

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

ISAAH LESTER, Administrator of
the Estate of Jessica Lynn Scott
Lester, deceased
Plaintiff,

v.

Case No. CL08-150

ALLIED CONCRETE COMPANY
and
WILLIAM DONALD SPROUSE,
Defendants.

and

ISAAH LESTER,
Plaintiff,

v.

Case No. CL09-223

ALLIED CONCRETE COMPANY
and
WILLIAM DONALD SPROUSE
Defendants.

FINAL ORDER

On the 23rd day of September, 2011, came the parties, Isaiah Lester (“Lester”), Administrator of the Estate of Jessica Lynn Scott Lester, by his Counsel, Malcolm P. McConnell, III, Esq. (“McConnell”), and Defendants Allied Concrete Company (“Allied”) and William Donald Sprouse, by their counsel, Benjamin G. Chew, Esq. Rory E. Adams, Esq., John W. Zunka, Esq. and Richard H. Milnor, Esq. and came the beneficiaries, Gary C. Scott and Jeannine Scott, by their counsel, Joseph A. Sanzone, Esq., plus Matthew B. Murray (“Murray”) by his counsel, Thomas Williamson, Esq. and Marlina Smith (“Smith”) by her counsel, M. Bryan Slaughter, Esq. and Malcolm P. McConnell, Esq. by his counsel, Robert T. Hall, Esq. as well as Allen, Allen, Allen and Allen, by its counsel, Hugh M. Fain, III, Esq., for an evidentiary hearing pursuant to the Court’s Order dated September 1, 2001, granting Defendants’ post-trial motions for sanctions against Murray and Lester wherein the Court, in addition to hearing arguments of counsel, received testimony of expert witnesses, received memoranda from Defendants, Murray, Lester and Allen, Allen, Allen and Allen, and received evidence of billing records reflecting attorneys’ fees and expenses incurred by Defendants relating to the spoliation of evidence and other misconduct identified in the aforementioned Order of September 1, 2011; and

WHEREAS, the Court has subsequently reviewed Defendants’ Supplemental and Revised January 18, 2011 Memoranda of Costs and Fees Incurred Related to Motion for

Sanctions for Plaintiff's Spoliation of Evidence filed on September 22, 2011, detailing fees and expenses and has also received and reviewed Objections of Mathew B. Murray, Esq. to Defendants' Supplemental and Revised January 18, 2011 Memoranda of Costs and Fees, accompanied by analysis and critique by G.A. "Chip" Kalbaugh, Esq., directed to Thomas W. Williamson, Jr. Esq., dated September 30, 2011; and

WHEREAS, the Court has carefully considered all of the arguments of Murray and Lester that the fees and expenses sought are excessive, including, but not limited to, contentions that all but a portion of the fees sought were neither reasonable, necessary nor caused by the sanctioned conduct, that fees sought were in contravention of litigation billing guidelines of the insurance companies, involved too many attorneys and staff, that hourly rates of all attorneys and staff were excessive, that retention of Mr. Roche, plus all local counsel was unnecessary and that the litigation with Facebook in California was unnecessary, unduly expensive and time-consuming; and

WHEREAS, the Court, having reviewed the evidence and arguments of counsel and carefully considered the extensive pattern of deceptive and obstructionist conduct of Murray and Lester resulting in the sanction award, finds that most of the substantial fees and costs expended by Defendants were necessary and appropriate to address and defend against such conduct, with the actions required by Defendants having been accurately summarized under the heading entitled "Timeline of Spoliation Events" set forth on pages 3-6 of Defendants' Rebuttal to Mathew B. Murray's and Plaintiff's Objections to Defendants' Memorandum of Costs and Fees; and

WHEREAS, after considering the objections of Murray and Lester as set forth above, and after rendering deductions where the Court determined such objections to be well-founded, the Court, having considered the time and effort expended by the attorneys, the nature of the services rendered, the complexity of the services, the value of the services to the client, the results obtained, whether the fees incurred were consistent with those generally charged for similar services, and whether the services were necessary and appropriate in light of the Court's Order of September 1, 2011, see, e.g., *West Square, L.L.C. v. Communication Techs.*, 274 Va. 425 (2007), finds as follows:

1. The total of fees and expenses found to be payable to Defendants is \$722,000, with the sum of \$625,110 due Patton Boggs LLP and the sum of \$96,890 due Zunka, Milnor & Carter, Ltd.;
2. Of the grand total set forth above, Murray is obligated for, and is hereby ORDERED to remit to Defendants, the sum of \$542,000; and
3. Of the grand total set forth above, Lester is obligated for, and hereby ORDERED to remit to Defendants, the sum of \$180,000; and

There being nothing further remaining for resolution in this case, it is hereby DISMISSED from the docket of this Court.

The Clerk is directed to mail true copies of the foregoing Final Order to all counsel of record.

Endorsements are dispensed with pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia.

ENTER: _____

DATE: _____

[Handwritten signature]
10/21/11

A COPY TESTE:
PAUL C. GARRETT, CLERK
- *[Handwritten signature]* - DEP. CLERK