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(GREENWALD)

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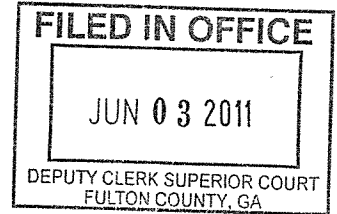
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



E.K. GREENWALD,

Plaintiff,

v.

STEVEN A. ODOM,

Defendant.

Civil Action File No. 2008CV154834

ORDER ON DEFENDANTS' MOTION FOR ATTORNEYS' FEES

This matter is before the Court on Defendants' Motion for Attorneys' Fees pursuant to O.C.G.A. § 9-15-14. Under that section, a court is required to award reasonable and necessary attorneys' fees and expenses of litigation if it finds that a party "has asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim" O.C.G.A. § 9-15-14(a). A court may also award such fees and expenses if an attorney or party "brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment." O.C.G.A. § 9-15-14(b). The decision to grant an award of attorneys' fees and litigation expenses, and the amount of any such award, rests solely with the court without input from a jury. O.C.G.A. § 9-15-14(f).

Mr. E.K. Greenwald ("Greenwald") sued Mr. Steven A. Odom ("Odom"), Mr. Martin Kidder ("Kidder") and Mr. Mark Dunaway ("Dunaway") for alleged misrepresentations in connection with his purchase for \$2,040,000 through a private subscription (the "Transaction") of 3,000,000 shares (and 2.25 million warrants to purchase additional shares) in Verso Technologies, Inc. ("Verso"), a Minnesota telecommunications corporation that filed for bankruptcy on April 28, 2008.

Odom was Verso's CEO, Kidder was Verso's CFO, and Dunaway was Verso's COO. Specifically, he brought claims against Defendants for common law fraud, negligent misrepresentation, and securities fraud under Georgia law based on his contentions that Odom and Dunaway made oral misrepresentations during a meeting to discuss the pending Transaction and Verso's business prospects. As to the basis of his claims against Kidder, he cited certain misleading omissions made in a Confidential Information Memorandum, a Subscription Agreement, and an Investor Questionnaire (collectively, the "Offering Documents").

The Court granted Defendants' Motion for Summary Judgment on February 9, 2011. Defendants now ask for an award of fees incurred in this action following the deposition of Greenwald, which they argue conclusively established that Greenwald lacked any evidence to support what they allege were otherwise baseless claims. Defendants also seek fees in connection with their efforts to mount a defense to Greenwald's expert, Dr. Bhagat, who they argue rendered irrelevant opinions that vexatiously multiplied the proceeding.

A party "is not entitled to attorney fees merely because summary judgment was granted in his favor; grant of summary judgment does not per force result in an award of attorney fees for the prevailing party." Brown v. Kinser, 218 Ga. App. 385 (1995). Here, the Court cannot say that the record is so devoid of facts or that the legal theories advanced by Greenwald were so untenable to the point that Defendants are entitled to fees under O.C.G.A. § 9-15-14(a).

According to the record, Greenwald lost a significant amount of money as Verso succumbed to outstanding debts. He claims that he was persuaded that Verso's prospects were improving based on certain oral statements of two Defendants, and that he was not otherwise sufficiently made aware of the reality of Verso's condition due to material omissions in the Offering Documents prepared with the assistance of Kidder. Although the Court ultimately

found that all but one oral statement was an expression of hope or a projection about the future, and therefore not legally actionable, the Court cannot say that the distinction it was asked to draw renders Plaintiffs' claims so factually meritless that Defendants are entitled to fees. "Since fraud is inherently subtle, slight circumstances of fraud may be sufficient to establish a proper case." Chandler v. MVM Const., Inc., 232 Ga. App. 385, 388 (1998). Likewise, although the Court did not agree that it was ultimately grounds for recovery, Greenwald's concern over the omission in the Offering Documents of the risk of Nasdaq delisting due to undercapitalization, and the resulting impact on Greenwald's ability to sell his shares, was not so immaterial that Greenwald lacked "arguable" support.

Moreover, to Defendants' point that Greenwald was without basis to assert his claims in view of the merger clause in the Subscription Agreement, this Court cannot say that Greenwald's interpretation of the document to overcome the effects of this provision was so legally untenable that Defendants should get their fees paid for having to defend against it. Greenwald argued that the Subscription Agreement permitted him to consider extra-contractual statements made in response to questions about the Offering Documents. Although the Court ultimately disagreed, this interpretation was not utterly without merit.

Finally, the Court will not exercise its discretion to award fees under O.C.G. A. § 9-15-14(b) due to the additional litigation expense Defendants claim they were put to due Greenwald's expert. Greenwald's conduct in identifying a rebuttal expert, even if as Defendants contend his opinions strayed from the relevant issues, was not so improper as to persuade the Court to exercise its discretion to award fees under O.C.G.A. § 9-15-14(b). Defendants' Motion for Attorneys' Fees is **DENIED**.

SO ORDERED this 3rd June day of May, 2011.


ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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