

ORDERED.

Dated: September 29, 2023


Grace E. Robson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
Kissimmee Condos Partnership, LLC,)	Case No. 6:22-bk-00994-GER
)	Chapter 11
Debtor.)	
_____)	

ORDER LIQUIDATING ATTORNEYS' FEES AND COSTS

THIS CASE came before the Court upon the *Affidavit of Attorneys' Fees and Costs* (the "Fee Affidavit")¹ and *Filburn's Response in Opposition to Sophtwood's Damage Calculation of Attorneys' Fees and Costs Due to Rejection of its Purchase Contract with the Debtor* (the "Fee Objection")² pursuant to the *Order (1) Awarding Other Damages and (2) Setting Deadlines Regarding Attorneys' Fees and Costs* (the "Order Awarding Other Damages").³ The Court previously determined that Sophtwood, LLC ("Sophtwood") was entitled to a secured claim in the amount of \$200,000 pursuant to 11 U.S.C. § 365(j), as well as attorneys' fees and costs pursuant to the Debtor's rejection of the purchase and sale contract entered into between the Debtor and

¹ Doc. No. 283.

² Doc. No. 292.

³ Doc. No. 281.

Sophtwood (the “Purchase Contract”).⁴ The Fee Affidavit contained heavily redacted time records, and Mark Filburn (“Filburn”) filed a motion⁵ that the Court treated as an objection to entries that are for duplicative services, relate to Adversary Proceeding No. 6:22-ap-00076-GER (the “Adversary Proceeding”), or relate to claims other than those related to the Purchase Contract between the Debtor and Sophtwood.⁶ Sophtwood was directed to provide an unredacted copy of the time records to the Court for in-camera inspection.⁷ Additionally, Sophtwood provided Filburn unredacted time records that it asserts related to the Adversary Proceeding, and Filburn filed the Fee Objection. The parties agreed to mediate the attorneys’ fees dispute,⁸ but the mediation resulted in an impasse.⁹

The Court, having reviewed the relevant pleadings, the record, and relevant precedent,

FINDS, ORDERS, AND ADJUDGES as follows:

Sophtwood is seeking an award of attorneys’ fees in the amount of \$162,819.50¹⁰ and costs in the amount of \$5,459.83 with respect to services provided by its counsel, Saul Ewing LLP. For the reasons discussed herein, the Court awards attorneys’ fees in the amount of \$78,009.25 and costs in the amount of \$5,459.83.

⁴ See Order (1) Determining Purchase Contract is an Executory Contract and Approving Rejection, (2) Determining Priority of Sophtwood, LLC’s Rejection Claim, (3) Setting Briefing Schedule, and (4) Setting Status Conference (the “Order Approving Rejection”) (Doc. No. 268).

⁵ Filburn’s Motion for Extension of Time to File a Response to Sophtwood’s Damage Calculation of Attorneys’ Fees and Costs, Request that Certain Redactions be Removed or, in the Alternative for an In-Camera Inspection of the Time Records (Doc. No. 284).

⁶ Order Granting in Part Mark Filburn’s Motion for Extension of Time or in the Alternative for an In-Camera Inspection of Time Records (Doc. No. 285).

⁷ Order Granting in Part Mark Filburn’s Motion for Extension of Time or in the Alternative for an In-Camera Inspection of Time Records (Doc. No. 285).

⁸ See Notice of Intent to Mediate (Doc. No. 293); Joint Mediation Status Report (Doc. No. 302).

⁹ Mediator’s Report (Doc. No. 303).

¹⁰ While the Fee Affidavit states that Sophtwood is seeking \$162,379.50 in attorneys’ fees, the time records attached to the Fee Affidavit reflect a total of \$162,819.50.

A. Reasonable Attorneys' Fees Total \$78,009.25

The Purchase Contract provides, in relevant part, that “[i]n any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney’s fees, incurred in conducting the litigation.”¹¹ Sophtwood, as the prevailing party, is entitled to reasonable attorneys’ fees, costs and expenses pursuant to the attorneys’ fee provision in the Purchase Contract.

The Purchase Contract designates Florida law as the applicable law.¹² In determining the amount of attorneys’ fees to award, Florida law applies the lodestar method, “which requires courts to determine the number of hours reasonably expended on the litigation and the reasonable hourly rate for the type of litigation, [then] multiply the reasonable number of hours by the reasonable hourly rate, and, when appropriate, adjust the fee.”¹³ “The court is itself an expert on the question and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of witnesses as to the reasonableness of the fee request.”¹⁴ The Florida Supreme Court has outlined a number of factors for courts to consider in determining if the rate and hours requested by attorneys are reasonable, including:

- (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The

¹¹ Doc. No. 162 at 21.

¹² Doc. No. 162 at 24.

¹³ *Dependable Component Supply, Inc. v. Carrefour Informatique Tremblant, Inc.*, 572 F. App’x 796, 802 (11th Cir. 2014) (citing *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1151-52 (Fla. 1985)).

¹⁴ *Id.* (citing *Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988)).

experience, reputation, and ability of the lawyer or lawyers performing the services.
 (8) Whether the fee is fixed or contingent.¹⁵

To arrive at the lodestar figure, the Court should first determine the number of hours reasonably expended on the litigation.¹⁶ To determine the number of hours reasonably expended, the attorney must provide accurate records detailing the amount of work performed.¹⁷ “Inadequate documentation may result in a reduction in the number of hours claimed, as will a claim for hours that the court finds to be excessive or unnecessary.”¹⁸ The Court should also consider the “novelty and difficulty of the question involved” at this stage.¹⁹

The second step in the lodestar calculation is for the court to determine the reasonable hourly rate for the services provided by the prevailing party’s attorney. There has been no challenge to the reasonableness of the hourly rates charged by Saul Ewing LLP and the Court finds, upon its own experience and taking into consideration the *Rowe* factors,²⁰ that the hourly rates between \$175 and \$185 for paraprofessionals and between \$285 and \$550 for attorneys is reasonable. However, the Court finds that the number of hours requested is not reasonable and needs to be reduced.

After reviewing the billing records, the Court identified several examples of billing for duplicative work, ministerial tasks, interoffice communications, work not related to the dispute at issue, ambiguous time entries, and work related to litigation in which Sophtwood was not the

¹⁵ *Rowe*, 472 So. 2d at 1150.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *McDonald v. Hunter Warfield, Inc.*, No. 3:20-CV-971-MMH-LLL, 2022 WL 1095027, at *2 (M.D. Fla. Jan. 24, 2022) (alteration in original) (quoting *Norman*, 836 F.2d at 1303) (“In making this determination, the Court is not required to follow the parties’ calculations. Instead, because the court ‘is itself an expert on the question [of reasonable hourly rates, it] may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment’ without the benefit of other witnesses as to the values.”), *report and recommendation adopted*, No. 3:20-CV-971-MMH-LLL, 2022 WL 807438 (M.D. Fla. Mar. 17, 2022).

prevailing party. The Court has thoroughly reviewed the billing records and has reduced the number of hours by 21.025 hours for duplicative work,²¹ 13.15 hours for ministerial tasks,²² 61.8 hours for interoffice communication,²³ 16.5 hours for work not related to the dispute at issue, 2.9 hours for ambiguous time entries,²⁴ and 51.1 hours for work related to litigation in which Sophtwood was not the prevailing party.²⁵ Additionally, the Court deducts the 4.6 hour entry on December 6, 2022 that counsel for Sophtwood admitted was for work in a different case.²⁶ In total, the Court finds it appropriate to reduce the number of hours by 171.075 and finds the number of hours reasonably expended by counsel for Sophtwood is 177.125 hours.²⁷ The allowed number of hours reasonably expended multiplied by the allowed hourly rates of the paralegals and attorneys is \$78,009.25.

B. Reasonable Costs Total \$5,459.83

Sophtwood requests cost reimbursement for court reporters, interpreters and other professional services, filing fees, photocopies and postage/FedEx charges. There has been no

²¹ See, e.g., *N. Dade Church of God, Inc. v. JM Statewide, Inc.*, 851 So. 2d 194, 196 (Fla. 3d DCA 2003) (“Duplicative time charged by multiple attorneys working on the case are generally not compensable.”); see also *Am. C.L. Union of Ga. v. Barnes*, 168 F.3d 423, 432 (11th Cir. 1999) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 1939-40, 76 L. Ed. 2d 40 (1983)) (“Redundant hours must be excluded from the reasonable hours claimed by the fee applicant.”).

²² See, e.g., *N. Dade Church of God, Inc.*, 851 So. 2d at 196 (first citing *Haines v. Sophia*, 711 So. 2d 209, 212 (Fla. 4th DCA 1998); then citing *Brevard Cnty. v. Canaveral Props., Inc.*, 696 So. 2d 1244, 1245 (Fla. 5th DCA 1997); and then citing *Ziontz v. Ocean Trail Unit Owners Ass’n, Inc.*, 663 So. 2d 1334, 1335-36 (Fla. 4th DCA 1993)) (“Likewise noncompensable is excessive time spent on simple ministerial tasks such as reviewing documents or filing notices of appearance.”).

²³ See *McDonald*, 2022 WL 1095027, at *6-7 (recognizing that attorneys’ fees for interoffice communication is not appropriate).

²⁴ See *id.* at *7 (quoting *Zachoul v. Fair Debt Collections & Outsourcing*, No. 8:09-CV-128-T-27MAP, 2010 WL 1730789, at *3 (M.D. Fla. Mar. 19, 2010), *report and recommendation adopted*, 2010 WL 1727459 (M.D. Fla. Apr. 27, 2010)) (“Block-billing, or ‘lumping together multiple activities in a single entry with no indication how much time was spent on each task,’ makes judicial review unnecessarily difficult and may warrant a reduction in the requested hours.”).

²⁵ These hours include the hours requested related to the Adversary Proceeding. See *N. Dade Church of God, Inc.*, 851 So. 2d at 196 (“Attorney’s fees should also not be awarded for an issue on which the moving party was unsuccessful.”).

²⁶ As conceded by Sophtwood’s counsel at the hearing held on July 18, 2023.

²⁷ While the Fee Affidavit states that Sophtwood is seeking an award of fees for 347.4 hours, the time records attached to the Fee Affidavit reflect a total of 348.2 hours.

objection to the costs and the Court finds these costs are reasonable and awardable under the Purchase Contract.

Accordingly, it is

ORDERED:

1. Sophtwood is awarded reasonable attorneys' fees in the amount of \$78,009.25 and costs in the amount of \$5,459.83 as its allowed unsecured rejection damage claim in accordance with 11 U.S.C. § 502(g).²⁸

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Carmen Contreras-Martinez is directed to serve a copy of this Order on interested parties who are non-CM/ECF users and file a proof of service within three days of its entry.

²⁸ See Order Approving Rejection (Doc. No. 268); Order Awarding Other Damages (Doc. No. 281).