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Order on Motion for Attorneys' Fees and Expenses

Alice D. Bonner

Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE
JAN - 9 2012
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

COPY

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ISHTIAQ A. KHAN AND CHOICE)
CARE OCCUPATIONAL MEDICINE)
AND ORTHOPAEDICS, LLC, ISHTIAQ)
A. KHAN, as Trustee, MJ & KJ Khan)
1990 Family Trust)

Plaintiffs,)

v.)

M. SHAILENDRA)
KIRAN SHAILENDRA)

SHAILENDRA GROUP, LLC)
SG CONTRACTING, INC.)
SG CONSULTING, INC.)
LEE'S MILL, INC.)
SG BROKERAGE, LLC)
966 INVESTMENTS, LLC)
S&S ENGINEERS, INC.)

HERITAGE BANK)

Defendants.)

VIRGINIA HAMMOND KHAN)
KRISHAN G. GUPTA)

Nominal Parties.)

Civil Action File No.
2010CV194327

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**ORDER ON UNITED COMMUNITY BANK'S
APPLICATION FOR ATTORNEYS' FEES**

This matter is before the Court on United Community Bank's ("UCB") Application for Attorneys' Fees and Supplemental Application for Attorneys' Fees pursuant to this Court's July 21, 2011 Order and November 2, 2011 Order. Upon consideration of the

applications, affidavits of counsel and accompanying exhibits, and Plaintiffs' response, the Court finds as follows:

On July 21, 2011 the Court entered an order ("July 21, 2011 Order") denying Plaintiffs' Motion to Compel UCB to produce documents. In the July 21, 2011 Order, the Court stated that it would consider awarding UCB's reasonable attorneys' fees under O.C.G.A. § 9-11-37. Subsequently, Plaintiffs filed a Motion for Reconsideration. Oral arguments were held on October 10, 2011, and an order denying the motion was issued on November 2, 2011 ("November 2, 2011 Order"). In the November 2, 2011 Order, the Court granted UCB leave of Court to submit a supplement to its Application for Attorneys' Fees in order to reflect the additional time billed in defending Plaintiffs' Motion for Reconsideration. UCB filed its Supplemental Application for Attorneys' Fees on November 4, 2011. Plaintiffs filed a response to the Supplemental Application on November 21, 2011.

UCB is seeking a total award of \$10,100.00 in attorneys' fees, such amount comprised of \$3,504.00 incurred in responding to Plaintiffs' Motion to Compel and \$6,596.00 incurred in responding to Plaintiffs' Motion for Reconsideration.

Plaintiffs oppose the award of attorneys' fees on the grounds that 1) UCB failed to state that the fees requested are reasonable (and Plaintiff contends that they are not) and 2) an award of attorneys' fees is not permitted for opposing a Motion for Reconsideration under O.C.G.A. § 9-11-37.

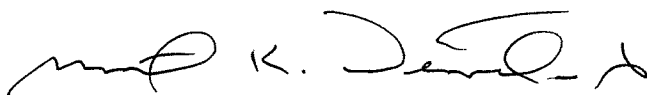
Under O.C.G.A. § 9-11-37(a)(4)(B), if a motion to compel discovery is denied, the court is authorized to require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable

expenses incurred in opposing the motion, including attorneys' fees. The Court finds no merit to Plaintiffs' position that this statute only authorizes an award of fees in connection with a motion to compel, not a motion to reconsider a ruling on a motion to compel. Where, as here, the Court was asked to reconsider a motion to compel based on arguments that were previously raised or issues that the moving party was aware of at the time the initial motion to compel was filed, the Court finds the grounds for the imposition of fees under O.C.G.A. § 9-11-37 even more compelling.

Also unavailing is Plaintiffs' contention that UCB failed to submit evidence that the fees are reasonable. In fact, Paul Durdaller testified in his affidavit regarding the total "reasonable" attorneys' fees incurred by UCB.

Nevertheless, upon review of the affidavits of UCB's counsel and of the billing statements submitted in support of UCB's request for \$10,100.00 in fees, the Court finds the total amount sought unreasonable. Instead, the Court awards UCB \$5,000 in fees incurred in opposing the motions, which the Court deems a reasonable amount considering the effort expended in drafting two response briefs and preparing for and attending a hearing in connection with Plaintiffs' Motion for Reconsideration.

SO ORDERED this 9th day of January, 2012.



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

Copies sent electronically to:

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