

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

GOODING REALTY CORP.

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v.

PD 99-4987

BRISTOL BAY CVS, INC.

**DECISION ON MOTION FOR THE RETURN OF HOLDOVER RENT,
INTEREST, COSTS, AND ATTORNEY'S FEES**

GIBNEY, J. Plaintiff, Gooding Realty Corp. (GRC), and Defendant Bristol Bay CVS, Inc. (CVS), appear before this court after the Supreme Court, during the pendency of an appeal, remanded the case in order for this Court to issue a ruling on certain post-trial motions. Specifically, GRC objects to CVS's motion for the return of certain money paid by CVS to GRC as holdover rent, plus interest, costs, and attorney's fees, resulting from the litigation of a dispute concerning a commercial real estate lease. GRC further moves this Court to deposit the disputed funds with the Registry of Court, pending its appeal.

Facts and Travel

This case had an extensive travel through many different courts of this state. The facts relevant to the instant matter are as follow. After a trial on the issue of whether CVS was a holdover tenant entitling GRC, as landlord, to back rent, this Court issued a written decision that granted CVS's Motion For Judgment on Partial Findings pursuant to the Super. R. Civ. P., Rule 52(c). See Decision on Remand and in the Motion to Strike, filed October 5, 2001.

Although this judgment is presently on appeal to the Supreme Court, CVS now seeks to recover \$54,738.22 in costs and attorney's fees pursuant to the language of the lease, which states:

"In the event of any suit, action, or proceeding at law or in equity, by either of the parties hereto against the other by reason of any matter or thing arising out of this lease, the prevailing party shall recover not only its legal costs but also a reasonable attorney's fee (to be fixed by the Court) for the maintenance or defense of said action or suit as the case may be."

(CVS Memorandum, Exhibit A at page 17, ¶ 38.) To support its claim, CVS has submitted copies of billing reports along with an affidavit from Brent R. Canning, an attorney handling the case for the firm of Hinckley, Allen & Snyder, L.L.P. CVS also seeks the return of back rent payments it previously made to GRC in the amount of \$40,217.18, pursuant to a District Court Order that was later vacated by this Court, plus statutory interest from GRC in the amount of 12% on this balance. This Court notes that CVS here makes no statutory claims for attorney's fees or costs.

In its brief, GRC raises numerous arguments to CVS's claim for interest, costs, and attorney's fees. These arguments include: (1) the fact that CVS seeks more than \$52,000 in fees and costs even though the amount in controversy was \$40,217.18, and that CVS's claims for expenses are "rife with inappropriate charges and luxury items," (GRC's Memorandum at 4); (2) CVS was not successful at all levels of the litigation in this matter and should thus be compensated for the litigation in which it was victorious only, (conversely, CVS should not be compensated for the District Court proceeding or the first appeal it took to the Superior Court); (3) the amount charged by CVS's attorneys was not reasonable but instead was excessive for such a simple trespass and ejectment action under the "lodestar" principle; (4) CVS has offered no expert testimony establishing the amount of "reasonable" attorney's fees, as required; and (5) CVS failed to submit properly formatted bills for services rendered and costs, as required under Super. R. Civ. P., Rule 54(b).

**Motion for the Return of Holdover Rent and Interest,
and the Cross-Motion for Deposit with the Registry of Court**

GRC objects to CVS's motion and moves this Court to deposit the disputed funds into the Registry of Court, pending a determination of GRC's appeal to the Supreme Court. CVS has raised no arguments against placing the disputed funds into the Registry. Superior Court Rules of Civil Procedure, Rule 67(a), provides:

"In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing."

The present matter is appropriate for such a deposit. Here, CVS originally paid GRC money for holdover rent based on Orders of the District and Superior Courts. These Orders were later reversed by the Supreme Court and by this Court. Therefore, at the present stage of the litigation, CVS is entitled to the return of the disputed money. However, this Court is mindful of the need for judicial economy and thus wishes to avoid repeating the collection process again. Thus, this Court shall order GRC to deposit the disputed funds into the Registry pending the outcome of its appeal to the Supreme Court.

CVS next argues that GRC should pay 12% interest on this sum of money because GRC has enjoyed the use of the money for the past two years. Despite raising a general objection to the imposition of interest, GRC has raised no specific arguments against it. To support its argument, CVS points to several provisions of the Rhode Island General Laws. In particular, CVS cites Rhode Island Gen. Laws 1956 § 9-21-10, which provides:

"(a) In any civil action in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent (12%) per annum thereon from the date the cause

of action accrued, which shall be included in the judgment entered therein. Post-judgment interest shall be calculated at the rate of twelve percent (12%) per annum and accrue on both the principal amount of the judgment and the prejudgment interest entered therein. This section shall not apply until entry of judgment or to any contractual obligation where interest is already provided."

In this case, a decision for pecuniary damages was made in favor of CVS and the judgment subsequently entered. Therefore, CVS is entitled to 12% interest on the returned funds.

Reasonable Attorney's Fees and Costs

Rule 1.5 of the Rhode Island Supreme Court Rules of Professional Conduct provides the factors to be used in determining the reasonableness of an attorney's fee. These factors include:

- "(1) the time and labor required, the novelty and difficulty of the questions 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 experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent."

"[T]he determination of whether an attorney's fee is reasonable requires particular facts in the form of affidavits or testimony upon which the trial court may premise a decision." St. Jean Place Condominium v. Decelles, 656 A.2d 628 (R.I. 1995) (citing Colonial Plumbing & Heating Supply Co. v. Contemporary Construction Co., 464 A.2d 741 (R.I. 1983)). The amount awarded in attorney fees is

within the sound discretion of the trial judge in light of the circumstances of each case. Schroff, Inc. v. Taylor-Peterson, 732 A.2d 719 (R.I. 1999).

GRC makes several arguments against the award of attorney's fees. Primarily, GRC argues that the sum sought by CVS in attorney's fees and costs exceeded the amount in controversy and that the bills submitted by CVS's counsel are "rife with inappropriate charges and luxury items." This Court does agree with GRC that some of the costs for which CVS now seeks reimbursement are, at least, somewhat questionable. (See, e.g., infra.)

However, CVS never asked to be involved in this litigation in which it was ultimately victorious, and a finding against it on attorney's fees, in relative cost, would be tantamount to a ruling against it on the issue of holdover tenancy. CVS was successful in litigating this matter.

CVS submitted to this Court properly formatted bills as required under Super. R. Civ. P., Rule 54(b). (See CVS's Motion for Attorney's Fees and Costs, Exhibit C.) These billing reports clearly enumerate the services provided and the fees charged by CVS's Counsel. Further, CVS offered the affidavit of Brent R. Canning to establish the reasonable rate of attorney's fees, which this Court now formally accepts. CVS's Counsel, Hinckley Allen & Snyder (HAS), has vigorously defended the claims brought against its client. HAS pursued this matter for CVS over a period lasting more than one year using a fixed fee basis for billing. Furthermore, the language of the lease itself imposes no limits and is broad enough to encompass all of prevailing party CVS's claims for fees. After reviewing CVS's request for attorney's fees, this Court finds that the amount charged by CVS's attorneys was reasonable under the factors listed in Rule 1.5.¹

¹ The "lodestar" principle is applicable in Rhode Island to the extent it agrees with Rule 1.5, only. Therefore, the cases cited by GRC regarding the "lodestar" principle are inapposite.

Accordingly, this Court grants CVS's request for attorney's fees in the amount of \$52,693.25.

However, this Court finds that some of CVS's requested costs, i.e., trial exhibit expenses and dining expenses, are not worthy of inclusion. (See, e.g., *id.*, Bill Numbers: (RA) 533886, (RA) 495553, (RA) 536135.) These items include: \$43.08 for lunch at Parkside Rotisserie Bar; \$53.81 for lunch at Union Station Brewery; \$182.97 to the Providence Blueprint Reproduction Company for trial exhibits; \$53 to messenger services Mr. Messenger and Dash for deliveries either to courthouses within walking distance of Counsel's office or where the U.S. Mail would have been sufficient; and \$75 in parking charges in the Fleet Center Garage on three separate tickets, \$25 per ticket. Because the Court finds that HAS's request for reimbursement is not reasonable with respect to these items, this Court rejects CVS's claims for these costs. Accordingly, CVS is entitled to costs in the amount of \$1,637.11.

Conclusion

Pursuant to Super. R. of Civ. P. Rule 67 and to promote judicial economy, this Court grants GRC's motion to deposit the sum of \$40,217.18, plus statutory interest of 12%, with the Registry of Court pending the outcome of its appeal to the Supreme Court. This Court also awards \$52,693.25 in attorney's fees, which this Court finds to be a fair and reasonable amount. Additionally, this Court grants CVS's request for costs in the amount of \$1,637.11, which, after excluding the specific charges for dining, messengers, parking, and trial exhibits, this Court also finds to be fair and reasonable. Accordingly, this Court grants CVS's motion for attorney's fees and costs in the total amount of \$54,330.36.

Counsel shall submit an appropriate judgment for entry.