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DOUGLAS COUNTY, NV 2014-852779

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KAREN ELLISON, RECORDER

Award of Attorneys Fees, Costs and Interests

(Title of Document)

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

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1 Case No. 13-CV-0220

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3 DOUGLAS COUNTY
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4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

BY *[Signature]* DEPUTY

5 IN AND FOR THE COUNTY OF DOUGLAS

6
7
8 MATTHEW GOMEZ,

9 Plaintiff,

10 vs.

AWARD OF ATTORNEYS FEES
COSTS & INTEREST

11 LSA, INC., a Nevada corporation;
12 SIMPLE PUMP COMPANY LLC, a
13 Nevada Limited Liability Company;
and GARY WITTIG, an individual,

14 Defendants.
15

16 On August 13, 2014, a de novo Short Trial was conducted in the Ninth Judicial District
17 Court of the State of Nevada pursuant to N.J.D.C.R. 28. On August 22, 2014, Judgment was
18 entered for Plaintiff in the total amount of Thirteen Thousand Six Hundred Dollars(\$13,600).

19 On August 29, 2014, counsel for Plaintiff filed Plaintiff's Motion For Attorneys' Fees and
20 Costs. On September 8, 2014, counsel for Defendants filed an Opposition To Motion For
21 Attorney's Fees And Costs. On September 16, 2014, Plaintiff filed Plaintiff's Response To
22 Defendants Opposition To Plaintiff's Motion For Attorneys' Fees And Costs.
23

24 Background

25 This action was arbitrated pursuant to the Ninth Judicial District Court court-annexed
26 arbitration program under N.J.D.C.R. 4, which adopts the Nevada Arbitration Rules(NAR).
27

1 Attorney Charles Cockerill was appointed as Arbitrator. The arbitration hearing was conducted
2 and the Arbitrator issued an Award which is included in the record of this action. In his
3 nine(9) page Award, he concluded that Gary Wittig was the alter-ego of LSA, Inc., and
4 awarded money damages against Wittig and LSA in the sum of Thirteen Thousand Six Hundred
5 Dollars (\$13,600), Three Thousand Dollars(\$3000.00) for attorney fees and costs in the sum of
6 Four Hundred Fifty-Nine and 50/100 Dollars(\$459.50). Prior to the hearing Plaintiff made an
7 Offer of Judgment to LSA, Inc., in the sum of \$11,000.00, which was rejected.
8

9
10 On April 10, 2014, Defendants filed a Request For Trial de Novo. The action was
11 scheduled for a de novo Short Trial under N.J.D.C.R. 28, which provides for a binding Short
12 Trial as set forth in the Nevada Short Trial Rules. As noted above, the trial was conducted and
13 judgment was issued in favor of Plaintiff in the sum of Thirteen Thousand Six Hundred
14 Dollars(\$13,600.00). The Court concluded, "Gary Wittig is found to be the alter-ego of LSA,
15 and LSA and Wittig are jointly and severally liable for damages awarded to Plaintiff against
16 LSA."
17

18 Discussion

19 Plaintiff seeks the sum of Nineteen Thousand Two Hundred Fourteen and 58/100
20 Dollars(\$19,214.58) for attorneys' fees and Twenty-Seven and 98/100 Dollars(\$27.98) for costs
21 commencing from the date of the trial de novo request. The request for attorneys fees is
22 supported by a Memorandum of Attorneys' Fees. The request for attorney's fees addresses
23 each of the *Beattie* factors in determining if an award of such fees is merited in this case.
24 *Beattie v. Thompson*, 99 Nev, 579, 588-89 (1983). Further, Plaintiff addresses the *Brunzell*
25 factors as to whether the fees sought are reasonable and justified in the amount. *Brunzell v.*
26 *Golden Gate Nat'l Bank*, 85 Nev. 345, 350 (1969).
27
28

1 Counsel for Defendants acknowledges that Plaintiff is the prevailing party in this action
2 and does not oppose an award of attorney's fees, costs and interest. However, the amount of
3 attorney's fees to be awarded is in dispute. Plaintiff has cited several rules and statutes in
4 support of the attorney's fees request. *NAR 20(B)(2)(a)*, *NAR 20(B)(1)*, *NRCP 68*, *NRS*
5 *18.010(2)(a)*, *NRS 18.010(2)(b)*. In its opposition, Defendants contend those rules and statutes
6 are not applicable in the instant action because the maximum amount of attorney's fees
7 allowable under the Short Trial Rules is Three Thousand Dollars(\$3000.00). *N.S.T.R. 27(b)(4)*.
8 The Short Trial Rule states that "an award of fees under subsections (1) (b) of this rule may not
9 exceed a total of \$3000.00, unless the parties otherwise stipulate or the attorney's compensation
10 is governed by a written agreement between the parties allowing a greater award." As noted by
11 Defendants, there is no stipulation or written agreement governing attorney's fees.

12
13
14 It appears that the maximum amount of attorney's fees allowable in this action may be
15 limited by the Short Trial Rules to \$3000.00, unless such fees are merited under NRS
16 18.010(2)(b):

17
18 NRS 18.010 Award of attorney's fees.

19 2. In addition to the cases where an allowance is authorized by a specific statute, the
20 court may make an allowance of attorney's fees to a prevailing party;...
21 (b) Without regard to the recovery sought, when the court finds that the claim,
22 counterclaim, cross-claim or third party complaint or defense of the opposing party was
23 brought or maintained without reasonable ground or to harass the prevailing party.
24 The court shall liberally construe the provisions of this paragraph in favor of awarding
25 attorney's fees in all appropriate situations. It is the intent of the Legislature that
26 the court award attorney's fees pursuant to this paragraph and impose sanctions
27 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate
28 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.

Counsel for Defendants states, "...regardless of whether NRS 18.010(2)(b) serves as a

1 basis for awarding attorney's fees under the circumstances of this case (which defendants
2 strenuously reject), the amount of fees awarded is still subject to the limiting provisions of
3 NAR 16(E) and N.S.T.R. 27(b)(4)". Whether attorney's fees may be awarded independent of a
4 limiting statute or rule has been addressed by the Nevada Supreme Court. *Panicaro v.*
5 *Robertson*, 113 Nev, 667, 669 (1997). In *Panicaro*, the non-prevailing party argued that the
6 prevailing party was limited to a maximum award of attorney's fees of \$3000.00, as provided at
7 that time in NAR 20. The Court rejected the argument stating,
8
9

10 "First, the \$3000.00 cap applies only to mandatory fees required under Rule 20.
11 Rule 20 does not restrict the district court's jurisdiction to award discretionary
12 fees under NRS 18.010(2). Secondly, the plain language of NRS 18.010(2)
13 expressly states: *In addition to the cases where an allowance is authorized by a*
14 *specific statute*, the court may make an allowance of attorney's fees to a
15 prevailing party. (Emphasis added.) Therefore, we conclude that lower courts
16 are empowered to exceed statutory caps on attorney's fees pursuant to a
17 discretionary award under NRS 18.010." *Id.*

18 THEREFORE, the Court hereby enters the following:

19 Findings of Fact

- 20 1. Plaintiff Matthew Gomez is the prevailing party in this action and he is entitled to
21 attorney's fees, costs and interest.
- 22 2. As shown by the "Findings of Fact" in the Judgment, Defendant Gary Wittig as the
23 alter-ego of Defendant LSA, Inc., intentionally and purposefully thwarted and impeded
24 Plaintiff's legitimate and reasonable claim to compensation in the sum of \$13,600.00.
- 25 3. Wittig has continued his attempts to evade compensating Plaintiff during the
26 litigation of this action including the arbitration process and trial de novo.
- 27 4. There was no factual or legal basis for Wittig to deny the compensation to
28 Plaintiff because as Wittig candidly testified during the trial, "I was LSA. LSA was me."

1
2 Conclusions of Law

3 1. Plaintiff is the prevailing party in this action pursuant to the Nevada Short Trial
4 Rules and NRS 18.010(2)(b).

5 2. Under NRS 18.010(2)(b), Wittig's defense was brought or maintained without
6 reasonable ground and to harass prevailing party Mathhew Gomez.

7 3. Wittig's frivolous and vexatious conduct unreasonably hindered the timely
8 resolution of a meritorious claim.

9 4. Based on the Findings of Fact herein and the *Pinicaro* decision, Plaintiff is entitled
10 to attorney's fees independent of the \$3000.00 cap set forth in the Nevada Short Trial Rules.

11 5. The Court is empowered to exceed the aforesaid attorney fee cap and to make a
12 discretionary award of fees under NRS 18.010(2)(b).

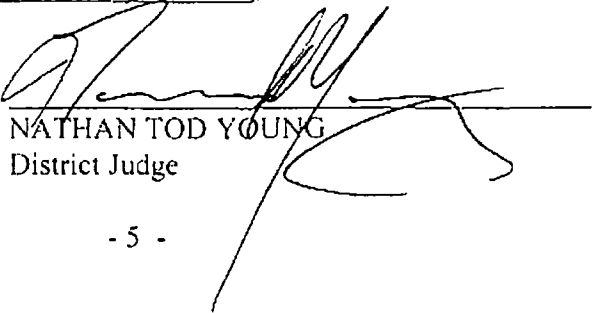
13 6. As envisioned by the Nevada Legislature in enacting NRS 18.010(2)(b), this action
14 presents an "appropriate situation" to award discretionary attorney's fees to the prevailing party.

15 7. Counsel for Plaintiff have satisfied the factors regarding attorney's fees set forth
16 in the *Beattie* and *Brunzell* cases.

17 Award

18 Plaintiff is awarded attorney's fees in the sum of Nineteen Thousand Two Hundred
19 Fourteen and 58/100 Dollars(\$19,214.580), costs in the sum of Twenty-Seven and 98/100
20 Dollars(\$27.98) and interest on the judgment at the rate of 5.25%. Wittig and LSA are jointly
21 and severally liable for said fees, costs and interest.

22 DATED this 29 day of October, 2014.

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NATHAN TOD YOUNG
District Judge

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Copies served by mail this 29th day of October, 2014, to:

Nevantage Law Group, Steven G. Ganim, Esq., 401 Ryland St., Ste. 301, Reno, NV 89502;
John S. Bartlett, Esq., 755 N. Roop St., Ste. 108, Carson City, NV 89701.

Jan Seddar
Judicial Assistant

ORIGINAL

CERTIFIED COPY

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

DATE November 12, 2014

BOBBIE R. WILLIAMS, Clerk of Court
of the State of Nevada, in and for the County of Douglas,

By D. K. Williams Deputy