

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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KEY EQUIPMENT FINANCE INC.,

Plaintiff,

v.

PIONEER TRANSPORTATION, LTD.,

Defendant.

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MEMORANDUM AND ORDER

06-C-297-S

Plaintiff Key Equipment Finance Inc. commenced this civil action against defendant Pioneer Transportation, Ltd. alleging default of obligations owed under Finance Lease Agreements pursuant to Article 2A of the Uniform Commercial Code and breach of contract.

On January 17, 2007 the Court granted plaintiff's motion for summary judgment on its breach of contract claim. Additionally, on said date the Court granted defendant's motion for partial summary judgment in as much as it sought an order declaring that the Master Lease Agreement constituted a sale of goods with a security interest rather than a finance lease.

On January 18, 2007 judgment was entered in favor of plaintiff against defendant on its breach of contract claim in the amount of \$121,702.80 plus interest at the rate of 1.5% per month from the date of September 22, 2006 and costs. Additionally, on said date judgment was entered in favor of defendant against plaintiff on its claim under Article 2A of the Uniform Commercial

Code dismissing said claim with prejudice and costs. Jurisdiction is based on 28 U.S.C. § 1332(a)(1). The matter is presently before the Court on the parties' cross motions for attorneys' fees. The following additional facts relevant to the pending motions are undisputed.

#### BACKGROUND

On July 28, 2003 defendant Pioneer Transportation, Ltd. entered into an Agreement with American Express Business Finance Corporation (hereinafter American Express) entitled Master Lease Agreement to finance the acquisition of a messaging system for its trucking operation. Plaintiff Key Equipment Finance Inc. assumed American Express' rights and obligations under the Master Lease Agreement when it acquired American Express on March 1, 2005. Said Agreement contains a provision entitled Default: Remedies which provide in relevant part as follows:

...Upon default, Lessor [plaintiff] may do any one or more of the following: (1) recover from Lessee [defendant] the sum of (A) any and all Rentals, late charges and other amounts than in each case due and owing under any or all Leases, (B) accelerate and collect the unpaid balance of the remaining Rentals scheduled to be paid under any or all Leases, together with Lessor's anticipated residual interest in any or all of Equipment subject thereto, both discounted to present value at a rate of 5.50% per annum, and (C) Lessor's related attorneys' fees, collection costs and expenses...

#### MEMORANDUM

Plaintiff asserts that by virtue of defendant's default it is entitled to an award of attorneys' fees and expenses under the

terms of the Master Lease Agreement. Additionally, plaintiff asserts that it is entitled to its entire fee request in the amount of \$92,983.15 because this amount reasonably and accurately reflects the amount of legal fees incurred while litigating this action. Accordingly, plaintiff argues that its motion for attorneys' fees should be granted. However, defendant asserts that plaintiff failed to distinguish between successful and unsuccessful claims as required under Utah law. Additionally, defendant asserts that the amount of attorneys' fees requested by plaintiff is not reasonable because language contained within the Agreement limits plaintiff to only those fees and expenses related to its successful breach of contract claim. Accordingly, defendant argues that plaintiff's motion for attorneys' fees should either be denied in its entirety or significantly reduced to a reasonable amount.

Defendant likewise filed a motion for attorneys' fees arguing that it is entitled to \$12,500 in fees under Utah Code § 78-27-56.5 because it prevailed on plaintiff's Article 2A claim. However, plaintiff argues defendant's motion for attorneys' fees should be denied because defendant failed to prevail on a claim that vindicated a legal or contractual right. The Court will address the parties' cross-motions simultaneously.

Under Utah law,<sup>1</sup> attorneys' fees are awarded only if authorized by statute or contract. Chase v. Scott, 2001 UT App.

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<sup>1</sup>The parties agree that Utah law governs these motions.

404, ¶ 12, 38 P.3d 1001, 1004 (quoting Equitable Life & Cas. Ins. Co. v. Ross, 849 P.2d 1187, 1194 (Utah Ct. App. 1993)) Additionally, if attorneys' fees are provided for by contract such fees are awarded in accordance with the terms of that contract. Id. There is no question that in this action attorneys' fees are provided for by the Master Lease Agreement. This conclusion is supported by the plain language of the Default: Remedies provision of the Agreement which provides that upon default Lessor (plaintiff) may recover from Lessee (defendant) the sum of its related attorneys' fees, collection costs, and expenses.

However, under Utah law a prevailing party has reciprocal rights to recover its attorneys' fees in certain types of actions. This reciprocal right is enumerated in Utah. Code § 78-27-56.5 which provides as follows:

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney's fees.

There is no question that § 78-27-56.5 applies to this action because: (1) the action was based on a written contract (the Master Lease Agreement), (2) the Agreement was executed after April 28, 1986; and (3) the Agreement allows at least one party to recover its attorneys' fees. Accordingly, under said statute defendant is entitled to an award of attorneys' fees if it was the prevailing

party in the underlying action. As such, the Court's analysis must begin with determining which party was the prevailing party for the purpose of awarding attorneys' fees.

There can be only one prevailing party in any litigation. Cache County v. Beus, 2005 UT App. 204, ¶ 14, 128 P.3d 63, 69 (citations omitted). The term "prevailing party" is defined as "[a] party in whose favor a judgment is rendered." Id. (citation omitted). Typically, determining who the "prevailing party" was for the purpose of awarding attorneys' fees is quite simple: "[p]laintiff sues defendant for money damages; if plaintiff is awarded a judgment, plaintiff has prevailed, and if defendant successfully defends and avoids an adverse judgment, defendant has prevailed." Mountain States Broad. Co. v. Neale, 783 P.2d 551, 555 (Utah Ct. App. 1989). However, in certain cases a flexible approach is needed to determine who actually was the "prevailing party" in the underlying action. Id. at 556, n.7.

A flexible approach to the "prevailing party" analysis is needed in cases involving multiple claims and parties. Id. (citing Pioneer Roofing Co. v. Mardian Constr. Co., 152 Ariz. 455, 733 P.2d 652 (Ct.App. 1986)). Additionally, such an approach should be utilized when one or more parties is granted non-monetary relief. Id. (citing Watson Constr. Co. v. Amfac Mortgage Corp., 124 Ariz. 570, 606 P.2d 421, 435-436 (Ct.App. 1979); Food Pantry, Ltd. v. Waikiki Business Plaza, Inc., 58 Haw. 606, 575 P.2d 869, 879

(1978)). Finally, a flexible approach is needed where "the ultimate award of money damages does not adequately represent the actual success of the parties under the peculiar posture of the case." Id. (citing Owen Jones & Sons, Inc. v. C.R. Lewis Co., 497 P.2d 312, 313-314 (Alaska 1972)). The Court finds that a flexible approach to the prevailing party analysis is not necessary in this action. As such, plaintiff must be considered the "'prevailing party'" for the purpose of awarding attorneys' fees because it was "the party in whose favor the 'net judgment [was] entered.'" Id. at 556 (citations omitted). Accordingly, defendant is not entitled to an award of fees and its motion is denied. See Chang v. Soldier Summit Dev., 2003 UT App. 415, ¶ 27, 82 P.3d 203, 211 ("[B]ecause we agree with...the trial court's determination that Defendants were the prevailing party for the purpose of awarding attorney fees...an award of attorney fees to Plaintiffs would have been inappropriate.") (citation omitted).

First, this action only involved two parties and plaintiff's claims both arose from defendant's default under the terms of the Master Lease Agreement. Additionally, on January 18, 2007 the Court entered judgment in favor of plaintiff against defendant on its breach of contract claim in the amount of \$121,702.80 plus interest at the rate of 1.5% per month from the date of September 22, 2006. While the Court also entered judgment in favor of defendant against plaintiff on its Article 2A claim, dismissing

said claim with prejudice and costs, defendant was not awarded any affirmative relief. Accordingly, plaintiff was the party in whose favor the net judgment was entered. Finally, the ultimate award of monetary damages to plaintiff adequately represents the actual success of the parties in this action. Accordingly, under the plain language of Utah Code § 78-27-56.5 defendant did not "prevail[] in a civil action." As such, it is not entitled to an award of attorneys' fees as a matter of Utah law.

However, it does not necessarily follow that plaintiff is entitled to recover all of its attorneys' fees. Cache County, at ¶ 16, 128 P.3d at 69. Rather, the Court must determine whether plaintiff's request is reasonable and in accordance with the terms of the Agreement. In making this determination, courts consider factors such as: (1) the relationship of the fee to the amount recovered, (2) the novelty and difficulty of the issues involved, (3) the overall result achieved; and (4) the necessity of initiating a lawsuit to vindicate rights under the contract. Trayner v. Cushing, 688 P.2d 856, 858 (Utah 1984) (citation omitted). Additionally, a party is entitled only to those fees "attributable to the successful vindication of contractual rights within the terms of [its] agreement." Id. (citations omitted). However, a court need not consider all such factors when making its attorneys' fees determination. Rather, a court may select the factor or factors that are most relevant to its fee calculation in

light of the factual context of the case. Foote v. Clark, 962 P.2d 52, 56-57 (Utah 1998). In this action, the factor that is most relevant to the Court's determination is what fees are attributable to the successful vindication of plaintiff's contractual rights. Accordingly, the Court will address plaintiff's fee request in light of this factor.

Under Utah law, a "reasonable fee will compensate [a party] only for those fees necessarily incurred in resolution of issues in [that party's] favor, and should not include fees relating to the issues resolved in [the other party's] favor." Mountain States Broad. Co., at 556 n.10 (citations omitted). On January 18, 2007 judgment was entered in favor of defendant against plaintiff on its Article 2A claim dismissing said claim with prejudice and costs. Accordingly, plaintiff is not entitled to recover fees that relate solely to the Article 2A issue. Rather, plaintiff is entitled only to those fees attributable to the successful vindication of its contractual rights, which are those fees related to its breach of contract claim. Trayner, at 858 (citations omitted).

The Court has exhaustively reviewed plaintiff's attorneys' billing statements. Upon its review, the Court has determined that 150.5 hours are attributable to plaintiff's unsuccessful pursuit of its Article 2A claim. As such, in making its fee calculation the Court examined the billing statements of each attorney and paralegal involved in this action (including his or her hourly



rate) and disallowed those hours attributable to the Article 2A issue resolved in defendant's favor. Mountain States Broad. Co., at 556 n. 10 (citations omitted). Accordingly, plaintiff's motion for attorneys' fees is granted. However, plaintiff's requested amount is reduced by \$38,723.00 for a total award of \$54,260.15.<sup>2</sup>

ORDER

IT IS ORDERED that plaintiff's motion for attorneys' fees is GRANTED.

IT IS FURTHER ORDERED that defendant's motion for attorneys' fees is DENIED.

IT IS FURTHER ORDERED that fees are awarded to plaintiff in the amount of \$54,260.15 and that judgment be amended accordingly.

Entered this 10<sup>th</sup> day of April, 2007.

BY THE COURT:

s/

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JOHN C. SHABAZ

District Judge

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<sup>2</sup>In its brief filed in opposition to plaintiff's motion for attorneys' fees, defendant advances numerous arguments concerning the unreasonableness of plaintiff's attorneys' fees. However, defendant failed to provide any legal authority in support of its arguments. Accordingly, such arguments are unavailing.