

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 8523

MIRIAM EQUITIES, LLC, a New
Jersey Limited Liability Company,

Plaintiff,

v.

LB-UBS 2007-C2 MILLSTREAM
ROAD, LLC, a North Carolina Limited
Liability Company,

Defendant.

**ORDER AWARDING EXPENSES
AND ATTORNEYS' FEES**

1. **THIS MATTER** is before the Court to determine an award of attorneys' fees and other expenses resulting from the Court's Order and Opinion granting Defendant LB-UBS 2007-C2 Millstream Road, LLC's ("Defendant") Motion for Summary Judgment (the "Summary Judgment Order"). *See Miriam Equities, LLC v. LB-UBS 2007-C2 Millstream Rd.*, 2022 NCBC LEXIS 5 (N.C. Super. Ct. Jan. 25, 2022); (*see also* ECF No. 89 (same).)

2. After considering Defendant's Petition in Support of Award of Attorneys' Fees and Costs (the "Petition"), as well as Defendant's supporting materials and other relevant matters of record, the Court hereby **ENTERS** the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, and **ORDERS** relief as set forth below.

FINDINGS OF FACT

3. This case involves the attempted sale of commercial property in Guilford County, North Carolina (the "Property") by Defendant to Plaintiff Miriam Equities, LLC ("Plaintiff"). The sale fell through when Plaintiff failed to meet the terms

required to close in the Agreement for Sale and Purchase of the Property (the “Agreement”).

4. After an eventful discovery and motion period, the Court considered and granted Defendant’s Motion for Summary Judgment on 25 January 2022. In its Summary Judgment Order, the Court determined that the Agreement contained a reciprocal attorneys’ fee provision as defined by N.C.G.S. § 6-21.6. Specifically, Section 16.1 of the Agreement provides in relevant part:

In the event of any litigation arising out of or under this Agreement and/or out of Buyer’s ownership, development or construction upon the Property, the prevailing party shall be entitled to collect from the non-prevailing party reasonable attorneys’ fees and costs.

(Verified Compl. Ex. A, at § 16.1, ECF 3.)

5. The Court further found that Defendant was the prevailing party in the litigation. (Summ. Judg. Or. at ¶¶ 69–70.)

6. As a result of these findings, the Court ordered Defendant to file a petition with supporting affidavits and other materials on or before 24 February 2022. Plaintiff was afforded twenty days from Defendant’s filing to respond to the petition. (Summ. Judg. Or. at ¶ 71.)

7. On 24 February 2022 Defendant filed its Petition. (ECF No. 91.) Included as an exhibit with the Petition were a series of invoices reflecting fees and expenses billed by counsel for Defendant (the “Invoices”). (ECF No. 91.1.) No affidavit accompanied these materials. Defendant did not respond to the Petition.

8. The Court has previously awarded attorneys’ fees and expenses in this matter as a result of Plaintiff’s discovery violations (the “Sanctions Order”). *See*

Miriam Equities, LLC v. LB-UBS 2007-C2 Millstream Rd., 2021 NCBC LEXIS 97, at ¶¶ 16–17 (N.C. Super. Ct. Nov. 1, 2021).

9. In response to the earlier Sanctions Order, Defendant filed an Affidavit of Attorneys' Fees, (Aff. Att'ys' Fees [hereinafter "Aff."], ECF No. 85), in which James Pulliam, Defendant's counsel, attested to the experience and "standard" hourly rates of co-counsel Elizabeth Winters, Lynn Charbonneau, and himself.

10. According to Pulliam's affidavit, several of Defendant's attorneys and the paralegal involved in this matter have significant experience in complex business litigation. Lead counsel Pulliam has practiced complex business litigation for more than thirty-two years. (Aff. ¶ 4.) Co-counsel Winters likewise has practiced in the field for more than nine years. (Aff. ¶ 4.) Charbonneau, the team's paralegal, completed an ABA-approved certificate program in 1988. (Aff. ¶ 4.) However, the record is devoid of evidence that would allow the Court to evaluate the reasonableness of the rates charged for the following professionals: David Simpkins, Lori Hunt, Ava Conger, Monica Roberts, K. K. Hanley and A. F. Gray.

11. The Court previously awarded Defendant \$18,901.25 in attorneys' fees and \$2,333.27 in expenses as a result of the Sanctions Order. (Ord. Awarding Exp. & Att'ys' Fees ¶ 28, ECF No. 88.)

12. A determination of the appropriate award of attorneys' fees and expenses following the Court's Order and Opinion granting Defendant's Motion for Summary Judgment is now ripe for determination. The Court concludes, in the

exercise of its discretion, that a hearing would not assist the Court with respect to this ruling and thus decides this matter without a hearing. *See* BCR 7.4.

CONCLUSIONS OF LAW

A. Legal Standard

13. In North Carolina, attorneys' fees are recoverable only "if such a recovery is expressly authorized by statute." *Robinson v. Robinson*, 210 N.C. App. 319, 336 (2011) (citation and internal quotation marks omitted). N.C.G.S. § 6-21.6(c) applies here, given the Agreement's reciprocal attorneys' fees provision.

14. An award for attorneys' fees under N.C.G.S. § 6-21.6(c) must be reasonable. *See In re VR King Constr., LLC*, 2021 Bankr. LEXIS 1804, at *12–14 (Bankr. W.D.N.C. July 7, 2021); N.C. Rev. R. Prof. Conduct 1.5(a). The trial court must make findings of fact to support an award of reasonable attorneys' fees. *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2018 NCBC LEXIS 69, at *16 (N.C. Super Ct. July 6, 2018) ("An award for attorneys' fees under section 6-21.6 must be reasonable, and the trial court must make findings supporting any award." (citing *WFC Lynwood I LLC v. Lee of Raleigh, Inc.*, 259 N.C. App. 925, 933 (2018))). In doing so, the Court may consider all relevant facts and circumstances, including, but not limited to, the following:

- (1) The amount in controversy and the results obtained.
- (2) The reasonableness of the time and labor expended, and the billing rates charged, by the attorneys.
- (3) The novelty and difficulty of the questions raised in the action.
- (4) The skill required to perform properly the legal services rendered.

- (5) The relative economic circumstances of the parties.
- (6) Settlement offers made prior to the institution of the action.
- (7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil Procedure and whether judgment finally obtained was more favorable than such offers.
- (8) Whether a party unjustly exercised superior economic bargaining power in the conduct of the action.
- (9) The timing of settlement offers.
- (10) The amounts of settlement offers as compared to the verdict.
- (11) The extent to which the party seeking attorneys' fees prevailed in the action.
- (12) The amount of attorneys' fees awarded in similar cases.
- (13) The terms of the business contract.

N.C.G.S. § 6-21.6(c).

15. Ultimately, the amount of attorneys' fees to be awarded is left to the trial court's discretion and "will not be disturbed without a showing of manifest abuse of [that] discretion." *Bryson v. Cort*, 193 N.C. App. 532, 540 (2008). The trial court "may also in its discretion consider and make findings on the services expended by paralegals . . . if, in the trial court's opinion, it is reasonable to do so." *United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 195 (1993) (cleaned up).

B. Amount of Attorneys' Fees Awarded

16. Turning to the amount of the award, of the factors for consideration, the Court determines that the following are relevant: (1) the amount in controversy and the results obtained; (2) the reasonableness of the time and labor expended, and the

billing rates charged by the attorneys; (3) the novelty and difficulty of the questions raised in the action; (4) the skill required to perform properly the legal services rendered; (5) the extent to which the party seeking attorneys' fees prevailed in the action; and (6) the terms of the business contract. *See* N.C.G.S. § 6-21.6(c).

1. Time and Labor Expended

17. The Court first evaluates the time and labor expended by Defendant's counsel. The Court again observes—as it did in its earlier Sanctions Order awarding attorneys' fees—that, rather than billing by task, the time is “block-billed” by each provider for all tasks performed in an entire day. (*See generally* Invoices.) When more than one task is performed in a day, the “block-billing” format makes it difficult for the Court to assess whether the time spent with respect to each task was reasonable. *See Dixon v. Astrue*, 2008 U.S. Dist. LEXIS 9903, at *11 (E.D.N.C. Feb. 8, 2008) (“This block billing precludes the court from determining that all of the amounts claimed . . . are both compensable and reasonable”). Therefore, the Court strongly encourages counsel not to submit materials in block-billed format when requesting attorneys' fees.

18. In addition, descriptions of certain of the time entries are redacted in their entirety, preventing the Court from determining their reasonableness:

<i>Date</i>	<i>Initials</i>	<i>Description</i>	<i>Hours</i>
11/04/2021	ELW	REDACTED ENTRY	1.30
11/05/2021	ELW	REDACTED ENTRY	1.50
11/05/2021	JHP	REDACTED ENTRY	2.50

(ECF No. 91.1.)

The hours requested for these entries will be deducted from the calculation of attorney's fees to ensure the reasonableness of the award.

2. Billing Rates

19. The record is devoid of evidence that would allow the Court to evaluate the reasonableness of the rates charged for the following professionals: David Simpkins, Lori Hunt, Ava Conger, Monica Roberts, K. K. Hanley and A. F. Gray. Consequently, the amounts charged for these professionals (\$13,682.50) shall not be included in the award.

20. Defendant charged the following hourly rates: (i) \$895.00 for Mr. Pulliam; (ii) \$570.00 for Ms. Winter; and (iii) \$380.00 for Ms. Charbonneau. (Aff. ¶ 4.) Based upon the Court's survey of North Carolina cases, the typical and customary hourly rate charged by attorneys in North Carolina for complex commercial litigation varies by firm but, in general, is somewhat less than the rates requested by Defendant's counsel here. *See, e.g., Ford v. Jurgens*, 2022 NCBC LEXIS 59, at *4, 11 (N.C. Super. Ct. June 15, 2022) (concluding requested hourly rate of \$380.00 for a partner with 14 years of experience was reasonable); *In re VR King Constr., LLC*, 2021 Bankr. LEXIS 1804, at *21–22 (concluding requested hourly rate reasonable as it was “well below” the \$400.00 to \$450.00 hourly rate for “general commercial litigation attorneys with approximately 12 years of experience”); *Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 58, at *19–20 (N.C. Super. Ct. Sept. 5, 2019) (holding hourly rates of \$350.00 and \$250.00 to be reasonable), *aff'd per curiam*, 376 N.C. 798; *Bradshaw v. Maiden*, 2018 NCBC LEXIS 98, at *12 (N.C. Super. Ct. Sept.

20, 2018) (concluding that “a typical and customary hourly rate charged in North Carolina for complex commercial litigation . . . ranges from \$250 to \$475” (citation omitted)); *In re Krispy Kreme Doughnuts, Inc., S’holder Litig.*, 2018 NCBC LEXIS 61, at *21 (N.C. Super. Ct. June 20, 2018) (concluding \$300.00 per hour was “well within the standard range” for complex civil litigation); *see also Cannon v. Bald Head Island*, 2021 U.S. Dist. LEXIS 139488, at *7 (E.D.N.C. July 27, 2021) (holding hourly rates of \$300.00 for lead counsel and \$200.00 to \$225.00 for associates reasonable for the prosecution of a motion to compel). The Court takes judicial notice of such holdings and of the customary hourly rates of local attorneys of the same experience providing similar services in Guilford County, North Carolina. *See Simpson v. Simpson*, 209 N.C. App. 320, 328 (2011) (trial court permitted to take judicial notice of “customary hourly rates of local attorneys performing the same services and having the same experience”).

21. Likewise, with respect to paralegal rates, the Court observes that relatively recent fee awards have been based on rates lower than that requested here. *See, e.g., Capps v. Newmark S. Region, LLC*, 2021 U.S. Dist. LEXIS 88402, at *13–14 (E.D.N.C. May 10, 2021) (concluding a rate of \$100.00 per hour for paralegal services reasonable “as the prevailing market rate for corporate civil litigation in this district”); *Lorenzo v. Prime Communs., L.P.*, 2018 U.S. Dist. LEXIS 236186, at *34 (E.D.N.C. Sept. 28, 2018) (finding paralegal rate of \$125.00 per hour reasonable); *Red Valve, Inc.*, 2019 NCBC LEXIS 58, at *19–20 (holding paralegal rate of \$150.00 per hour reasonable based on paralegal’s fifteen years of experience); *Insight Health*

Corp., 2018 NCBC LEXIS 69, at *21–23 (awarding hourly rates between \$150.00 and \$250.00 for support staff and paralegals where fee petition was supported by an affidavit from an outside attorney and were not objected to by sanctioned party).

22. Considering the range of hourly rates and adjusting for the passage of time since the cases above were decided, the Court finds, in the exercise of its discretion, that rates of \$675.00 per hour for Mr. Pulliam’s time, \$475.00 per hour for Ms. Winter’s time, and \$250.00 per hour for Ms. Charbonneau’s time are reasonable given the evidence and under the circumstances existing here, and the fee award reflects these rate adjustments.

3. Complexity of Issues and Necessary Skill

23. With respect to this factor, the Court finds that the work required in connection with the Motion for Summary Judgment would not, under ordinary circumstances, have been challenging for experienced attorneys such as Mr. Pulliam and Ms. Winters. However, Plaintiff’s conduct during discovery and motion practice unnecessarily complicated that case. Consideration of this factor, therefore, weighs in favor of the reasonableness of the attorneys’ fees requested herein.

4. Amount in Controversy and Results Obtained

24. This case involved the attempted sale of a commercial building for more than \$23 million and included a claim for \$1 million in liquidated damages. Summary judgment was awarded to Defendant. In addition, the Court determined that Defendant was not required to return the \$1 million deposit but was permitted to retain the deposit under the terms of the Agreement as liquidated damages. Thus,

Defendant accomplished its demanded relief. This factor weighs in favor of the attorneys' fee award.

5. Terms of the Business Contract

25. As stated above, the Agreement specifically provides that the prevailing party "shall be entitled to collect from the non-prevailing party reasonable attorneys' fees and costs." (Verified Compl. Ex. A, at § 16.1.) Defendant is the prevailing party.

26. Accordingly, after making the time and rate adjustments discussed above, as well as accounting for the \$18,901.25 previously awarded, the Court finds, in the exercise of its discretion, that an attorneys' fee award of \$281,556.25 is fair and reasonable under the circumstances of this case.

<i>Timekeeper</i>	<i>Hours</i>	<i>Hourly Rate</i>	<i>Total</i>
James Pulliam	249.10	\$675.00	\$168,142.50
Elizabeth Winters	275.40	\$475.00	\$130,815.00
Lynn Charbonneau	6.00	\$250	\$1,500.00

Total Fees Earned: \$300,457.50
(\$18,901.25)

Fee Award: \$281,556.25

C. Amount of Expenses Awarded

27. Turning next to the remaining expenses reflected in the Invoices, they fall broadly into the following categories: Federal Express charges for mailing, courier services, court reporting charges, videographer charges, charges associated with

obtaining a certified charter for Defendant, copying charges, e-discovery-related data storage charges, and Westlaw legal research charges.

28. The Court has already awarded Defendant expenses in the amount of \$2,333.27 in connection with its Motion for Sanctions.

29. The Agreement states that the prevailing party shall be entitled to collect from the non-prevailing party reasonable attorneys' fees *and costs*. Similarly, N.C.G.S. §6-21.6(c) permits an award of reasonable attorneys' fees *and expenses*. N.C.G.S. § 7A-305(d) includes certain expenses as costs. Nevertheless, the majority of expenses listed on the Invoices are not generally recoverable in a civil action.

30. The statute lists some expenses that are recoverable, among them: fees for designation to the North Carolina Business Court, witness fees, the expense of service of process, mediator fees, fees for stenographic and videographic assistance directly related to the taking of depositions, and the cost of deposition transcripts. *Id.* Accordingly, the Court finds that the following expenses incurred by Defendant shall be added to the award:

<i>Date</i>	<i>Charge</i>	<i>Amount</i>
12/10/2019	Guilford County Clerk; NCBC designation – 50% of filing fee	\$550.00
08/04/2020	Patterson Harkavy LLP-Mediation services through July 20, 2020	\$880.00
11/10/2020	Veritext-Remit Payment for Job# 4313460	\$250.00
10/28/2021	Veritext/New York Reporting Co.-Court reporting services regarding Statement on Record	\$633.00

Total: \$2,313.00

These expenses total \$2,313.00.

CONCLUSION

31. WHEREFORE, the Court, in the exercise of its discretion, hereby **ORDERS** Plaintiff to pay Defendant’s reasonable attorneys’ fees in the amount of \$281,556.25, as well as other expenses detailed above in the amount of \$2,313.00, for a total amount of \$283,869.25. Payment is to be made within thirty (30) days following entry of this Order.

IT IS SO ORDERED, this the 8th day of July, 2022.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases