

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

GRIT DREXEL LLC Plaintiff(s) vs. CRESCENT ABSTRACT LLC Defendant(s)	: : : : : : : :	PHILADELPHIA COUNTY COURT OF COMMON PLEAS Case No. 230401466 COMMERCE PROGRAM
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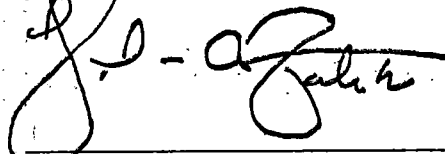
ORDER

AND NOW, this 11th day of March, 2025, upon consideration of the foregoing Motion to Assess Damages, it is hereby **ORDERED** and **DECREED** that **JUDGMENT** is **ENTERED** in favor of Plaintiff Grit Drexel LLC and against Defendant Crescent Abstract LLC, and damages are hereby **ASSESSED** against Defendant in the amount of \$511,791.66, representing \$510,754.78 in compensatory damages, and \$1,036.88 in costs.

IT IS FURTHER ORDERED that:

1. Grit Drexel LLC's request for a reward of attorney fees in the amount of \$5,000 under 42 Pa. C.S.A. § 2503(9) is hereby **DENIED**. The Court's Ruling is based upon its findings herein attached.

BY THE COURT:



PAULA A. PATRICK, J.

ORDOP-Grit Drexel Llc Vs Fidelity National Title Insuran [FJB]



COPY

OPINION

On March 5, 2025, the Court held an evidentiary hearing to assess damages against Defendant Crescent Abstract, LLC in the instant matter. For the reasons below, the Court grants Plaintiff's requested relief in part and denies its requested relief in part.

FACTUAL AND PROCEDURAL HISTORY

On March 23, 2022, Plaintiff Grit Drexel, LLC ("Grit Drexel") obtained a title insurance policy from Fidelity National Title Insurance Company ("Fidelity"), whose agent was Crescent Abstract, LLC ("Crescent Abstract"), the Defendant. This policy was obtained in conjunction with Plaintiff's purchase of a piece of property at 3725 Lancaster Avenue, Philadelphia, PA 19104. Fidelity learned that a significant easement existed on the property dating back to 1975, which would preclude Grit Drexel from using the property as it intended. Plaintiff Grit Drexel LLC intended to demolish the property, a three (3) story apartment building and erect a single-family household. Fidelity sent Grit Drexel LLC a letter confirmed that Plaintiff Grit Drexel was insured against loss for the undiscovered easement. Plaintiff initiated a lawsuit against Fidelity and Crescent Abstract for breach of contract, bad faith insurance practices, and declaratory judgment, as well as a negligence claim against Crescent Abstract for its failure to discover the easement. Fidelity filed its preliminary objections to Plaintiff's complaint on May 5, 2023. Grit Drexel filed an Amended Complaint on May 26, 2023 bringing a single-count claim of negligence solely against Crescent Abstract. Grit Drexel served Crescent Abstract with the Amended Complaint on June 12, 2023 via the sheriff with an attached notice to defend.

Defendant did not file an appearance in the trial court, nor did it answer the Amended Complaint. On July 12, 2023, Plaintiff Grit Drexel LLC served Defendant Crescent Abstract LLC with a notice of intent to take a default judgement against Defendant. The Prothonotary entered a

Default Judgment against Defendant Crescent Abstract LLC on August 17, 2023. On September 29, 2023, Crescent Abstract filed a Petition to Strike or Open Default Judgment. On November 3, 2023, this Court issued an order denying Defendant's Petition to Open or Strike a Default Judgment. Defendant filed its Notice of Appeal on December 1, 2023. On December 23, 2023, Defendant filed its Statement of Matters Complained of on Appeal under Pa. R.A.P 1925(b). This Court filed its appeal opinion on April 12, 2024. On January 22, 2025, the Superior Court of Pennsylvania affirmed the Court's November 3 order.

DISCUSSION

I. PLAINTIFF HAS PROVEN ITS LOSSES IN THE AMOUNT OF \$510,754.78.

Pennsylvania Courts assign the fact-finder “the task of assessing the worth and credibility of the testimony on the issue of damages.” *Glomb by Salopek v. Glomb*, 530 A.2d 1362, 1369 (Pa. Super. 1987). “The distinguishing feature of compensatory or actual damages is that they serve “to compensate for a proven injury or loss.”” *Bert Co. v. Turk*, 298 A.3d 44, 58 (Pa. 2023). Compensatory damages are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct and may include out-of-pocket loss and other monetary harms. *Id.*

Here, Plaintiff requests damages totaling \$510,754.78. Michael Silverman, Plaintiff's Expert, is a Certified General Appraiser, licensed in the state of Pennsylvania. *See* Exhibit P-17. Mr. Silverman possessed twenty-nine (29) years of experience performing valuations and appraisals for businesses, developers, and investors, title issues, and various other real estate areas. Plaintiff's Expert conducted an appraisal review of Defendant's expert George Sengpiel's Appraisal Report and found the value conclusions of Plaintiff's property, namely that the unaffected market value was \$700,000 without the easement, and that Plaintiff suffered a \$450,000

diminution in value of the property due to said undisclosed easement and subsequent legal dispute. *Id.* at 5. Mr. Silverman is qualified as an expert, and thus has the necessary qualifications to opine on the property's value before and after value diminution.¹ Plaintiff's damage calculation regarding the value of the property itself is uncontested, and even confirmed by Defendant's own expert findings. Thus, these damages are credible.

As for the remaining calculations, Plaintiff has proffered numerous exhibits of paid invoices surrounding the building's construction, zoning, design, insurance policy, and demolition plans. Plaintiff contracted for the services of multiple construction and architectural firms, and paid the necessary permit fees with the City of Philadelphia.² Having actually incurred bills for services and permits for the property in question, Plaintiff has proven concrete, out-of-pocket losses in fact. These losses were the result of Defendant's wrongful conduct, as affirmed by the Superior Court's refusal to reverse this Court's denial to strike or open the Default Judgment. The losses described in footnote 2 total a sum of \$510,755.28, attributed to the property's decline in value, to its due and owing payment contractual obligations for the services, as well as payment rendered for the permits already procured for the property at issue.

¹ See Pa. R.E. 702. ("A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson and the knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and the expert's methodology is generally accepted in the relevant field.")

² See Exhibit P-3 (Gnome Architecture Invoice, billing \$28,207.45 for services, building permit application fees, and additional Services);

See Exhibit P-4, pg. 2-5 (Poulson Associates, billing \$4,325.00 for Engineering Structural & Utility Plan services);

See Exhibit P-6 (All-State Services, billing \$4,875.00 for Demolition Fees);

See Exhibit P-7 (StructureLabs Building Design Invoice, billing \$9,500);

See Exhibit P-8 (Geo Structures Invoice, billing \$4,657.50 for Underpinning & Special Inspector Services);

See Exhibit P-9 (Ambric Tech Invoice, billing \$500.00 for Report & Consulting services);

See Exhibit P-10 (City of Philadelphia, billing \$51.00 for a Zoning Permit for Full Demolition);

See Exhibit P-11 (City of Philadelphia, billing \$4,275.73 for a New Construction Permit);

See Exhibit P-12 (City of Philadelphia, billing \$421.50 for Minor Demolition Permit);

See Exhibit P-15 (Gannon-Coyne & Associates Invoice, billing \$3,413.00 for Business Owner's Policy Premium);

See Exhibit P-16 (Grit Construction LLC Invoice, billing \$529.10 for Temporary Fencing, Signage, Permit Postings, and Closures).

Therefore, Plaintiff is entitled to its requested relief in the amount of \$510,754.78.

II. PLAINTIFF IS ENTITLED TO ITS COSTS AS THE PREVAILING PARTY IN THE INSTANT MATTER

“It is a general rule in our judicial system... [T]hat costs inherent in a law suit are awarded to and should be recoverable by the prevailing party.” *Smith v. Rohrbaugh*, 54 A.3d 892, 897 (Pa. Super. 2012)(internal citation omitted). “[C]osts follow as a matter of course, and the court has no discretion to award or deny them.” *Id.* “[T]he [losing] party must pay “accrued record costs...includ[ing] all record costs, namely, costs paid by the plaintiff to the prothonotary and to the sheriff, such as fees for filing and service of this complaint, fees for filing and service of the writ of attachment summoning the garnishee, discovery costs, notary fees for various affidavits filed of record, and fees for subpoenas to bring witnesses to arbitration hearings.” *Friedgen v. Evangelical Manor*, 384 A.2d 1309, 1311 (Pa. Super. 1978). “[A] fee for a subpoenaed witness incurred by the non-appealing party should be entered on the record by way of a bill of costs.” *Id.*

Having prevailed in the instant suit through a Default Judgment affirmed by the Pennsylvania Superior Court, Plaintiff is entitled to recover all of its record costs and discovery costs. *Smith*, 54 A.3d at 897; *See* 01/22/25 Order (Affirming the Court’s Order denying Defendant’s Petition to Strike or open a Default Judgment). The Court has no discretion to deny the requested relief. *Id.* Based upon the contents of its exhibits, Plaintiff is entitled to a minimum of \$440.71 in record costs for the cost of filing its appeal and rendering service on the Defendant.³ Furthermore, Plaintiff examined two witnesses during the assessment of damages hearing, one being its expert Michael Silverman, who performed a written valuation analysis of Defendant’s Expert Report on the property in the instant matter. Because Grit Drexel LLC has prevailed in the

³ *See* Exhibit P-13; *See* Exhibit P-14

matter, the non-prevailing party, Defendant Crescent Abstract LLC is liable to Plaintiff for the costs associated with the production of the report.

Therefore, Plaintiff is entitled to the \$1,036.88 in costs that it seeks from the Defendant, the non-prevailing party in this matter.

III. PLAINTIFF HAS FAILED TO PROVIDE A BASIS FOR AN AWARD OF ATTORNEY'S FEES UNDER 42 PA. C.S.A. § 2503(9)

Under 42 Pa. C.S.A. § 2503(9), Counsel shall be entitled to reasonable attorney fees where another party's conduct in initiating the action or otherwise was arbitrary, vexatious or in bad faith. 42 Pa. C.S.A. § 2503(9); *Berg v. Georgetown Builders, Inc.*, 822 A.2d 810, 816 (Pa. Super. 2003)(internal citation omitted).

Here, Plaintiff requests a \$5000 award of attorney fees under 42 Pa. C.S.A. § 2503(9) for Defense counsel's conduct in filing the motion *in limine*, based upon Defendant's bad conduct. Specifically, its bad faith in citing to non-existent law when raising its discovery objection and ignoring controlling precedent as to its hearsay objection. However, 2503(9) only applies to conduct in initiating an action, namely the filing of a suit, as is implicated by the language of the statute, "the conduct of another party in commencing the matter or otherwise". 42 Pa. C.S.A. § 2503(9); *Thunberg v. Strause*, 682 A.2d 295, 300 (Pa. 1996) ("[T]he [§ 2503(9)] statute focuses attention on the conduct of the party from whom attorney's fees are sought and on the relative merits of that party's claims... The Judicial Code permits the award of attorneys' fees in an attempt to curb the filing of frivolous and otherwise improperly brought lawsuits."). Because Plaintiff is alleging bad faith in the conduct committed during the course of a lawsuit, namely the filing of the motion *in limine*, and not in commencing the lawsuit itself, relief cannot be awarded under § 2503(9).

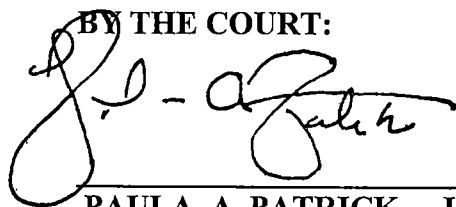
Therefore, Plaintiff's requests for attorney fees under 42 Pa. C.S.A. § 2503(9) must be denied.

SO ORDERED.

DATED:

March 11, 2025

BY THE COURT:

A handwritten signature in black ink, appearing to read "P. A. Patrick", is written over a horizontal line.

PAULA A. PATRICK, J.