

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

BOCA VIEW CONDOMINIUM ASSOCIATION,
INC.,

CASE NO.: 502020CA000251
JUDGE: CAROLYN BELL

PLAINTIFF,

vs.

ELEANOR LEPSALTER, AN INDIVIDUAL,
AND EDWARD LEPSALTER, AN INDIVIDUAL,

DEFENDANTS.

FINAL JUDGMENT FOR ATTORNEY'S FEES AND COSTS:

THIS CAUSE having come before the Court for hearing on May 17, 2023, June 5, 2023 and June 8, 2023 for an evidentiary hearing to determine Defendants' ELEANOR LEPSALTER and EDWARD LEPSALTER's reasonable attorney's fees and costs, the Court, having considered all admitted evidence, the parties' written submissions, argument of counsel, and being otherwise duly advised in the premises, finds and rules as follows:

1. This Court has previously determined that Defendants ELEANOR LEPSALTER and EDWARD LEPSALTER are the prevailing parties in this matter and are entitled to reasonable attorney's fees and costs.
2. The evidence presented to the Court consisted of documentary evidence establishing the time expended by Defendants' counsel in this matter, the costs incurred by the Defendants in this matter, as well as testimony presented by Andrew M. Schwartz, Esq., Christopher S. Salivar, Esq., Ryan Willits, Esq., and Marshall Osofsky, Esq. as to the reasonableness of fees and time. The Court has carefully considered the credibility of each witness, all the while being cognizant of the

interests of the parties in the outcome of the case. In summarizing any evidence or the substance of any witness's testimony, the Court has not included every detail, nor attempted to state non-essential facts; because the Court has not done so, however, does not mean it has failed to consider all of the evidence. Further, in its findings, the Court has not considered any inadmissible evidence, nor any evidence irrelevant to any of the matters at issue, and is only considering evidence for the purposes for which it was admitted. *See J.G. v. State*, 213 So. 3d 936, 937 (Fla. 4th DCA 2017) (A judge may hear information that a jury would not be permitted to hear because a "judge as finder of fact is presumed to have disregarded any inadmissible evidence or improper argument.")

3. The Court is has fully considered the factors set out by the Florida Supreme Court in *Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145 (Fla. 1985), for purposes of determining an appropriate award of reasonable attorney's fees. Those factors are:
 - (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 experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) Whether the fee is fixed or contingent.

4. During the hearings held before the Court, the Court heard testimony identifying the total time expended by Defendants' counsel in connection with this action, and the total costs incurred by the Defendants in connection with this action. Per the testimony proffered by the Defendants' witnesses (Andrew M. Schwartz, Esq., Christopher S. Salivar, Esq., and Ryan Willits, Esq.) the Defendants seek an award of the following:

- a. Attorney's fees: \$245,710.00
- b. Costs: \$26,916.47

The attorney's fees incurred by Defendants and which Defendants seek to recover from Plaintiff derive from two (2) law firms retained by the Defendants during the course of this multi-year litigation. Defendants initially retained Andrew M. Schwartz, P.A. as their counsel, which law firm appeared in this proceeding beginning in January of 2020 on their behalf. In January of 2022 the Defendants also retained Christopher S. Salivar, P.L.L.C. to represent their interests as co-counsel. Per the testimony of Mr. Salivar, this retention was done to maintain continuity of representation, as the sole attorney employed by Christopher S. Salivar, P.L.L.C. (Christopher S. Salivar, Esq.) was a former employee of Andrew M. Schwartz, P.A. who had been materially involved in the representation of these Defendants from the beginning of this action.

5. With respect to the rates of the billing parties associated with Andrew M. Schwartz, P.A., the Defendants agreed to pay for legal services at a rate of \$535.00 per hour for time expended by Andrew M. Schwartz, Esq.; \$435.00 per hour for time expended by associate attorneys employed by the firm (specifically Heather F. Beale, Esq. and Christopher S. Salivar Esq.); and \$195.00 per hour for time expended by paralegals employed by the firm.

6. The Court considered these rates along with expert testimony presented by Defendant's fee expert Ryan Willits, Esq., and Plaintiff's fee expert, Marshall Osofsky, Esq.. Both Mr. Willits and Mr. Osofsky rendered opinions as to the reasonableness of the hourly rates charged by Andrew M. Schwartz, P.A. In light of the evidence before the Court, the Court finds the following to be reasonable rates pursuant to which Defendants are entitled to recover attorney's fees for the time expended by the billing parties of Andrew M. Schwartz, P.A.:

- a. The Court finds Andrew M. Schwartz, Esq.'s rate of \$535.00 to be reasonable, in light of Mr. Schwartz's years of experience and his reputation as a litigation attorney. The Court also finds that both Mr. Willits and Mr. Osofsky agreed this rate was reasonable.
- b. The Court finds that a reasonable rate for the services of Christopher S. Salivar, Esq. while working at Andrew M. Schwartz, P.A. would be \$395.00, as opposed to the \$435.00 rate requested by the Defendants. The Court makes this finding based upon Mr. Salivar's years of experience and his reputation as a litigation attorney, the results obtained in this suit based upon his actions taken for the benefit of the Defendants, and the testimony of Mr. Willits and Mr. Osofsky as to the reasonableness of his fees.
- c. The Court finds that a reasonable rate for the services of Heather F. Beale, Esq. would be \$375.00, as opposed to the \$435.00 rate requested by the Defendants. The Court makes this finding based upon the fact that Mrs. Beale had less overall legal experience than Mr. Salivar, and her contributions to this action were more in the role of newer attorney consulting and support, as opposed to that of a first or second

chair trial counsel. The Court also considered the testimony of Mr. Willits and Mr. Osofsky as to the reasonableness of her fees.

- d. The Court finds that a reasonable rate for the services of Randi Scheiblich, the paralegal employed by Andrew M. Schwartz, P.A., would be \$195.00 per hour. Both Mr. Willits and Mr. Osofsky agreed this rate was reasonable.
 - e. The Court finds that the requested rate for Scott Chapman, Esq. of \$460.00 per hour is reasonable in light of his experience. Both Mr. Willits and Mr. Osofsky also agreed this rate was reasonable.
7. With respect to the rates and time expended by the firm Christopher S. Salivar, P.L.L.C., services were provided pursuant to a hybrid retainer agreement. Under this agreement, Mr. Salivar earned an initial flat fee of \$7,500.00, and accounted for his hourly time at a rate of \$360.00 per hour. Christopher S. Salivar, P.L.L.C. retained the right to advance Defendants' claim for recovery of prevailing party attorney's fees on behalf of the Defendants at the agreed hourly rate in the event the Defendants were successful in this action.
 8. Considering the testimony of Mr. Willits and Mr. Osofsky, Esq., the Court finds Mr. Salivar's \$360 hourly rate to be reasonable. The Court also finds that Defendants are entitled to seek recovery of an award of attorney's fees based upon Mr. Salivar's tracked and billed time and the alternative fee recovery clause contained therein. *See First Baptist Church of Cape Coral, Fla. Inc. v. Compass Constr., Inc.*, 115 So. 3d 978 (Fla. 2013).
 9. Having determined that the foregoing rates for the services provided by Defendants' counsel are reasonable, the Court turns its consideration to the total time expended in this

litigation and whether the total amount of attorney's fees sought by the Defendants is reasonable under a *Rowe* analysis.

10. The Court finds this case required a significant expenditure of time to adequately address the issues presented to the Court for consideration. Plaintiff argued that this case was overly litigated, and the Court agrees. The Court finds, however, that the reason for the overlitigation was due to the strategies employed by the Plaintiff. The Court further finds that the fact that the Defendants vigorously defended this case does not mean that they over-litigated the case. The Court finds that the Defendants' litigation strategies were appropriate, given the litigation strategies of the Plaintiff. The Court finds that, because of the actions of the Plaintiff, there was an enormous amount of time and labor required by Defendants in this case. The Court finds that, because of the actions of the Plaintiff, many issues that should have been relatively straightforward were made quite difficult and required skill, time, and effort for an effective response. As an example, the Plaintiff's complaint for trial de novo charged the arbitrator with the commission of error in connection with nine (9) specific issues. While some of the issues presented turned on the existence, or lack thereof, of factual support for the Plaintiff's allegations, others presented sophisticated legal issues. Nonetheless, having made these findings, the Court still finds that some reductions in the time submitted by Defendants' counsel are required, and the Court will address each of those below.

11. Starting first with Christopher S. Salivar, P.L.L.C., from the date of that firm's retention through April 7, 2023, Christopher S. Salivar, Esq. (acting as the sole attorney employed by Christopher S. Salivar, P.L.L.C.) expended 274.6 hours representing the Defendants. By review of the timesheets in evidence, and the testimony presented for the Court's

consideration, the Court finds all of this time to have been reasonably incurred. The Court finds the tasks identified in the timesheets denote necessary actions taken by Mr. Salivar to represent the interests of the Defendants. The Court also finds that Mr. Salivar was candid with the Court as to certain billable items for which attorney fee reimbursement were not being sought. Specifically, Mr. Salivar did not seek reimbursement for: a) hours incurred preparing documents in the middle of a discovery deposition (for which the firm properly did not charge any additional time to the Defendants), b) a reduction of time from the timesheets in evidence to account for a sanctions payment of \$1,404.00 Ordered by the Court and paid by Plaintiff's counsel, and c) exclusion of specific time entries included on the timesheets and which identified actions taken in connection with a pending Fourth District Court of Appeal action (Case No.: 4D23-0257). As such, the Court awards all of Christopher S. Salivar, Esq.'s requested time at the rate of \$360.00 per hour. The total amount of this award for the services rendered by Christopher S. Salivar, P.L.L.C. is **\$98,856.00.**

12. Moving next to the Andrew M. Schwartz, P.A. law firm, from the date of its retention through December 14, 2022, the employees of Andrew M. Schwartz, P.A. expended 355 total hours representing the Defendants. Having reviewed the timesheets for Andrew M. Schwartz, P.A. by each billing party, the Court finds that reductions to some of the time expended by Andrew M. Schwartz, Esq. and Heather F. Beale, Esq. are necessary. The Court finds the reduction is warranted based upon what the Court finds to be duplication of attorney effort on some tasks, and based upon what the Court finds to be excessive supervisory tasks by Andrew M. Schwartz, Esq. Given the Court's consideration of the *Rowe* factors and the actual services provided by each billing party as reflected in the time

records in evidence, the Court finds the following hourly amounts to have been reasonably incurred:

- a. The Court finds that Andrew M. Schwartz, Esq. reasonably expended 36.6 hours representing the interests of the Defendants in this action. The Court finds that while Christopher Salivar was at the Schwartz firm, half of the time billed by Andrew Schwartz was reasonable. The Court further finds it appropriate to reduce Andrew Schwartz's time to one-eighth of the amount of time billed after Mr. Salivar left the firm. The Court is reducing the time based upon what it finds is a duplication of attorney effort, and the lack of need for supervision to the extent expended by Mr. Schwartz.
- b. The Court finds that Heather F. Beale, Esq. reasonably expended 28.9 hours representing the interests of the Defendants in this action.
- c. The Court finds that Scott Chapman, Esq. reasonably expended .7 hours representing the interests of the Defendants in this action.
- d. The Court finds that Randi Scheiblich reasonably expended 61.3 hours performing paralegal tasks for the benefit of the Defendants in this action. As to the paralegal time the Court has found to be reasonable, the Court specifically considered Plaintiff's argument that some of the time awarded constituted "administrative tasks" which should not be compensable. The Court notes that the work performed by paralegals in the current legal environment has shifted as to what is considered administrative, and what is not considered administrative. The Court fully reviewed the time sheets in evidence, and finds that the types of things the paralegal billed for in this case, including electronic filing and electronic file updating, require

paralegal level expertise. The Court finds the activities performed by the paralegal, in this case, were appropriate and the Court has awarded all of the incurred paralegal time based upon this finding.

13. Given the Court's findings as to the total reasonable number of hours expended by each billing party, the Court hereby awards a total reasonable fee of **\$96,019.00** for the services rendered by Andrew M. Schwartz, P.A.
14. In rendering the foregoing rulings, the Court has expressly considered the total time expended by Defendants' counsel in connection with this matter, and has found the time identified herein to be reasonable in comparison to the ultimate result achieved for the Defendants. The Court entered a Final Judgment which fully ratified and upheld the arbitrator's ruling brought before the Court for review. Further, the Court ruled in favor of the Defendants as to each of the six (6) issues presented by the Plaintiffs at trial. The trial evidence, as presented by Defendants' counsel, also stood as the basis for the Court's denial of the Plaintiff's eighty-three (83) page Motion for Rehearing and/or Motion for New Trial, which the Court denied, and which denial was based in part upon the Court's finding that substantial competent evidence in the trial record supported the Court's rulings as set forth in its December 2, 2022 Final Judgment.
15. The Court has fully considered the testimony provided by all testifying witnesses, including testimony regarding the length of relationship between the Defendants and Defendants' counsel, noting that the Defendants initially retained Andrew M. Schwartz, P.A. to represent their interests in earlier litigation involving the Plaintiff in 2012. This lengthy connection is also a factor the Court considers in finding the Defendants' counsel's rates as identified herein to be reasonable.

16. The Court also finds that the attorneys who represented the Defendants were knowledgeable, experienced, and capable litigation attorneys, who achieved a result for the Defendants which denied all relief sought in this action by the Plaintiff.
17. Having fully considered all factors set forth in *Rowe* for determining an appropriate lodestar calculation, the Court hereby awards the Defendants a recovery of **\$194,875.00.**
18. As to costs, the Court has fully reviewed the costs documentation submitted in evidence, including all invoices for deposition transcripts and court reporting services, subpoena service, copies for file and litigation materials, parking for court appearances, postage, proposed expert witness expenses, and expert witness fees, and finds all submitted costs to be reasonable. The full amount to be awarded Defendants for costs is **\$31,903.97.**
19. The Court finds costs associated with the testimony of Ryan Willits, Esq. to be reasonable, specifically the 10.5 hours he expended preparing for and testifying during the hearings held before this Court (and the pre-hearing depositions which were conducted pursuant to this Court's prior Order). The Court finds that Mr. Willits' rate of \$475.00 per hour for his services is reasonable in light of his experience and testimony, and as such the costs award set forth herein includes an award of \$4,987.50 for the fees the Defendants incurred with Mr. Willits for his expert witness services.
20. As to Peter Sachs, the testimony established that Mr. Sachs was not allowed to testify at trial by the then trial judge. The Court recognizes that the costs related to a non-testifying expert witness and the attorney's fees related to preparing such an expert for testifying are generally not compensable. In this case, however, because the issue on which he was prepared to remained one that Plaintiff kept alive by having their own expert on call, the

Court finds that all costs associated with having Mr. Sachs prepared to testify are reasonable and warranted.

21. The Court further finds that, in this particular case, at least until the Defendants were allowed to actually review the documents at issue, post-judgment fees and costs are appropriately before the Court and the Court does deem them all to be reasonable.
22. Finally, the Court finds that Defendants are entitled to an award of pre-judgment interest on the attorney's fees award set forth above, per *Genser v. Reef Condo. Ass'n*, 100 So. 3d 760 (Fla. 4th DCA 2012) ("In its final order, the court determined that interest on the award of attorney's fees was due from the date of entitlement, namely the date on which liability for attorney's fees was determined, even though the amount was not determined until a year later. The Court's ruling comports with *Quality Engineered Installation, Inc. v. Higley South, Inc.*, 670 So. 2d 929, 931 (Fla. 1996), in which the supreme court held that a party is entitled to a pre-judgment award of interest on attorney's fees from the date of entitlement:"). On December 2, 2022 (the date of the Final Judgment which fixed Defendants' entitlement to a recovery of attorney's fees) the statutory pre-judgment and post-judgment interest rate was 4.75%. As of January 1, 2023, that rate increased to 5.52%. Based upon these applicable pre-judgment interest rates, Defendants are entitled to \$5,391.70 in pre-judgment interest on the \$194,875.00 attorney's fee award set forth above, calculated as: \$25.36 per day for 29 days (December 2, 2022 through December 31, 2022), and \$29.47 per day for 158 days (January 1, 2023 through June 8, 2023).
23. To the extent not otherwise addressed in the instant Order, the Court also incorporates its findings and rulings made orally on the record in this case. To the extent there are any


inconsistencies between the Court's oral rulings and those within the written Order, the Court intends the written Order to take precedence.

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED

1. Judgment is hereby entered in favor of ELEANOR LEPSALTER and EDWARD LEPSALTER, whose address is 1000 Spanish River Rd, 2S, Boca Raton, FL 33432, against BOCA VIEW CONDOMINIUM ASSOCIATION, INC. (FEI/EIN# 20-2429205), whose address is 1000 Spanish River Rd, Boca Raton, FL 33432, in the total amount of \$232,170.67, for which execution shall issue forthwith. Until the foregoing judgment is satisfied, the judgment shall bear post-judgment interest at the current rate of 6.58% per annum, with such rate to change annually in accordance with § 55.03(3), Fla. Stat. (2011).
2. The Court shall retain jurisdiction over the parties for purposes of enforcement of this judgment as may become necessary.
3. Within forty-five (45) days of the entry of this Judgment Plaintiff shall serve upon Defendants' counsel a complete Form 1.977 Judgment Debtor Fact Information Sheet, along with all required documents identified therein. Failure to comply with this provision of this judgment may be punishable as contempt of court.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida

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Carolyn Bell
Carolyn Bell Circuit Judge
ADMINISTRATIVE OFFICE OF THE COURT

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Carolyn Bell
Circuit Judge

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record via email