

2011 JUN 28 03:37 PM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY, FLORIDA
Receipt #1401013

IN THE CIRCUIT COURT IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION

MIDFIRST BANK,
Plaintiff

Case No.: 2008-CA-1957-SC
Division A

vs.

GIDEON A. RECHNITZ, TRUSTEE FOR
THE COSTA FAMILY TRUST, et al.,
Defendants.

FILED IN OPEN COURT THIS 27 DAY OF
June, 2011
KAREN E. RUSHING, CLERK OF COURT

BY: abanel DEPUTY CLERK

WANDA COSTA,
Cross Plaintiff

Judgment Creditors:
GULFCOAST LEGAL SERVICES, INC.
HOLLAND & KNIGHT, LLP
(counsel for Ms. Costa)



vs.
Judgment Debtors:
GIDEON A. RECHNITZ,
THOMAS S. COOK
GARCO, INC.
PROFITMAX, INC.

Cross Defendants

**FINAL JUDGMENT AWARDING ATTORNEYS FEES AND COSTS TO
GULFCOAST LEGAL SERVICES, INC. AND HOLLAND & KNIGHT LLP
AGAINST GIDEON A. RECHNITZ, THOMAS S. COOK, GARCO, INC., and
PROFITMAX, INC.**

THIS CAUSE came on to be heard before this court on June 27, 2011, upon Cross Plaintiff Wanda Costa's duly noticed motion an award of attorneys fees to her counsel GULFCOAST LEGAL SERVICES, INC., and HOLLAND & KNIGHT, having taken testimony, accepted evidence including the *de bene esse* deposition of cross plaintiff's Expert Witness on value and amount of attorneys fees and costs, having heard the arguments, and reviewed the record, this Court finds and adjudges as follows:



✓ Robin Lee Storer Attorney
1750-17th Street Unit 1
Juno, FL 34234

It is hereby ORDERED AND ADJUDGED:

This case is now before the Court for consideration of the cross plaintiff Ms. Costa's counsel motion for attorney's fees and costs as a prevailing party pursuant to The Florida Deceptive and Unfair Trade Practices Act.

The cross plaintiff requests attorney's fees in the amount of \$338,863.95 (with separate awards: GULFCOAST LEGAL SERVICES, INC.'s award in the amount of \$241,842.50 and HOLLAND & KNIGHT LLP's award of \$97,021.45). This amount was calculated as set forth below considering (1) the reasonable market rate for each of Ms. Costa's attorneys and (2) the reasonableness as to the amount of time expended by each attorney.

The cross plaintiff also seeks costs in the amount of \$5,412.05 (with separate awards: GULFCOAST LEGAL SERVICES, INC.'s award in the amount of \$2,063.79 and HOLLAND & KNIGHT LLP's award of \$3,348.26), and requests that the entire award of fees and costs be levied against the cross defendants Gideon A. Rechnitz, Thomas S. Cook, Garco, Inc. And Profitmax, Inc., jointly and severally.

The cross plaintiff Wanda Costa has assigned any right, title and interest in her counsel's claims for attorneys fees and costs to those attorneys. Copies of Ms. Costa's retainer agreement with GULFCOAST LEGAL SERVICES and HOLLAND & KNIGHT LLP are part of the evidentiary record of this matter.

Discussion.

A court, in its sound discretion, may award a reasonable attorney's fee to a prevailing party in an action brought under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.2015. The section provides that prevailing parties attorneys are to be awarded for their actual work time on the trial and appeal upon the submission of affidavits covering their time and costs. It is undisputed that cross plaintiff is the prevailing party in this action as to the trial and appeal levels; consequently the only issue that remains to be determined is the amount of the attorney's fees and costs to be awarded.

The starting point for determining the amount of a reasonable fee "is the number of hours reasonably expended on the litigation multiplied by the reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "The fee applicant bears the burden of establishing entitlement and documenting the appropriate hours and hourly rates." *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988).

I. Reasonable Hourly Rates

The prevailing market rate for similar services by similarly trained and experienced lawyers in the relevant legal community is the established basis for determining a reasonable hourly rate. *Duckworth v. Whisenant*, 97 F.3d 1393, 1396 (11th Cir. 1996); *Norman*, 836 F. 2d at 1299. "The general rule is that the 'relevant market for purposes of determining the reasonable hourly rate for an attorney's services is 'the place where the case is filed.'" *American Civil Liberties Union of Georgia v. Barnes*, 168 F.3d 423, 437 (11th Cir. 1999). The party seeking fees bears the burden of establishing the market rate and should present the court with "specific and detailed evidence" from which it can determine the reasonableness of the proposed rate. *Norman*, 836 F. 2d at 1303.

In this case, the relevant legal market is the Tampa Bay, Florida area, and more specifically, the Sarasota county area. See *Cullens v. Georgia Dept. of Transp.*, F.3d 1489, 1494 (11th Cir. 1994). The cross plaintiff seeks compensation for the services of three attorneys from a non-profit civil legal aid agency and several attorneys from the private law firm of Holland & Knight, LLP, and has submitted the resumes of each GLS attorney as well as affidavits from the other attorneys to support the requested hourly rates.

Attorney Elizabeth M. Boyle was the lead counsel in this case. She received her J.D. from the University of Mississippi in 1983, and became licensed to practice law in 1983. She practiced as a civil trial lawyer in the Washington, D.C. area from 1984 until 2002 with an emphasis on employee representation and real estate. In 2000, Ms. Boyle was admitted to the Florida Bar. Ms. Boyle is a member of the Florida, Virginia, Maryland, District of Columbia and Mississippi (inactive) state bars, and many federal bars throughout the United States and is admitted to the United States Supreme Court. In 2002, she joined GULFCOAST LEGAL SERVICES, INC., a non-profit public interest civil legal aid firm, at its Sarasota office and has managed that office since 2002, supervising the provision of legal services in thousands of cases since 2002. The cross plaintiff's counsel seeks an hourly rate of \$275/hour for Ms. Boyle.

Attorney James D. "Jim" McDonald has been practicing law for more than 53 years and has extensive experience in complex civil litigation. Mr. McDonald is a member of the Florida Bar and the New York Bar as well as many federal bars throughout the United States and is admitted to the United States Supreme Court. Mr. McDonald has been a pro bono volunteer at Gulfcoast Legal Services for 9 years and has contributed thousands of hours of his time over that time on a wide variety of projects for GLS clients. Mr. McDonald has also done extensive pro bono work for other local and national non-profits over his distinguished career. The cross plaintiff seeks a rate of \$375/hour for Mr. McDonald.

Attorney Robin L. Stover graduated from Loyola Law School in Los Angeles, California, in 1997 in the top 25% of her class and on the Dean's Honor list. She is a member of the California (admitted in 1998, inactive) and Florida Bars and she is also a member of Phi Beta Kappa. She has volunteered at GULFCOAST LEGAL SERVICES, INC., and also works as a contract attorney with GLS, providing legal services in hundreds of mortgage foreclosure defense cases. The cross plaintiff seeks a rate of \$175/hour for Ms. Stover.

Attorney Leland H. Kynes, an associate at Holland & Knight LLP, is a member of the Georgia and Florida state bars, and has practiced in Tampa, Florida and Atlanta, Georgia. Mr. Kynes graduated from the University of Georgia law school and was admitted to practice in Florida in 2007. Mr. Kynes was the directing attorney as to the defense of Ms. Costa's case at the appeal level. The cross-plaintiff seeks a rate of \$270/hour in 2010, and \$290/hour in 2011 for Mr. Kynes.

Attorney David B. Singer, Senior Counsel at Holland & Knight LLP, is a member of the Florida and Illinois states bars. Mr. Singer graduated from the University of Michigan law school in 2002, and was admitted to practice in Illinois in 2003 and Florida in 2009. The cross-plaintiff seeks a rate of \$290/hour in 2010, and \$300/hour in 2011 for Mr. Singer. Mr. Singer served as the supervising attorney as to the defense of Ms. Costa's case at the appeal level.

The law firm of Holland & Knight, LLP, also seeks compensation for 55.6 hours of work completed by other lawyers at their firm. Mr. Murphy has investigated this part of the claim and found it to be reasonable based upon his interview with attorney Leland Kynes. The other attorney time is well documented in the Holland & Knight, LLP, time records which are attached to the affidavit of Leland Kynes which is a part of the evidentiary record of this case. Mr. Singer and Mr. Kynes supervised the work of these attorneys.

The cross plaintiff has also submitted for the evidentiary record the duly noticed June 22, 2011, *de bene esse* deposition of Eugene Murphy as an expert on prevailing market rates for attorney's fees and on the reasonableness of the time expended by the attorneys for Ms. Costa in this case. Mr. Murphy is an attorney in Sarasota County, Florida, and has been admitted to practice law since 1986 in Connecticut and New York and since 2003 in Florida. He currently works for Robinson & Cole, LLP, a law firm of 250 attorneys with nationwide offices. He manages Robinson & Cole LLP's Florida office. His duties include managing litigation dockets for clients of Robinson & Cole, LLP, in Florida, including state and federal court litigation.

Mr. Murphy's job duties also include reviewing attorneys bills, including those of local attorneys, for his clients to insure that the bills are reasonable. Mr. Murphy's deposition includes as Exhibit A his affidavit containing his expert opinion on fees

and costs for this matter and his brief professional biography. This court finds that Mr. Murphy is qualified as an expert to give his opinion on the reasonable market rates of the attorneys for Ms. Costa and as to the reasonableness of the amount of time they are claiming in support of an attorneys fees award.

Mr. Murphy opines that the rates requested by the cross plaintiff's GLS attorneys are well within the range of rates charged to paying clients in the Sarasota County, Florida, area. However, Mr Murphy has adjusted downward the rates requested by Holland & Knight, LLP, attorneys, Mr. Kynes and Mr. Singer, to bring those rates in line with what he believes is a reasonable market rate for their services in the Sarasota county market area, considering their experience.

Upon a careful review of the evidence and expert testimony submitted, as well as the Court's own knowledge, experience, and expertise, the Court finds that the hourly rates suggested by the cross plaintiff for her attorneys and her expert witness, Mr. Murphy, are reasonable, reflect prevailing market rates, and are adequately supported by lay and expert testimony.

Accordingly, the Court finds that it is appropriate to award attorney's fees at the hourly rates of \$275 for Ms. Boyle, \$375 for Mr. McDonald, \$175 for Ms. Stover, \$270 for Mr. Kynes in 2010 and \$290 for Mr. Kynes in 2011, \$290 for Mr. Singer in 2010, and \$300 for Mr. Singer in 2011, and from \$200/hour to \$320/hour for other Holland & Knight LLP, attorneys who performed work on this case, whose work was attested to at the hearing on the personal knowledge of Mr. Singer.

II. Reasonable Hours Expended

The next step in the analysis is to determine what hours were reasonably expended on the litigation. The cross plaintiff seeks compensation for nearly 1,161.20 hours of work in this matter. To support this request, the cross plaintiff relies upon the affidavits and testimony from her attorneys, the complete time sheet records for both Gulfcoast Legal Services and Holland & Knight attorneys, and the deposition testimony and affidavit from expert witness Eugene P. Murphy who opines that the hours expended in this case were reasonable and appropriate (Exhibit A).

This case involved issues of societal magnitude which extended beyond the cross plaintiff's individual rights, and advanced issues of public importance. According to the expert testimony, this case set a precedent as being the first known jury verdict of its kind applying the unfair and deceptive practices law to a foreclosure rescue scam. Ms. Boyle and volunteer attorney Jim McDonald were recognized for their work on this and related cases by the Florida Bar Foundation with the *2010 Goldstein Award* which recognizes excellence in civil legal aid impact cases. Moreover, the cross

defendants fought the cross plaintiff on every front, actively litigating their positions throughout the course of this five (5) year-long case, including a failed attempt to evict Ms. Costa from her home, and including subjecting the non-profit legal aid agency managing attorney and volunteer attorneys personally, to an aggressive, persistent battery of Fl. Stat. 57.105 threat letters and motions, which in retrospect were ill-taken, and added considerably to the workload of Ms. Costa's trial counsel.

The division of labor among the cross plaintiff's attorneys generally shows that each made a distinct contribution to the case. The Court is persuaded by the affidavits and testimony of Ms. Boyle, Mr. McDonald, Ms. Stover, Mr. Kynes, Mr. Singer, and by the expert witness' opinion that these attorneys exercised sound billing judgment and avoided duplicative, redundant, or otherwise unnecessary billing. This Court finds that the time expended by Ms. Costa's counsel was reasonable and necessary to adequately and effectively represent Ms. Costa.

This Court incorporates by reference the cross plaintiff's expert witness deposition as providing ample factual data upon which the findings are made herein that the market rate and the amount of time claimed by Ms. Costa's attorneys are reasonable. As Mr. Murphy testified, the time expended by these attorneys is consistent with the time necessary to develop the facts, analyze the legal issues, prepare the complaint and amendments thereto, conduct discovery, take depositions and other discovery, defend against numerous sanctions motions, defend against numerous motions in limine and summary judgment motions, prosecute a 4 day long jury trial, write appeal briefs and replies in the appeal, and pursue a very hard fought and strongly defended cause of action under the Florida Deceptive and Unfair Trade Practices Act. The time expended by these attorneys was reasonable and necessary for them to succeed in this case for their client to obtain a jury verdict and final judgment for her.

In resolving the cross plaintiff's motion, the Court has considered all of the factors and guidelines set forth in the relevant case law, as well as Rule 4-1.5(b)(1) of the Florida Bar Rules of Professional Conduct, which specific factors are:

(b) Factors to Be Considered in Determining Reasonable Fees and Costs.

- (1) Factors to be considered as guides in determining a reasonable fee include:
- (A) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
 - [C] the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
 - (D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

(E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

(F) the nature and length of the professional relationship with the client;

(G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(H) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

In sum, the cross plaintiff's counsel shall be awarded fees as follows:

Attorney	Rate	Hours	Dollars
James McDonald	\$375.00	236.9	\$88,837.50
Elizabeth Boyle	\$275.00	509.8	\$140,195.00
Robin Stover	\$175.00	73.2	\$12,810.00
Leland Kynes	\$255.00/\$290.00	215.3	
David Singer	\$370.00/\$385.00	70.4	
Other Holland & Knight	\$200.00 to \$320.00	55.6	(all H&K) \$97,021.45
			\$338,863.95

III. Litigation Expenses.

The cross plaintiff also seeks reimbursement for \$5,412.05 in litigation costs.

The cross plaintiff submitted to evidence on this matter the Affidavits of Elizabeth M. Boyle and Leland H. Kynes which provide an itemization, invoices and receipts attesting and certifying that all expenses submitted for reimbursement are true and correct. A review of this evidence show these expenses were for copies, hearing transcripts, exhibit preparation, online research costs, binders and postage – all categories of costs which are recoverable, and which appear to be reasonable and necessary in the prosecution of the trial and defense of appeal in this case. The Court will therefore award the cross plaintiff's counsel litigation costs in the amount of \$5,412.05 (with an award to GLS of \$2,063.79 and an award to HK of \$3348.26, of that amount).

IV. Additional Cost Award: Expert Witness Fees for Gulfcoast Legal Services, Inc.

This court has reviewed Mr. Murphy's testimony and accepts his reasonable market rate for his testimony is this matter is \$275/hour and that he has completed 24 hours of time which were reasonable and necessary to provided his opinion, equaling \$6,600.00.

V. Conclusion: Entry of Final Money Judgments for Attorneys Fees and Costs

Accordingly, upon due consideration, it is hereby ORDERED AND ADJUDGED that the Plaintiff's Motion for Attorney's Fees and Litigation Expenses is GRANTED, and

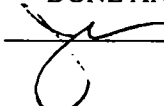
Final Judgment in favor of the cross plaintiff's counsel GULFCOAST LEGAL SERVICES, INC., whose address is 1750 17th Street, Unit I, Sarasota, Florida 34234 & 641 First Street South, St. Petersburg, Florida 33701, and against cross defendants, jointly and severally, GIDEON A. RECHNITZ, THOMAS S. COOK, GARCO, INC., and PROFITMAX, INC., in the amount of \$250,506.30 (TWO HUNDRED FIFTY THOUSAND FIVE HUNDRED AND SIX DOLLARS AND THIRTY CENTS U.S.), with interest at the legal rate FOR WHICH LET EXECUTION ISSUE.

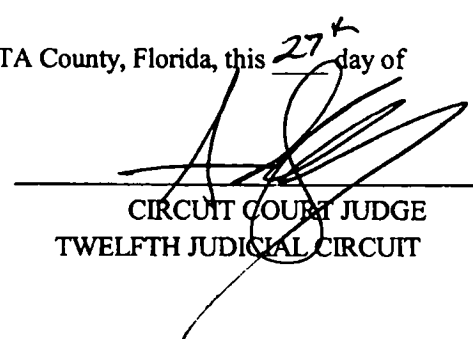
And further, Final Judgment in favor of the cross plaintiff's counsel HOLLAND & KNIGHT, LLP, whose address is 100 North Tampa Street, Suite 4100, Tampa, FL 33602, and against cross defendants, jointly and severally, GIDEON A. RECHNITZ, THOMAS S. COOK, GARCO, INC., and PROFITMAX, INC., in the amount of \$100,369.70 (ONE HUNDRED THOUSAND THREE HUNDRED AND SIXTY NINE DOLLARS AND SEVENTY CENTS U.S.), with interest at the legal rate, FOR WHICH LET EXECUTION ISSUE.

This Court also orders each of these cross defendants to provide the sworn information required in response to Florida Rules of Civil Procedure Fact Information Sheet Form 1.911.9(a) (for individual cross defendants Gideon A. Rechnitz and Thomas S. Cook) and Fact Information Sheet Form 1.977(b) (for corporations Profitmax, Inc., and Garco, Inc.) to attorneys for cross plaintiff Wanda Costa, within 30 days of this order.

THE JUDGEMENT DEBTORS SHALL FILE WITH THE CLERK OF THIS COURT A NOTICE OF COMPLIANCE AFTER THE ORIGINAL FACT INFORMATION SHEET, TOGETHER WITH ALL ATTACHMENTS, HAS BEEN DELIVERED TO THE JUDGMENT CREDITOR'S ATTORNEY.

DONE AND ORDERED in Chambers in SARASOTA County, Florida, this 27th day of _____, 2011.





CIRCUIT COURT JUDGE
TWELFTH JUDICIAL CIRCUIT

cc:

Elizabeth M. Boyle, Esquire
James D. McDonald, Esquire, Volunteer Attorney
Robin L. Stover, Esquire, Volunteer Attorney
John P. Cunningham, Esquire, Executive Director
GULFCOAST LEGAL SERVICES, INC.
641 First Street South
St. Petersburg, FL 33701
and 1750 17th Street Unit I
Sarasota, FL 34234
(941) 366-1746
www.gulfcoastlegal.org

Leland H. Kynes, Esquire
David B. Singer, Esquire
Holland & Knight LLP
100 North Tampa Street
Tampa, FL 33602

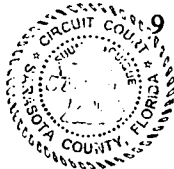
For Cross Plaintiff Wanda Costa

Richard McGiver, Esquire
Kass, Shuler, Solomon, Spector, Foyle & Singer,
P.A. P. O. Box 800
1505 N. Florida Avenue
Tampa, FL 33601
For Plaintiff MidFirst Bank

Cross Defendants:
Gideon A. Rechnitz,
Profitmax, Inc.
Garco, Inc.
P.O. Box 12733
St. Petersburg, FL 33733

Thomas S. Cook
P.O. Box 7610
Seminole, FL 33775

CLERK OF THE CIRCUIT COURT



"STATE OF FLORIDA, COUNTY OF SARASOTA
I hereby certify that the foregoing is a true and correct copy
of pages 1 through 9 of the instrument filed in
this office. The original instrument filed contains 9
pages.

This copy has no redactions. This copy has been
redacted pursuant to law.

Witness my hand and official seal this 28th day of
June, 2011.
KAREN E. RUSHING, CLERK OF THE CIRCUIT COURT
By: Shula R. Adams
Deputy Clerk