

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

SVNE PHARMA, INC., : August Term 2013
Plaintiff, :
v. : No. 2706
NORTHEAST PHILADELPHIA PHARMACY, :
INC., et. al., : Commerce Program
Defendants. :
Control Number 15051486
:

ORDER

AND NOW, this ^{1ST} day of July 2015, upon consideration of Defendants Northeast Philadelphia Pharmacy, Inc. and Inna Sander's Motion for Attorney Fees and Costs, Plaintiff's response in opposition and after oral argument, it hereby is **ORDERED** that the Motion for Attorneys' Fees and Costs is **Granted in part and Denied in part**. Defendants are awarded attorneys' fees in the amount of \$104,783.95 and costs in the amount of \$ 24,213.06.

BY THE COURT,


PATRICIA A. McINERNEY, J.

Svne Pharma, Inc. C/O P-ORDOP



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COMMERCE PROGRAM**

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	:	
Defendants.	:	Control Number 15051486
	:	
	:	

OPINION

Presently pending before the court is defendants’ petition for attorney fees and costs. This action arises from a complaint filed on August 23, 2013, by plaintiff SVNE Pharma, Inc. (“SVNE”) against defendants Northeast Philadelphia Pharmacy, Inc. and Inna Sandler (“Defendants”), the former owner of the pharmacy. The complaint included claims for fraud, equitable fraud/rescission and breach of contract. On April 24, 2015, the court granted defendants’ motion for summary judgment, denied plaintiff’s partial motion for summary judgment and dismissed plaintiff’s complaint in its entirety. Defendants now seek an award of attorneys’ fees and costs. For the reason discussed below, the motion for attorneys’ fees and costs is granted in part and denied in part.

Under the American Rule, applicable in Pennsylvania, a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception.¹ In the case *sub judice*, defendants argue they are entitled to attorneys fees pursuant to statutory authorization, 42 Pa. C. S. § 2503 (7) and (9)

¹ *Trizechahn Gateway LLC v. Titus*, 601 Pa. 637, 652, 976 A.2d 474, 482-83 (2009) See, *Mosaica Charter Sch. v. Commonwealth, Dep’t of Educ.*, 572 Pa. 191, 206–07, 813 A.2d 813, 822 (2002).

and an agreement between the parties. As it relates to statutory authorization, defendants argue they are entitled to an award of attorneys' fees pursuant to 42 Pa. C. S. § 2503(9) for commencing the action and pursuing it vexatiously and in bad faith and pursuant to 42 Pa. C. S. § 2503 (7) for obdurate and vexatious conduct during the pendency of the matter. Subsections (7) and (9), respectively, provide that a trial court may award reasonable counsel fees to a litigant as a sanction for conduct that is dilatory, obdurate or vexatious, and for conduct in commencing the matter or otherwise, that is arbitrary, vexatious, or in bad faith.² An opponent can be deemed to have brought suit "vexatiously" if suit were filed without sufficient grounds in either law or in fact and if the suit served the sole purpose of causing annoyance.³ Also, parties have been found to have acted "vexatiously" when they have pursued their claim in the face of settled law or in contravention of clear court rulings that their claim was without merit. Opponents can also be charged with filing a lawsuit in "bad faith" if the suit was instituted for purposes of fraud, dishonesty or corruption.⁴

In the case *sub judice*, there is no evidence that the instant action was instituted vexatiously or in bad faith. The record does not indicate that SVNE brought this action believing that it had no reasonable possibility of succeeding. SVNE will not be penalized for bringing an action which was not ultimately successful.⁵ As such, the court finds that statutory authorization for attorneys' fees does not exist.

² *Diener Brick Co. v. Mastro Masonry Contractor*, 885 A.2d 1034, 1042 (2005).

³ *Id.*

⁴ *Id.*

⁵ *Possessky v. Diem*, 440 Pa. Super. 387, 402, 655 A.2d 1004, 1011 (1995) (One cannot be penalized for bringing an action which was not ultimately successful.).

Defendants also argue they are entitled to an award of attorney fees and costs based upon § 8.08 of the Asset Purchase Agreement. Section 8.08 of the Asset Purchase Agreement, titled “Prevailing Party”, provides as follows:

Section 8.08 Prevailing Party. If any action at law or in equity is brought by either party hereto to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to recover reasonable attorneys’ fees, costs, and disbursements in addition to any other relief to which such party may be entitled.

By virtue of granting defendants’ motion for summary judgment and denying plaintiff’s partial motion for summary judgment, defendants are the prevailing party and therefore entitled to recover reasonable attorneys’ fees and costs. Defendants seek an award of \$278,977.95 for attorney fees and \$25,753.66 for costs. Defendants are entitled to reasonable attorneys’ fees pursuant to the contract’s terms and Pennsylvania law.⁶ Determination of the reasonableness of an attorneys’ fee award is within the sound discretion of the trial court and is reviewed only for abuse of discretion.⁷ The trial court’s discretion with respect to the reasonableness of an attorney’s fees includes the authority to reduce the fee claimed and allow only such sum as the court deems reasonable.⁸ In determining whether attorney’s fees are reasonable, a trial court considers numerous factors, including the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the degree of responsibility incurred; the professional skill and standing of the attorney in his

⁶See, *McMullen v. Kutz*, 603 Pa. 602, 615, 985 A.2d 769 (2009).

⁷ *In Re LaRocca’s Trust Estate*, 431 Pa. 542, 246 A.2d 337 (1968).

⁸ See *McMullen v. Kutz*, 603 Pa. 602, 985 A.2d 769 (2009) (holding that where a contractual provision provides for a breaching party to pay the attorney’s fees of the prevailing party in a breach of contract case, the trial court may consider whether the fees claimed to be incurred are reasonable and to reduce the fees claimed if appropriate).

profession; the result he was able to obtain; and, the amount of money or the value of property in question.⁹

During oral argument, SVNE submitted plaintiff's Exhibit 1, a 5 page document, which consisted of a summary of the most excessive fees sought by defendants. The entries on P1 identified the category/phase of litigation, task description, hours billed, fees charged and comments. Upon review of defendants' itemized invoices supporting its fee request¹⁰ as well as P-1, the court finds defendants attorneys' fee request to be unreasonable. For instance, defendants' billed a total of 8 hours for research of the Case Management Memo, preparation of the Case Management memo, a two page document, and attendance at the conference for a total of \$2400.00. Some other examples include billing a total of 11.7 hours to draft and confer on responding to document request; a total of 10.6 hours was billed for review of pleadings for the preparation of one subpoena and 39.8 hours was billed for time spent on motions for letters rogatory and research on service of out of state subpoenas. Additionally, some of the entries are duplicative and one entry, dated 11/18/13 to "finalize and file brief re: valuation of shares in SM West and Cert. in Support of Attorney's Fees and Costs is not related to the instant action. Based on this court's review of the invoices, P-1, the pleadings in this matter and after taking into consideration the experience of counsel, defendants' attorneys fee request is reduced by \$174,194.00.

In addition to a fee request, defendants also seek an award of costs for \$25,753.66. According to defendants' counsel, these fees are broken down as follows: \$12,151.04 in costs generated throughout this litigation, \$2,970.68 requested in the bill of costs, and \$11,856.90 in

⁹ *La Rocca's Trust Estate*, at 546, 246 A.2d at 339.

¹⁰ Defendants' invoices were marked as P2.

expert fees. SVNE argues many of the charges on the bill of costs submitted are duplicative and unnecessary. The court finds SVNE's argument persuasive. As such, the bill of costs is reduced to \$1,540.60.

CONCLUSION

For the forgoing reasons, defendants Motion for Attorneys Fees and Costs is granted in part and denied in part. Defendants are awarded attorneys fees in the amount of \$104,783.95 and costs in the amount of \$24,213.06.

BY THE COURT,


PATRICIA A. McINERNEY, J.