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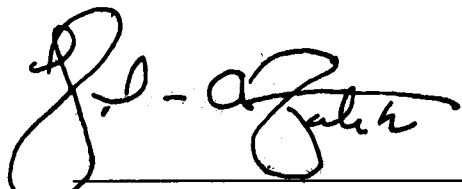
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION -CIVIL

THOMAS MORE MARRONE, ESQUIRE,	:	April Term 2021
	:	
Plaintiff	:	
v.	:	No. 2548
	:	
THE LOFTS AT 1234 CONDOMINIUM ASSOCIATION,	:	Commerce Program
	:	
Defendant.	:	Control Number 23023692

ORDER

AND NOW, this 13th day of July 2023, upon consideration of Defendant The Lofts at 1234 Condominium Association's Motion for an Award of Costs and Reasonable Attorneys' Fees under 68 Pa. C. S. § 3412 or Alternatively under 42 Pa. C. S. § 2503, and Plaintiff Thomas More Marrone, Esquire's Response in Opposition, and in accord with the attached Opinion, it hereby is **ORDERED AND DECREED** that the Motion is **DENIED**.

BY THE COURT:



PAULA A. PATRICK, J.

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OPINION

Presently before the Court is Defendant The Lofts at 1234 Condominium Association Motion’s for an Award of Costs and Reasonable Attorney’s Fees pursuant to 68 Pa. C. S. § 3412 or in the alternative 42 Pa. C. S. § 2503. For the reasons discussed below, the motion is denied.

BACKGROUND

In this action, Plaintiff Thomas More Marrone, Esquire (“Marrone”) claimed a right to indemnification and *quantum meruit* for professional time he allegedly diverted from his law practice and provided to defend himself and Defendant the Lofts at 1234 Condominium Association (“Association”) in two actions captioned *Cooley v. Lofts at 1234 Condominium Association, et. al.*, 1604-3513 and *Dana v. Lofts at 1234 Condominium Association, et. al.*, 1702-6522 (hereinafter referred to as *Cooley and Dana* Actions).¹ On January 6, 2023, this Court granted the Association’s Motion for Summary Judgment and denied Marrone’s partial motion for Summary Judgment. On February 1, 2023, Marrone filed a Motion for Reconsideration which

¹ A detailed factual background of this action may be found in this Court’s Opinion dated January 6, 2023.

was denied by the Court. Marrone has not filed a Notice of Appeal of this Court's Order and Opinion dated January 6, 2023.

Now, the Association moves this Court for an award of costs and attorney fees. Specifically, the Association seeks a total of \$220.72 in Record Costs related to this matter and Non Record Costs which represent a total of \$90,356.72 in attorneys' fees and costs from April 2021 through November 2022 in connection with its defense.² The Association relies upon two statutes for the award of costs and attorneys' fees. For the reasons discussed below, the Association's Motion is Denied.

DISCUSSION

I. The Association is not Entitled to Attorney Fees and Costs under 68 Pa. C. S. § 3412.

The Association argues that it is entitled to an award of attorney fees under 68 Pa. C. S. § 3412.³ Title 68 Pa. S. C. § 3412 of the Condominium Act provides as follows:

If a declarant or any other person subject to this subpart violates any provision thereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief. **Punitive damages may be awarded in the case of a willful violation of the subpart and, if appropriate, the**

² In addition to the foregoing motion, the Association has also filed Bill of Costs pursuant to Phila. Local Rule 227.5 with the Office of Judicial Records seeking the same Record Costs (\$220.72) and Non Record Costs (\$90,356.72) as in this action. Marrone filed Exceptions and a hearing on the Bill of Costs was scheduled for June 15, 2023. To date, a decision has not been rendered by the Office of Judicial Records. The Court's decision here will not have any preclusive affect on whether the Association is entitled to a Bill of Costs for Record Costs, See Phila. Local Rule 227.5 (C)(1). However, this decision does preclude the Association's Bill of Costs for Non Record Costs, See Phila. Local Rule 227.5 (C)(2)(f), because as will be discussed in this Opinion, the Statutes relied upon by the Association for an award of attorney fees and costs do not expressly authorize the award of attorney fees and costs.

³ No opinion, published or otherwise, appears to have addressed the fee award provision of § 3412. However, there have been opinions which addressed provisions with similar language. See, *Serota v. London-Towne Homeowners Association*, 2018 WL 6005540 (Pa. Cmwlth. Ct. November 16, 2019) (Planned Community Act, 68 Pa. C. S. § 5412) and *Morgan v. The Stotesbury Community Ass'n, Inc.*, No. 2018-23317, 2022 WL 17475706 (Pa.Com.Pl., Montgomery County Dec. 06, 2022).

prevailing party may be entitled to an award of costs and reasonable attorney fees.⁴

Section 3412 does not mandate the award of attorney fees and costs to a prevailing party. Rather, it is at the Court's discretion as to whether such an award should be made⁵ after the prevailing party establishes its entitlement to such an award.⁶

Here, the Association has not established its right to an award of fees and costs as there is no evidence of a violation of the Condominium Act or that the Association has made a claim that it was adversely affected by any such violation. Marrone filed this action seeking indemnification and *quatum meruit* for legal fees he allegedly incurred and believed he was entitled to reimbursement under the Condominium ByLaws.

Additionally, notwithstanding the absence of a claim alleging violation of the Condominium Act, there has been no finding that Marrone willfully violated §3412 of the Condominium Act in this case. The Association relies upon Marrone's litigious history in this Court of Common Pleas as a basis to award attorney fees in this action. Reference to other actions and decisions of other Judges is not sufficient for this Court to award attorney fees and cost in this

⁴ Effect of violations on rights of action, 68 Pa.C.S.A. § 3412. (Emphasis Added).

⁵ "Use of the term 'may' signals the legislature's intention to rest the award of counsel fees and costs within the discretion of the trial court." *Hoy v. Angelone*, 554 Pa. 134, 720 A.2d 745 (Pa. 1988).

⁶ *Jones v. Muir*, 515 A.2d 855, 859 (Pa, 1986) ("The applicant for counsel fees has the burden of proving his/her entitlement thereto.") (fee award under common-fund doctrine); *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 197 A.3d 825, 837 (Pa. Cmwillh. 2018) (single-judge opinion) ("Requester bore the burden of proof and persuasion as to reasonableness of the fees claimed.") (fee award under Right-to-Know Law), *aff'd*, 243 A.3d 19 (Pa. 2020).

action. Based on the foregoing, the Association's motion for an award of attorney fees and costs pursuant to § 3412 is denied.

II. The Association is not Entitled to an Award of Attorney Fees and Costs under 42 Pa. C. S. §2503.

In the alternative, the Association argues it is entitled to attorney fees and costs under 42 Pa. C. S. § 2503 (7) and (9). Title 42 Pa. C. S. § 2503 provides in part that the following participants shall be entitled to reasonable counsel fees as part of the taxable costs of the matter if:

(7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter...

(9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

In support of its request, the Association asks this Court to take into consideration Marrone's profession as an attorney at law in this Commonwealth when he "sought to be compensated for his legal services at a rate of \$850/hour from a client that never retained him." (Association Memo Law.) Additionally, the Association directs this Court to Marrone's multiple lawsuits seeking to obtain the exact same legal fees which have been denied by other Judges of this Court.

First, the Association may not rely upon Marrone's past and present litigation history for an award of attorney fees and costs in this action. An award of counsel fees under § 2503 is meant to compensate a litigant for costs caused by the actions of the opposing party relating to the conduct of a party at some point during the litigation process. Thus, activity that occurred prior to this lawsuit in other lawsuits cannot form the basis for a counsel fee award.⁷ As the only complaint

⁷ *Carlson v. Ciavarelli*, 100 A.3d 731, 745 (Pa. Cmwlth. 2014); *F. Zacherl, Inc. v. Flaherty Mechanical Contractors, LLC*, 131 A.3d 1030, 1042 (Pa. Cmwlth. 2016).

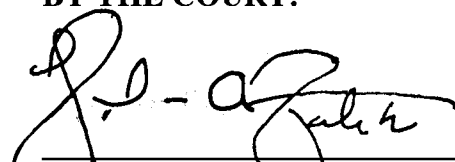
made by the Association is the rate that Marrone sought reimbursement for in this litigation, the Association has not met its burden to show that Marrone engaged in “dilatatory, obdurate or vexatious conduct during the pendency of a matter.”

Additionally, the Association has not shown that Marrone engaged in bad faith in this litigation. The Court recognizes the parties long history of litigation, however, notwithstanding that history, the claims brought by Marrone in this action have not been shown to be filed in bad faith. While this Court did grant summary judgment in favor of the Association, prior attempts to dismiss this matter were made by the Association but denied; preliminary objections were overruled and a motion for judgment on the pleadings was denied. Section 2503(9) serves not to punish all those who initiate legal actions that are not ultimately successful, or which may seek to develop novel theories in the law. Such a rule would chill the rights of litigants to bring legal harms suffered.⁸ While Marrone has allegedly made numerous attempts to collect the same fees as sought here as damages, the claims alleged in Marrone’s amended complaint in this action were different. This strategy does appear to be against the interests of judicial economy and efficiency, but it does not amount to bad faith warranting the award of attorney fees and costs.

CONCLUSION

Based on the foregoing, the Motion to Award Attorney Fees and Costs is Denied.

BY THE COURT:



PAULA A. PATRICK, J.

⁸ *Dong Yuan Chen v. Saidi*, 100 A.3d 587, 592 (Pa. Super. 2014)