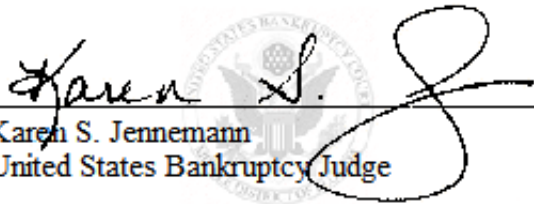


ORDERED.

Dated: September 08, 2021



Karen S. Jennemann  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re	)	
	)	
Ellingsworth Residential Community	)	Case No. 6:20-bk-01346-KSJ
Association, Inc.,	)	Chapter 11
	)	
Debtor.	)	
_____	)	
Alice Guan,	)	
Plaintiff,	)	Adversary No. 6:20-ap-00055-KSJ
	)	
vs.	)	
	)	
Ellingsworth Residential Community	)	
Association, Inc.,	)	
	)	
Defendant.	)	
_____	)	

**ORDER AWARDING ATTORNEYS' FEES AND COSTS**

Alice Guan, a creditor, filed this adversary proceeding raising identical issues previously asserted in her objections to confirmation of Ellingsworth Residential Community Association, Inc.'s (the "Debtor") Chapter 11 Plan, all of which were overruled. Guan's Amended Complaint was dismissed with prejudice because she

was attempting to relitigate issues already decided by the Court.<sup>1</sup> The Debtor now seeks \$11,022.65 for attorneys' fees and costs it incurred defending this proceeding.<sup>2</sup>

Guan, a *pro se* creditor, filed an Amended Complaint against the Debtor in this adversary proceeding.<sup>3</sup> The issues raised in the Amended Complaint<sup>4</sup> are identical to those Guan already had raised in her objections to confirmation filed in the main bankruptcy case,<sup>5</sup> which I ultimately overruled and the District Court affirmed on appeal.<sup>6</sup> The Debtor sought dismissal of the Amended Complaint as duplicative and vexatious litigation filed in bad faith.<sup>7</sup>

After a hearing,<sup>8</sup> I agreed with the Debtor's position and granted its request for dismissal with prejudice.<sup>9</sup> Guan is seeking a "second bite at the apple" by rearguing what already was decided in confirming the Debtor's Plan. The Debtor then filed this

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<sup>1</sup> Doc. No. 23. All "Doc. No." citations refer to pleadings filed in Adversary Proceeding 6:20-ap-00055-KSJ unless otherwise noted.

<sup>2</sup> Doc. No. 32.

<sup>3</sup> Doc. No. 8.

<sup>4</sup> Doc. No. 8. In the Amended Complaint Guan alleges claims against the Debtor for breach of contract, accounting, and injunctive relief. At the hearing on November 17, 2020, Guan agreed to dismiss her claim for breach of contract (Count 1).

<sup>5</sup> Guan's objections to confirmation are contained in the Main Case, 6:20-bk-01346-KSJ, Doc. Nos. 147, 149, 167, 180, 182, 253, 257, 260, 268, 272, 297, and 304.

<sup>6</sup> Main Case, No. 6:20-bk-01346-KSJ, Doc. No. 341. Guan appealed the Memorandum Opinion Confirming Debtor's Plan of Reorganization (Main Case, No. 6:20-bk-01346-KSJ, Doc. No. 341) and the Order Confirming Debtor's Plan of Reorganization (Main Case, No. 6:20-bk-01346-KSJ, Doc. No. 340). *Guan v. Ellingsworth Residential Cmty. Ass'n, Inc. (In re Ellingsworth Residential Cmty. Ass'n, Inc.)*, No. 6:20-cv-01938-WWB (M.D. Fla. filed Oct. 20, 2020). The District Court since has affirmed. Order on Appeal, *Guan v. Ellingsworth Residential Cmty. Ass'n, Inc. (In re Ellingsworth Residential Cmty. Ass'n, Inc.)*, No. 6:20-cv-01938-WWB (M.D. Fla. Aug. 19, 2021), ECF No. 40; Main Case, No. 6:20-bk-01346-KSJ, Doc. No. 750.

<sup>7</sup> Doc. No. 10.

<sup>8</sup> The hearing occurred on November 17, 2020.

<sup>9</sup> Doc. No. 23. To the extent necessary, the Court incorporates into this Order the findings and conclusions made in the Order Granting Defendant's Motion to Dismiss Amended Complaint with Prejudice. Guan appealed the Order Granting Defendant's Motion to Dismiss Amended Complaint with Prejudice. *Guan v. Ellingsworth Residential Cmty. Ass'n, Inc. (In re Ellingsworth Residential Cmty. Ass'n, Inc.)*, No. 6:21-cv-00279-WWB (M.D. Fla. filed Feb. 10, 2021); Doc. No. 26. That appeal is still pending.

Motion for Award of Attorneys' Fees and Costs Against Alice Guan and affidavit,<sup>10</sup> seeking attorneys' fees and costs totaling \$11,022.65.<sup>11</sup>

Under Federal Rule of Bankruptcy Procedure 7054(b), “[t]he Court has broad discretion to determine whether and to what extent to award costs to prevailing parties.”<sup>12</sup> Section 720.305 of the Florida Statutes also includes a prevailing-party fee provision entitling “[t]he prevailing party in any such litigation . . . to recover reasonable attorney fees and costs.”<sup>13</sup> Because the Court dismissed the Amended Complaint with prejudice, the Debtor is the prevailing party of this adversary proceeding and entitled to its reasonable fees and costs.

Yet, even if the law does not directly apply, the Court finds it appropriate to award the Debtor its fees and costs incurred in defending this action. Bankruptcy courts have inherit power to impose sanctions on parties.<sup>14</sup> This inherit authority may be used to sanction parties for “conduct that abuses the judicial process.”<sup>15</sup> “To impose sanctions under these inherent powers, the court first must find bad faith.”<sup>16</sup> A finding of bad faith may be warranted when a party: “(1) ‘knowingly or recklessly raises a

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<sup>10</sup> Doc. No. 32. In response, Guan filed an Objection to the Debtor's Motion for Award of Attorneys' Fees and Costs, Doc. No. 56.

<sup>11</sup> In the Debtor's Motion for Award of Attorneys' Fees and Costs Against Alice Guan, the Debtor pursues an award of attorneys' fees as the prevailing party under section 720.305 of the Florida Statutes and Federal Rule of Civil Procedure 54 made applicable by Federal Rule of Bankruptcy Rule of Procedure 7054.

<sup>12</sup> *Welch v. Marion Cmty. Hosp. (In re Amodeo)*, No. 8:17-BK-07965-RCT, 2019 WL 10734046, at \*4 (Bankr. M.D. Fla. July 30, 2019) (quoting *Bishara v. O'Callaghan (In re O'Callaghan)*, 304 B.R. 887, 889 (Bankr. M.D. Fla. 2003)).

<sup>13</sup> Fla. Stat. § 720.305(1)(d); *accord Roebuck v. Sills*, 306 So. 3d 374, 381 (Fla. 1st DCA 2020).

<sup>14</sup> *Gwynn v. Walker (In re Walker)*, 532 F.3d 1304, 1309 (11th Cir. 2008).

<sup>15</sup> *In re U.S. Corp.*, No. 20-40375-KKS, 2021 WL 1100078, at \*3 (Bankr. N.D. Fla. Jan. 22, 2021); *accord In re Pina*, 602 B.R. 72, 98 (Bankr. S.D. Fla. 2019); *Ginsberg v. Evergreen Sec., Ltd. (In re Evergreen Sec., Ltd.)*, 570 F.3d 1257, 1263 (11th Cir. 2009).

<sup>16</sup> *In re Walker*, 532 F.3d at 1309 (citing *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1575 (11th Cir. 1995)).

frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent;’ (2) pursues a claim without ‘reasonable inquiry into the underlying facts;’ or (3) ‘continually [advances] groundless and patently frivolous’ claims.”<sup>17</sup>

In addition, § 105(a) of the Bankruptcy Code<sup>18</sup> allows the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”<sup>19</sup> A bankruptcy court may invoke this statutory power to redress Federal Rule of Bankruptcy Procedure 9011 violations,<sup>20</sup> bad faith, and unreasonable, vexatious litigation.<sup>21</sup>

Although the Court recognizes that Guan is a *pro se* litigant, the Court finds an award of attorneys’ fees and costs is appropriate under this Court’s inherent powers and § 105(a). Guan continually has pursued unreasonable and vexatious litigation tantamount to bad faith. She knowingly has proceeded with baseless and frivolous claims against the Debtor, raising virtually identical issues that were directly raised and decided at the confirmation hearing.<sup>22</sup> Guan’s duplicative accusations required multiple hearings and led to a Motion to Dismiss and this Motion for Award of Attorneys’ Fees and Costs. Guan has wasted the Court’s valuable resources, and

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<sup>17</sup> *In re U.S. Corp.*, 2021 WL 1100078, at \*3 (footnotes omitted) (quoting *In re Evergreen Sec., Ltd.*, 570 F.3d at 1273, 1274).

<sup>18</sup> Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code.

<sup>19</sup> 11 U.S.C. § 105(a).

<sup>20</sup> Rule 9011(c) allows for the imposition of an “appropriate sanction” for a violation of subdivision (b) of Rule 9011. Rule 9011 is not applicable here.

<sup>21</sup> *Zalloum v. River Oaks Cmty. Servs. Ass’n, Inc. (In re Zalloum)*, No. 6:17-bk-02329-KSJ, 2019 WL 965098, \*9 (Bankr. M.D. Fla. Feb. 25, 2019) (quoting *In re Evergreen Sec., Ltd.*, 384 B.R. 882, 932 (Bankr. M.D. Fla.), *aff’d*, 391 B.R. 184 (M.D. Fla. 2008), *aff’d*, 570 F.3d 1257 (11th Cir. 2009)).

<sup>22</sup> Guan challenged plan confirmation in yet another adversary complaint under inapplicable provisions. Complaint, *Guan v. Ellingsworth Residential Cmty. Ass’n, Inc. (In re Ellingsworth Residential Cmty. Ass’n, Inc.)*, No. 6:21-ap-00074-KSJ (Bankr. M.D. Fla. Apr. 13, 2021), Doc. No. 1.

neither Guan nor the Debtor have the resources to continue re-litigating duplicative issues that already were resolved.

The Debtor is entitled to its reasonable<sup>23</sup> attorneys' fees and costs incurred in connection with filing and prosecuting the Motion to Dismiss.<sup>24</sup> After reviewing the Affidavit<sup>25</sup> from the Debtor's counsel and the billing statements submitted,<sup>26</sup> the Court finds the requested fees are reasonable and awards the Debtor \$11,022.65.

Accordingly, it is

**ORDERED:**

1. The Debtor/Defendant's Motion for Award of Attorneys' Fees and Costs Against Alice Guan (Doc. No. 32) is **GRANTED**.
2. Guan's Objection to the Debtor/Defendant's Motion for Award of Attorneys' Fees and Costs (Doc. No. 56) is **OVERRULED**.

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<sup>23</sup> A determination of whether these fees are reasonable requires the Court to consider the number of hours that could be reasonably expended on the litigation and then multiply that hourly figure by a reasonable hourly rate. This is known as the "lodestar method." *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 879 (11th Cir. 1990). In conducting this analysis, the Court considers the twelve factors outlined in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), *overruled on other grounds by Blanchard v. Bergeron*, 489 U.S. 87, 109 S. Ct. 939 (1989). Those twelve factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Id.* at 717-19. The Court considered each applicable *Johnson* factor in reviewing the fees requested. The Court specifically finds the "blended" hourly rate of \$274 per hour is reasonable for the 40.1 hours of legal work reasonably spent in this frivolous action filed in bad faith.

<sup>24</sup> *Martinez v. Giacobbe*, 951 So. 2d 902, 904 (Fla. 3d DCA 2007) (quoting *Fla. Fed. Sav. & Loan Ass'n v. Sanchez*, 553 So. 2d 1254, 1255 (Fla. 3d DCA 1989)) ("[I]t is for the bankruptcy court to determine whether a litigant 'was entitled to attorney fees incurred in the bankruptcy proceeding and, if so, what a reasonable fee should have been.'").

<sup>25</sup> Doc. No. 32, Ex. A.

<sup>26</sup> Doc. No. 32, Ex. 1.

3. The Court finds that \$11,022.65 is a reasonable fee for all services and costs incurred in connection with filing and prosecuting the Motion to Dismiss (Doc. No. 10).
4. The Debtor shall offset this award of \$11,022.65, dollar for dollar, against any amounts Guan is to receive on her allowed claim.

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Attorney Daniel Velasquez will serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.