

21-

DOC # 0683097  
08/28/2006 08:07 AM Deputy: CF

OFFICIAL RECORD

Requested By:

LEGAL EXPRESS

Assessor's Parcel Number: \_\_\_\_\_

Recording Requested By:

Name: Claire

Address: 1750 N Buffalo Dr 104-101 suite

City/State/Zip Las Vegas NV 89121

Real Property Transfer Tax: \_\_\_\_\_

Douglas County - NV  
Werner Christen - Recorder

Page: 1 Of 8 Fee: 21.00

BK-0806 PG-10055 RPTT: 0.00



Order Granting Motion for  
Attorney's Fees and Cost  
(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

*This cover page must be typed or legibly hand printed.*

C:\bc docs\Cover page for recording

REC'D & FILED

05 OCT 12 P3:37

ALAN CLOVER  
CLERK  
DEPUTY

1 Case No. 03-00586A

2 Dept. No. 2

3  
4  
5

6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR CARSON CITY**

-000-

9 KATHLEEN BOBBITT,

10 Plaintiff,

11 vs.

**ORDER GRANTING MOTION FOR  
ATTORNEY'S FEES AND COSTS**

12 BERRY-HINCKLEY INDUSTRIES, a  
13 Nevada corporation, dba WINNER'S  
14 CORNER; JOHN DOES 1 through 10  
15 inclusive, and BLACK & WHITE  
16 CORPORATIONS 1 through 10, inclusive,

Defendant.

17 THIS MATTER comes before the Court pursuant to Defendant Berry-Hinckley  
18 Industries d/b/a Winner's Corner's Motion for Attorney's Fees and Costs filed on August  
19 2, 2005. Plaintiff Kathleen Bobbitt filed a Partial Opposition to Defendant's Motion for  
20 Attorney's Fees and Costs on August 10, 2005. The Court has received and reviewed the  
21 parties' written briefs, the Court file and the law applicable to the issues raised. The  
22 Court, deeming itself fully advised of the matter, hereby enters its Findings of Fact,  
23 Conclusions of Law, Discussion, and Judgment as follows:

24 **FINDINGS OF FACT**

25 This case arose from a slip and fall at Winner's Corner at 1400 Rand Avenue in  
26 Carson City on or about March 18, 2002. The temperature that day was below freezing  
27 and snow had fallen the night before.

28 Plaintiff, who has frequented Winner's corner several times per week for



1 approximately five years, parked at Winner's Corner in order to enter the store. The  
2 parking lot and sidewalk appeared free from any water, snow, or ice. Plaintiff allegedly  
3 slipped on a patch of ice along the curb edge of the sidewalk and fell as she was stepping  
4 up onto the sidewalk in the front of the store.

5 The case proceeded to a trial by jury in the First Judicial District Court,  
6 Department 2 in Carson City on July 11, 2005. After the jury heard all of the evidence  
7 presented, a verdict in favor of the Defendants was returned, finding that they were not  
8 negligent.

9 Prior to the jury trial, Defendants served Plaintiff with two offers of judgment,  
10 both of which were rejected by Plaintiff. The first offer of judgment was for thirty  
11 thousand one dollar (\$30,001.00) and was served on Plaintiffs on April 21, 2005. The  
12 second offer of judgment of seventy-five thousand one dollar (\$75,001.00) was served on  
13 May, 31, 2005. As a result of the jury returning a verdict in favor of the Defendants, the  
14 Defendants have beat both offers of judgment.

15 **CONCLUSIONS OF LAW**

16 *NRS 17.115 Offer of Judgment*

17 1. At any time more than 10 days before trial, any party may serve upon  
18 one or more other parties a written offer to allow judgment to be taken in  
accordance with the terms and conditions of the offer of judgment.

19 4. Except as otherwise provided in this section, if a party who rejects an  
offer of judgment fails to obtain a more favorable judgment, the court:

20 (c) Shall order the party to pay the taxable costs incurred by the  
21 party who made the offer; and

22 (d) May order the party to pay to the party who made the offer  
23 any or all of the following:

24 (1) A reasonable sum...for each expert witness whose  
services were reasonably necessary to prepare for and  
25 conduct the trial of the case.

26 (2) Any applicable interest on the judgment[.]

27 (3) Reasonable attorney fees[.]

28 ///

///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NRS 18.010** Award of Attorney's Fees

1. The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.
  
2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
  - (a) When he has not recovered more than \$20,000; or
  - (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.
  
3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.
  
4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

**NRS 18.020** Cases in which costs allowed prevailing party.

Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.

**NRCP 68** Offers of Judgment

(A) The Offer. At any time more than 10 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its term and conditions.

(F) Penalties for Rejection of Offer. If the offeree rejects an offer and fails to

1 obtain a more favorable judgment.

2 (1) the offeree cannot recover any costs or attorney's fees and shall not  
3 recover interest for the period after the service of the offer and before the  
4 judgment; and

5 (2) the offeree shall pay the offeror's post-offer costs, applicable interest  
6 on the judgment from the time of the offer to the time of entry of the  
7 judgment and reasonable attorney's fees, if any be allowed, actually  
8 incurred by the offeror from the time of the offer. If the offeror's attorney  
9 is collecting a contingent fee, the amount of any attorney's fees awarded to  
10 the party for whom the offer is made must be deducted from that  
11 contingent fee.

12 NRCP 68 encourages the settlement of lawsuits by raising the stakes for a  
13 litigant who receives an offer of judgment. An "offeree must balance the uncertainty of  
14 receiving a more favorable judgment against the risk of receiving a less favorable  
15 judgment and being forced to pay the offeror's costs and attorney's fees." *Bergmann v.*  
16 *Boyce*, 109 Nev. 670, 677-678, 856 P.2d 560, 565 (1993).

17 The decision to award attorney's fees is within the sound discretion of the trial  
18 court. A district court's award of attorney's fees will not be disturbed on appeal absent a  
19 manifest abuse of discretion. *Bobby Berosini, Ltd. v. People for the Ethical Treatment*  
20 *of Animals*, 114 Nev. 1348, 1353-4, 971 P.2d 383, 386 (1998).

21 "It is settled that attorney's fees are not recoverable absent a statute, rule or  
22 contractual provision to the contrary." *Rowland v. Lepire*, 99 Nev. 308, 315, 662 P.2d  
23 1332, 1336 (1983).

24 Furthermore, "[T]he trial court must carefully evaluate the following factors: (1)  
25 whether the plaintiff's claim was brought in good faith; (2) whether the defendant's offer  
26 of judgment was reasonable and in good faith in both its timing and amount; (3) whether  
27  
28



1 the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or  
2 in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in  
3 amount. After weighing the foregoing factors, the district judge may, where warranted,  
4 award up to the full amount of fees requested." *Beattie v. Thomas*, 99 Nev. 579, 588-589,  
5 668 P.2d 268 (1983).  
6

### 7 DISCUSSION

8  
9 During the proceedings, Plaintiff was served with two offers of judgment. The  
10 first offer of judgment for thirty thousand one dollar was issued on or about April 21,  
11 2005. The second offer of judgment for seventy-five thousand one dollar was served on  
12 or about May 31, 2005. Plaintiff rejected both of these offers of judgement and  
13 proceeded with a jury trial that commenced July 11, 2005.  
14

15 At the conclusion of the jury trial, the jury returned a verdict in favor of the  
16 Defendants, finding that the Defendants were not negligent. This verdict did not allow  
17 Plaintiff to recover any monetary damages, and as a result, the Defendants have beat both  
18 offers of judgment.  
19

20 Pursuant to NRS 17.115, the Court may order the rejecting offeree to pay the  
21 offeror of an offer of judgment the reasonable costs and attorney's fees associated with  
22 the case.  
23

24 Furthermore, pursuant to NRCP 68, the penalties levied upon an offeree for  
25 rejecting an offer of judgment while not obtaining a more favorable judgment requires the  
26 offeree to pay the offeror's post-offer costs, including reasonable attorney's fees. As  
27 enumerated in *Bergmann*, this rule encourages settlements by making the offeree  
28

1 "balance the uncertainty of receiving a more favorable judgment against the risk of  
2 receiving a less favorable judgment and being forced to pay the offeror's costs and  
3 attorney's fees."  
4

5 The four factors spelled out in *Beattie* weigh in favor of granting the award of the  
6 attorney's fees and costs, less the challenged fees itemized in Plaintiff's partial  
7 opposition. The plaintiff's claim appears to have been brought in good faith. The  
8 Defendant's offer of judgment of thirty thousand one dollar was a reasonable sum, and  
9 the service of April 21, 2005 was reasonable in light of the pending trial to commence on  
10 July 11, 2005. The Defendant's second offer of judgment of seventy-five thousand one  
11 dollar was also reasonable in light of the May 31, 2005 service and the pending trial date  
12 of July 11, 2005. Plaintiff's decision to forgo the offer of judgment does not rise to the  
13 level of grossly unreasonable or bad faith. However, based on the totality of the  
14 circumstances surrounding the case and the decision to decline both offers of judgment is  
15 at the very least a very unreasonable decision. The fees are reasonable and justified in  
16 light of the preparation required for a jury trial. The reasonableness of the fees and costs  
17 is further validated by the Plaintiff's Partial Opposition whereby the Plaintiff only  
18 challenges two hundred ninety-four dollars of attorney's fees out of the entire amount of  
19 the Defendants' post-offer fees and costs. As a result, the Court orders Plaintiff to pay  
20 Defendant's attorney's fees of \$12,657.00 less the \$294.00 in challenged fees, plus the  
21 \$6,727.18 in costs for a total bill of \$19,090.18. Therefore, good cause appearing;  
22  
23  
24  
25  
26

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**JUDGEMENT**

IT IS HEREBY ORDERED that Plaintiff must pay Defendants attorney fees of \$12,363.00 and costs of \$6,727.18 for a total bill of \$19,090.18 incurred after the first offer of judgment of April 21, 2005.

DATED this 12<sup>th</sup> day of October, 2005.

*William A. Maddox*

William A. Maddox  
District Judge

cc: Marc Picker, Esq.  
David R. Sidran, Esq.

**SEAL**

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date 8/25/06

ALAN GLOVER, City Clerk and Clerk of the First Judicial District Court and the State of Nevada in and for Carson City.

By *Alan Glover* Deputy

7