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By order of the Court, DENIED. Presiding Judge Robert C. Naraja

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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

EUN TEAK JUNG and LAW OFFICES OF
RAMON K. QUICHOCHO, LLC,

Plaintiffs,

vs.

JU YOUNG KIM and TAEWOO CORP.,

Defendants.

CIVIL ACTION NO. 10-0314

ORDER DENYING DEFENDANTS'
REQUEST FOR ATTORNEY'S FEES

JU YOUNG KIM and TAEWOO CORP.,

Counter-Plaintiffs,

vs.

EUN TEAK JUNG,

Counter-Defendant.

I. INTRODUCTION

THIS MATTER came before the Court on Defendants' request for attorney's fees and costs on December 5, 2012 at 9 a.m. in Courtroom 202A. Defendants and counter-plaintiffs Ju Young Kim ("Kim") and Tae Woo Corporation ("Tae Woo Corp.") (collectively, "Defendants") were represented by Stephen J. Nutting, Esq. Plaintiff and counter-defendant Eun Teak Jung ("Jung") and plaintiff Law Offices of Ramon K. Quichocho, LLC ("the Law Offices") (collectively, "Plaintiffs") were represented by Robert H. Myers, Jr., Esq.

1 At the conclusion of the bench trial, on September 21, 2012, the Court entered a
2 judgment in the form of a findings of fact and conclusions of law (“Judgment”).¹ On October
3 12, 2012, at the direction of the Court, Defendants submitted a memorandum of law in support
4 of attorney’s fees and costs along with their attached time billings. On November 1, 2012,
5 Plaintiffs filed an opposition, and Defendants filed a reply on November 6, 2012. Based on a
6 review of the filed papers and oral arguments of counsel, the Court hereby DENIES
7 Defendants’ request for attorney’s fees.

8 **II. LEGAL STANDARD**

9 An award of attorney’s fees is within the court’s sound discretion. *In re Estate of*
10 *Malite*, 2010 MP 20 ¶ 44 (“Since attorney fee awards are reviewed for an abuse of discretion,
11 lower courts are granted wide latitude in awarding fees.”). The court also has wide latitude in
12 awarding costs. *Ishimatu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 73. Awarding attorney’s
13 fees involves a two-step process. *Malite*, 2010 MP 20 ¶ 45. “First, the court must determine
14 whether the requested fees are reasonable[,]” which requires the court to consider all relevant
15 attorney fee factors outlined in Rule 1.5 of the Model Rules of Professional Conduct
16 (“MRPC”). *Id.* “Second, the court must determine the appropriate fee award.” *Id.*

17 **III. DISCUSSION**

18 The Commonwealth has adopted the “‘American Rule,’ which states that parties must
19 bear their own costs of litigation.” *Reyes v. Reyes*, 2004 MP 1 ¶ 79 (citing *Alyeska Pipeline*
20 *Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240, 247 (1975)). However, the prevailing party is
21 entitled to costs other than attorney’s fees. NMI R. Civ. P. 54(d)(1). Also, the prevailing party
22 may recover reasonable attorney’s fees when authorized by statute. *Id.* Here, Defendants, as
23 the prevailing parties,² point to the statutes codified under the Holdover Tenancy Act and

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25 ¹ The Court agrees with Plaintiffs that an award for attorney’s fees and costs may not be available until there is a
26 final judgment, which must comply with the “separate document rule.” See NMI R. Civ. P. 54(a); *Commonwealth*
27 *v. Kumagai*, 2006 MP 20 ¶ 22. The Court delayed issuing a Rule 54(a) final judgment in order to first resolve the
28 pending motions for reconsideration and attorney’s fees and costs. Now that these motions have been resolved,
the Court will issue a final judgment that does not contain a recital of the pleadings. NMI. R. Civ. P. 54(a).

² The “prevailing party” is determined in light of the overall relief obtained and the number of successful claims
compared to the number of claims filed. *Ishimatu v. Royal Crown Ins. Co.*, 2010 MP 8 ¶ 67 (“[T]he prevailing
party is the party that has been successful on the whole, and not necessarily on every claim, at the end of the

1 Building Safety Code as permitting an award of attorney’s fees for prevailing on the claims
2 brought pursuant to those chapters. Defendants further argue they should recover fees for all
3 remaining claims because they all arose from a common core of facts. Lastly, Defendants
4 assert that Plaintiffs should not be permitted to contest the reasonableness of the fees since
5 Plaintiffs’ claims were all frivolous.³

6 **A. THE COURT EXERCISES ITS DISCRETION TO DENY ANY AWARD OF ATTORNEY’S FEES**
7 **UNDER THE HOLDOVER TENANCY ACT.**

8 Plaintiffs brought an unlawful detainer claim against Defendants pursuant to the
9 Holdover Tenancy Act (“the Act”). This claim was summarily dismissed in Defendants’ favor.
10 “In any civil action brought under [the Holdover Tenancy Act], the party in whose favor a
11 judgment or decree has been rendered may recover reasonable court costs, including attorney’s
12 fees, from the nonprevailing party.” 2 CMC § 40209. Based on the plain language of the
13 statute, Defendants *may* recover reasonable attorney’s fees as the prevailing party on Plaintiffs’
14 unlawful detainer claim.

15 Plaintiffs argue that an award of attorney’s fees is not available under the Act because
16 Plaintiffs did not file an exclusive unlawful detainer action. However, Plaintiffs offer no direct
17 legal support for this proposition and none is readily apparent to the Court upon reviewing the
18 Act and applicable case law. Furthermore, accepting Plaintiffs’ interpretation of the Act as
19 awarding the prevailing party with attorney’s fees and costs *only for exclusive* unlawful
20 detainer actions would create troubling policy. Plaintiffs who have strong claims under the Act
21 along with other related claims would have to file them separately in order to avail themselves

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23 litigation.”). Here, nine of the ten claims filed by Plaintiffs were dismissed in Defendants’ favor. The single
24 claim not dismissed, Count II (Partition), was granted in a manner more favorable to Defendants than Plaintiffs.
Defendants are the prevailing party in this lawsuit.

25 ³ Defendants’ argument that Plaintiffs should not be able to contest the reasonableness of Defendants’ fees due to
26 Plaintiffs’ frivolous complaint is irrelevant and without merit. By statute, the Court may award Defendants only
27 “reasonable” attorney’s fees and costs. 2 CMC § 40209. Furthermore, the Court has already concluded that
28 Plaintiffs’ claims were not wholly frivolous. (Judgment at 9-10) (“Although Plaintiffs asserted many claims
against Defendants that ultimately failed, the Court does not find them frivolous because they each had some basis
in the law.”) (citing *New Shintani Corp. v. Quitugua*, 2011 MP 9 ¶ 10). Therefore, the Court declines to address
this argument any further.

1 of attorney's fees and costs, which would be inefficient. Conversely, plaintiffs with weak
2 claims under the Act could circumvent the Act's provision for attorney's fees and costs by
3 simply combining them with another cause of action. Therefore, the Court declines to adopt
4 Plaintiffs' suggestion.

5 If the Act is applicable, as the Court has found, Plaintiffs argue the Court should
6 exercise its discretion to deny or reduce the award for attorney's fees in light of the Act's
7 purpose. The Court agrees.

8 The Act's language regarding attorney's fees is discretionary, which exhorts the Court
9 to consider the purpose of the Act. *Cf. Manglona v. Commonwealth*, 2010 MP 10 ¶ 29 (noting
10 that the court should consider "the remedial purpose of the statute involved" when exercising
11 its discretion to award prejudgment interest). The purpose of the Act is to streamline the
12 eviction process, thereby reducing the time and costs incurred by landlords in removing
13 holdover tenants from the leased premises. 2 CMC § 40201, commission cmt. § 2. Given the
14 purpose of the Act, the Legislature likely promulgated the provision on "Costs and Attorney's
15 Fees" as additional protection for landlords against holdover tenants. Furthermore, the
16 Legislature, in streamlining the eviction process, likely anticipated minimal attorney's fees and
17 costs incurred in an unlawful detainer claim. *See id.* § 40206.

18 Awarding Defendants attorney's fees would not serve the objective of the Act. First,
19 this case did not involve an eviction suit between a landlord and a holdover tenant; it involved
20 a dispute between two cotenants. Also, the purported "holdover tenant" was the prevailing
21 party rather than the purported "landlord." Second, Plaintiffs' unlawful detainer action was
22 summarily dismissed early on in the litigation. (Order Granting in Part Defs.' Mot. for Summ.
23 J. at 5.) Neither the procedure nor goals of the Act were observed in this case. *But cf. Pille v.*
24 *Sanders*, 2000 MP 10 ¶¶ 24-26 (finding an award of attorney's fees under the Uniform
25 Parentage Act was appropriate because it furthered the statute's purpose of enabling financially
26 disadvantaged parents to enforce their children's rights). Here, Defendants did not utilize the
27 Act to seek relief from a holdover tenant as primarily intended by the Legislature. Therefore,
28 the Court declines to award either party attorney's fees under the Act.

1 **B. DEFENDANTS ARE NOT ENTITLED TO ATTORNEY’S FEES UNDER THE COMMONWEALTH**
2 **BUILDING SAFETY CODE.**

3 Plaintiffs sued Defendants for negligence per se and nuisance⁴ based on a violation of
4 the Commonwealth Building Safety Code (“CBSC”). These claims were resolved in favor of
5 Defendants at trial. The statute permitting an award of attorney’s fees based on a CBSC claim
6 states:

7 (d) *Private Action.* Notwithstanding any other remedies available, any
8 person damaged economically, injured, or otherwise aggrieved as a result
9 of a violation of the building safety code has a cause of action against the
10 person who committed the violation. Violation of the building safety
code shall constitute a per se public nuisance. An award shall include
damages and the costs of litigation including reasonable attorney’s fees.

11 2 CMC § 7126. The Court construes the foregoing statute according to its plain meaning. *In*
12 *re Estate of Reyes*, 2012 MP 13 ¶ 13 (citing *N. Marianas Coll. v. Civil Serv. Comm’n*, 2007
13 MP 8 ¶ 9). The statute, 2 CMC section 7126(d), allows “any person . . . aggrieved as a result
14 of a violation of the building safety code” to recover reasonable attorney’s fees. Here,
15 Defendants were not aggrieved as a result of a violation of the CBSC so they are not entitled to
16 attorney’s fees under 2 CMC section 7126(d). The statute makes no mention of awarding
17 attorney’s fees to the “prevailing party” or a party that successfully defends against a claim
18 based on a violation of the CBSC. *But cf.* 2 CMC § 40209 (awarding attorney’s fees to “the
19 party in whose favor a judgment or decree has been rendered . . .”). Attorney’s fees are not
20 available under the CBSC.

21 Defendants are not entitled to attorney’s fees under either the Act or the CBSC, but
22 they are entitled to reasonable costs as the prevailing party. NMI R. Civ. P. 54(d)(1).
23 Defendants submitted legal billings for costs in the amount of \$2,359.63. Upon careful review
24 of the billings and the MRPC Rule 1.5 factors, the Court finds this amount reasonable.
25 Therefore, Defendants shall recover \$2,359.63 in reasonable costs.

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⁴ Plaintiffs alleged a private nuisance based on Tae Woo Corp.’s excessive noise and storage of dangerous
28 materials. This claim was summarily dismissed. Plaintiffs also alleged public nuisance based on a violation of
the CBSC due to Defendants’ removal of adequate means of egress from Plaintiffs’ property. The public nuisance
claim was resolved at trial in Defendants’ favor.

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IV. CONCLUSION

For the foregoing reasons, Defendants' request for attorney's fees is hereby **DENIED**. Defendants, as the prevailing party, shall receive reasonable costs in the amount of \$2,359.63, NMI R. Civ. P. 54(d)(1), plus post-judgment interest of 9% per annum pursuant to 7 CMC section 4101.

IT IS SO ORDERED this 29th day of January, 2013.

/s/
ROBERT C. NARAJA, Presiding Judge