

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 24-CV-04268

Shyla and Andrew Stewart, Plaintiffs/Counterclaim Defendants v. Vermont Construction Company, Defendant/Counterclaim Plaintiff	DECISION ON MOTION FOR ATTORNEY'S FEES
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RULING ON MOTION FOR ATTORNEY'S FEES

This matter is currently before the Court for determination of Defendant Vermont Construction Company's ("VCC") motion for attorney's fees and costs under the Vermont Prompt Pay Act ("VPPA"). On July 13, 2026, this Court granted summary judgment to Defendant on both Plaintiffs Shyla and Andrew Stewart's ("the Stewarts") claim for breach of contract and VCC's counterclaim for breach of contract.¹ See Decision on Cross Mots. for Sum. J., dated 7/13/2026. On July 27, 2026, VCC filed its motion for attorney's fees and costs. The Stewarts oppose VCC's motion on several grounds, including that the fees requested are not reasonable and do not all relate to VCC's counterclaim. For the reasons discussed below, VCC's motion is GRANTED IN PART and DENIED IN PART.²

Discussion

The VPPA provides that "the substantially prevailing party in any proceeding to recover any payment within the scope of this chapter shall be awarded reasonable attorney's fees in an amount to be determined by the court or arbitrator, together with expenses." 9 V.S.A. § 4007(c). No party disputes the applicability of the VPPA in these proceedings. Further, the Court has already concluded that VCC is the substantially prevailing party, and there is no basis to revisit

¹ On August 10, 2026, the Stewarts filed a Notice of Appeal from the summary judgment decision. However, the Court retains jurisdiction over the motion for attorney's fees and elects to exercise its discretion to rule on the motion at this time. See V.R.C.P. 54 – Reporter's Notes (stating "[w]hen an appeal on the merits has been taken, the trial court may rule or defer decision on the motion for fees"). Further, Rule 54(d)((D) instructs courts to, wherever possible, "resolve issues relating to fees without extensive evidentiary hearings." Because the Court does not find that a hearing on the disputed issues would be helpful or warranted, the Court decides the motion for attorney's fees without a hearing.

² The Stewarts also suggested the Court should wait to rule on the motion pending disposition of their motion to vacate. That motion has now been denied, so the argument is moot.

this determination. *See* Decision on Cross Mots. for Sum. J., at 10. Therefore, the two relevant issues are (1) the scope of the fees to be awarded under the VPPA, and (2) whether the requested fees are reasonable.

Contrary to the Stewarts' position, the VPPA does not require that the fee award be limited to the single claim arising under the statute. Instead, courts may award attorney's fees based on a broader range of claims arising from a common core of facts that supports multiple theories of recovery. *Nystrom v. Hafford*, 2012 VT 60, ¶ 19, 192 Vt. 300. Here, the Stewarts' claim and VCC's counterclaims all arose from the same set of facts, centering on repairs done to the Stewarts' house and the question of whether either party breached the contract. Further, the same evidence was discussed in analyzing all claims. Therefore, the Court concludes that the VPPA applies to support an award of all reasonable fees incurred by VCC in pursuing its counterclaims and defending against the Stewarts' claim. *See id.* (noting that "in most construction cases that include PPA claims, courts typically determine the substantially prevailing party, if any, and the award of fees with reference to the broader range of claims at issue in the case rather than simply focusing exclusively on the PPA claim").

The Court next turns to the reasonableness of the fees and expenses requested by VCC. The Stewarts contest the reasonableness of VCC's fees on several grounds, including (1) billing for unrelated litigation (2) heavy redaction preventing review (3) double billing for the same work (4) a request for costs not provided³ and (5) fees for a discovery dispute allegedly started by VCC.

In general, courts have significant discretion in determining the reasonableness of fees claimed and may adjust the fee figure upward or downward as necessary. Some of the factors for the Court's consideration include (1) the novelty of the legal issue, (2) the experience of the attorneys, and (3) the results obtained in litigation. *Spooner v. Town of Topsham*, 2010 VT 71, ¶ 8, 188 Vt. 293 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 430 n.3). However, for "purposes of an award of attorney's fees under Vermont law, the touchstone is reasonableness." *Perez v. Travelers Ins. ex rel. Ames Dep't Stores, Inc.*, 2006 VT 123, ¶ 13, 181 Vt. 45. The key question in determining reasonableness is "whether, at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures." *Spooner*, 2010 VT 71, ¶ 11 (quotation omitted).

Here, the Court concludes that the large majority of the fees and costs claimed by VCC are reasonable. But the Court credits the Stewarts' objections with respect to the redacted entries and the duplicative billing for deposition attendance.

First, VCC redacted a number of time entries in their entirety, providing no explanation for the redactions nor anything in the record that would permit the Court to assess the type of work performed and how it related to this action. Moreover, VCC appears to suggest that the entries were redacted for reasons other than to protect work product or attorney-client privilege.

³ Plaintiffs contend there is no expense correlating with mediation costs. But as VCC explains on Reply, the mediation cost is reflected in the entry for payment to "Hess & Gehris PLLC" for \$800. *See* Def. Ex. A, at 6 (filed 7/27/2026).

See Def. Reply, at 6 (filed 8/12/2026). “Time entries must be accurate and allow the court to assess whether the work performed was related to the litigation at issue.” *Perez*, 2006 VT 123, ¶ 13. VCC has not met its burden with respect to the fully redacted entries, and thus the Court excludes them from the award.

Second, VCC seeks to recover its fees billed for two attorneys to attend the same depositions of Tanya Stewart, Andrew Stewart, and Shyla Stewart. However, the billing entries do not explain each attorney’s distinct role at the deposition, such that the Court can determine that the attorneys were not “doing the same work.” *Spooner*, 2010 VT 71, ¶ 17; see Def. Ex. A, at 5. Accordingly, because VCC has not demonstrated that billing for the attendance of two attorneys at each deposition was reasonable, the Court disallows the fee for the second lawyer’s attendance, who did not take the deposition. However, the Court will not reduce the fee award for entries concerning multiple attorneys’ work on motions and other briefing or conversations between colleagues working on the case. This is common practice, and the Court finds it is reasonable for different attorneys to draft and revise legal filings or confer regarding issues in a case. See *id.* ¶ 18 (noting that, “there are situations in which a certain level of duplication between attorneys is reasonable” (citation omitted)); see also *Constr. Drilling, Inc. v. Eng’rs Constr., Inc.*, 2020 VT 38, ¶ 29, 212 Vt. 323 (“An award for time spent by two or more attorneys is proper as long as it reflects the distinct contribution of each lawyer to the case and the customary practice of multiple-lawyer litigation.” (quotation omitted)).

In addition, the Court also excludes all fees that VCC incurred before the Stewarts filed this action on October 24, 2024. The VPPA awards fees to the substantially prevailing party “in any proceeding.” 9 V.S.A. § 4007(c) (emphasis added). VCC provides no authority for the assertion that a party may recover fees under the VPPA incurred “in an effort to avoid the need for litigation,” nor has the Court found any. See Reply, at 8 n.3. Further, there is no explanation of how the work performed was reasonable and necessary to the ultimate litigation. Accordingly, the Court does not award those fees incurred prior to October 24, 2024.

The Court rejects the Stewarts’ two remaining objections. The December 30, 2024 entry for a conference with counsel in the Stewarts’ separate action against Peregrine Design/Build does not warrant exclusion. That lawsuit concerns the same property that VCC later repaired, and a reasonable attorney would confer with counsel in a related case to learn any relevant or useful information. See *Perez*, 2006 VT 123, ¶ 13. The discovery-dispute objection fails as well. The Stewarts contend that much of the billing flows from VCC’s delay in producing labor logs, but they identify no specific entries tied to that delay, and they never moved to compel production. Nothing in the record shows that VCC’s conduct unreasonably prolonged the litigation. The Court declines to reduce the award on this basis.

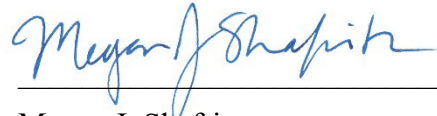
Lastly, the Court finds that the attorney’s rates are reasonable and reflect the current market. Moreover, the Stewarts did not challenge the reasonableness of the rates charged.

Order

Accordingly, for the foregoing reasons, Defendant’s Motion for Attorney’s Fees is GRANTED IN PART and DENIED IN PART.

The Court awards VCC \$ 77,782.09 in fees and costs. That amount equals the \$81,622.59 that VCC requested, reduced by (1) the time entries redacted in their entirety (\$999); (2) the duplicative deposition billing described above (\$2,391.50); and (3) all fees that VCC incurred prior to the commencement of this action on October 24, 2024 (\$450).

Electronically signed on August 27, 2026 at 11:23 AM pursuant to V.R.E.F. 9(d).



Megan J. Shafritz
Superior Court Judge