectual property Hostetler has exclusive ownership rights to under applicable

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21 Final Award, pp. 9, 19-20, 34, 37-38 (emphasis added).

22 Holley Aff. (Sept. 17, 2018), ¶5.

23 Hostetler Aff. (Dec. 12, 2017), ¶18.

copyright laws, employment laws, or otherwise, in confirming the Final Award and denying the HZS Parties' motion to vacate it this Court expressly found that "the parties had an opportunity to be heard and present evidence as to the underlying allegations that led to the relief granted." *See* Judgment, p. 6. Importantly, "[t]he function of the trial court in proceedings to confirm or vacate an arbitration award [are] severely limited in order not to frustrate the purpose of avoiding litigation by resorting to arbitration." Martin v. RocCorp, Inc., 212 Ga. App. 177, 178, 441 S.E.2d 671, 672 (1994) (citing Cotton States Mut. Ins. Co. v. Nunnally Lumber Co., 176 Ga. App. 232, 236(4), 335 S.E.2d 708 (1985)).

> Hence, the Georgia Arbitration Code, O.C.G.A. § 9-9-1 et seq., "demands that courts give extraordinary deference to the arbitration process and awards so that the trial court cannot alter the award." Scana Energy Marketing v. Cobb Energy Mgmt. Corp., 259 Ga.App. 216, 221(2), 576 S.E.2d 548 (2002). To ensure that proper deference is shown toward the arbitration process, the Arbitration Code requires a trial court to confirm an arbitration award unless one of the specific statutory grounds for vacating or modifying the award has been established. See O.C.G.A. § 9-9-12; Greene v. Hundley, 266 Ga. 592, 594–595(1), 468 S.E.2d 350 (1996).

Patterson v. Long, 321 Ga. App. 157, 160, 741 S.E.2d 242, 246 (2013). *See generally* O.C.G.A. §§ 9-9-10, 9-9-11 (addressing hearings before arbitrators, the presentation of evidence, arbitration awards, and applications for a change to an award). *Cf.* Kim v. McCullom, 222 Ga. App. 439, 441, 474 S.E.2d 654, 657 (1996) ("O.C.G.A. § 9-11-60 provides the exclusive method by which civil judgments may be attacked…It does not permit the use of post-judgment motions to raise arguments or introduce evidence previously known to the parties but not addressed at trial") (citing Daniels v. McRae, 180 Ga. App. 732, 734, 350 S.E.2d 317 (1986); Complete AAA Mfg. Corp. v. C & S Nat. Bank, 119 Ga. App. 450, 452(2), 167 S.E.2d 734 (1969)).

Given all of the above, the Court finds the Arbitrator's findings on the issue of Hostetler's personal IP are conclusive and are not subject to relitigation or clarification following

confirmation of the Final Award by this Court and affirmation of that Judgment by the Court of Appeals. *See* O.C.G.A. §9-11-60 ("[A]ny ruling by the Supreme Court or the Court of Appeals in a case shall be binding in all subsequent proceedings in that case in the lower court and in the Supreme Court or the Court of Appeals as the case may be"); O.C.G.A. §5-6-10 ("The decision of the appellate court and any direction awarded in the case shall be certified by the clerk to the court below, under the seal of the court. The decision and direction shall be respected and carried into full effect in good faith by the court below").

The Final Award does not identify specific documents or materials that constitute intellectual property. However, the Arbitrator clearly distinguishes between: (a) "Landscape Department Intellectual Property" as defined under the parties' Settlement Agreement (*e.g.*, "sketches, photographs, renderings, designs, drawings, design materials, marketing collateral, or any other document or work product of any kind or description in any format, paper digital or electronic, related to any contracts or projects undertaken by the Landscape Department"); and (b) such intellectual property and trade secrets developed by Hostetler and his production team prior to "the formation of HZS" and "before the establishment of HZSC Realty" and which were located on the HZSC Realty server and subsequently imaged by the HZS Parties.[24] The Arbitrator identifies the latter as Hostetler's "personal intellectual property" which she ultimately concludes "is to be returned forthwith."[25] These findings of the Arbitrator based on the evidence presented to her, when taken as a whole, provide a temporal limitation and general description of the types of materials that constitute Hostetler's personal IP. Thus, these findings as well as the procedures set forth in the Final Award regarding the return of Hostetler's personal IP provide the appropriate parameters under which the parties must proceed to ensure compliance with the

24 *Compare* Final Award, pp. 19-20, 34, 37-38.
25 Final Award, p. 34.

Judgment. Materials located on the relevant servers which fall within the foregoing parameters are to be imaged by Hostetler and remediated as set forth in the Final Award.

With respect to the payment of expenses incurred by Hostetler, the Final Award clearly provides that the imaging, restoration, and remediation of the HZS servers containing Hostetler's personal IP would be performed by a technical firm of Hostetler's choosing and at the HZS Parties' cost.[26] Hostetler has submitted evidence establishing that he has incurred expenses for such services provided by Kroll Ontrack ("Kroll") of $64,917.98.[27] The HZS Parties are hereby ORDERED to reimburse Hostetler for these fees plus any accrued interest thereon as provided by Georgia law.

With respect to his personal IP, Hostetler also seeks reimbursement of certain "out of pocket expenses", including $2,419.68 for "color copies" and $2,600 for "translation services related to identifying HZS's continued improper use of [his] name."[28] Insofar as Hostetler has not provided details or invoices regarding these expenses and they do not appear to fall within the specific costs awarded in the Final Award or the Judgment, the Motion to Enforce Judgment is DENIED as to these out of pocket expenses.

CONCLUSION

Accordingly, Defendant/Petitioner Hostetler's Motion to Enforce Judgment is GRANTED, IN PART, and DENIED, IN PART, as set forth above.

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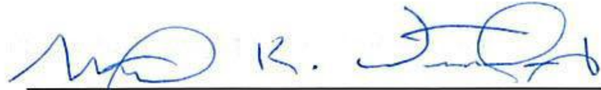
26 Final Award, pp. 37-38.

27 *See* Holley Aff. (Sept. 17, 2018), ¶¶ 4-5, Exs. A-B; Pietig Aff. (Feb. 10, 2017), ¶15, Ex. D.

28 Motion to Enforce Judgment, p. 6.

SO ORDERED, this 21st day of December, 2018.



MELVIN K. WESTMORELAND, JUDGE
Superior Court of Fulton County
Business Case Division
Atlanta Judicial Circuit

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