

FAYETTE CIRCUIT COURT
CIVIL BRANCH
THIRD DIVISION

FILED
FEB 25 2011
[Signature]

CHARLES HAUSMAN and
CHRISTINE HAUSMAN, his wife

PLAINTIFF

VS.

ORDER

NO. 07-CI-3780

DAVID DENHAM, ET AL

DEFENDANT

* * * * *

The Court took the Motion for Attorney fees under advisement and having considered same now enters its Order as follows:

Paragraph 19 of the contract in question provides generally that the prevailing party in a legal action which is instituted by or between the parties is entitled to recovery of "....all costs, including a reasonable attorney's fee." There is no doubt counsel for defendants Denham and Bizzack were involved in extensive and prolonged litigation in the matter including depositions, written discovery and voluminous motion practice and court hearings. As Summary Judgment was ultimately granted to Denham and Bizzack, there is no question they are the "prevailing parties" in this dispute with the Plaintiffs.

Taking into consideration the "totality of the circumstances", the Court feels that some, but not all, of the claimed attorney fees should be awarded to Denham and Bizzack in this case. The Court tried very hard to encourage the parties to settle the dispute instead of incurring the additional expense of ever increasing attorney fees and related litigation expenses. Yet, there continued a barrage of motions and amended complaints and extensive motion practice with a myriad of new claims from the Plaintiffs at every turn. Denham and Bizzack were willing at an early stage of the case to pay for replacement of the basement windows which was rejected by the Plaintiffs.

IT IS THEREFORE ORDERED that the Plaintiffs shall pay to Denham and Bizzack

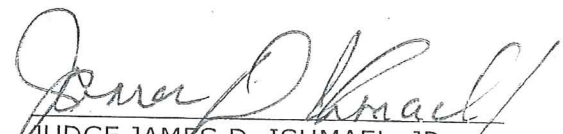
attorney fees incurred as follows:

- (1) as to the fees incurred with Henry E. Davis, Esq., the Court awards the sum of \$5,000.00.
- (2) as to the fees incurred with Miller, Griffin & Marks, PSC, the Court awards the sum of \$20,000.00.

Both of these awards are in the neighborhood of one-third of the amount claimed. The Court fully recognizes that all parties to litigation have a right to assert claims in good faith without fear of being required in every case of being ordered to pay opposing counsel's fees. The Court feels that the Plaintiffs engaged in repetitive and voluminous discovery and motion practice well beyond what was required or demanded in this case, all to no avail in the end. Therefore, this award of attorney fees, which is explicitly provided for in the contract, is fair and reasonable under the circumstances.

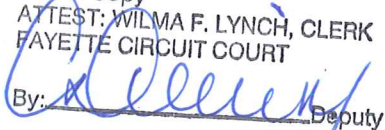
It is further ORDERED this is a final and complete adjudication of all of the final claims of the remaining parties and there is no just reason for delay and this Judgment is final and appealable pursuant to Cr 54.02.

Dated this the 25 day of Feb, 2011.


JUDGE JAMES D. ISHMAEL, JR.

ATTESTED COPIES MAILED TO:

Grant Stephens, Esq.
Carroll Redford, Esq.
Jeff Rager, Esq.

A True Copy
ATTEST: WILMA F. LYNCH, CLERK
FAYETTE CIRCUIT COURT
By:  Deputy

This the ___ day of FEB 25 2011, 2011.

WILMA F. LYNCH, C.F.C.C.

BY:  D.C.