

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

SITUS PROPERTIES, INC.,	:	June Term 2003
Plaintiff,	:	
v.	:	No. 2119
PETER ROBERTS ENTERPRISES, INC.,	:	
Defendant.	:	Commerce Program
	:	
	:	Control Number 020036
	:	

**ORDER**

**AND NOW**, this 21<sup>st</sup> day of April, 2006, upon consideration of Plaintiff Situs Properties, Inc.'s Motion for Attorney Fees, Costs and Interests, Defendant Peter Roberts Enterprises, Inc.'s Response in opposition, Memoranda, all matters of record and the hearing conducted on September 20, 2005, it hereby is **ORDERED** that Plaintiff's Motion is **Granted**. Plaintiff is entitled to \$63,776.67 for fees and costs and \$13,326.33 in interest.

**BY THE COURT,**

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**C. DARNELL JONES, II, J.**

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**OPINION**

*JONES, II, J.*

Presently before the court is Plaintiff Situs Properties, Inc.'s Motion for Attorney's Fees, Costs and Interest. For the reasons set forth below, Plaintiff's motion is Granted.

**BACKGROUND**

The within action was instituted by Plaintiff Situs Properties, Inc. ("Situs"), a licensed real estate and management services company, against Defendant Peter Roberts Enterprises ("PRE"), a company that owns commercial real estate in Philadelphia, for breach of contract and unjust enrichment to recover commissions arising from the sale of property owned by defendant Peter Roberts Enterprises.

On May 15, 2003, Situs filed a Notice of Broker's Lien in the amount of \$126,940 on the property pursuant to the Commercial Real Estate Broker Lien Act, 68 P.S. § 1058. On June 17, 2003, Situs filed the instant complaint. On June 24, 2003, the broker's lien was released after PRE agreed to place the \$126,940.00 in escrow. Thereafter, the parties filed cross motions for summary judgment. On January 26, 2005, the court found that Situs was entitled to recover commissions from the sale of property

owned by PRE on the breach of contract claim and dismissed the unjust enrichment claim.

On February 7, 2005, Situs filed a motion for reimbursement of attorney fees, costs and interest.<sup>1</sup> Situs maintains it is entitled to reimbursement of fees pursuant to the Commercial Real Estate Broker Lien Act, 68 P. S. § 1058 (h) as well as the Exclusive Agency Agreement (“Agreement”) between the parties. The amount of reimbursement sought by Situs is \$77,103.00. On September 20, 2005, the court heard testimony regarding the fairness and reasonableness of the fees requested as well as argument on whether Situs was entitled to reimbursement.

### **DISCUSSION**

Generally, litigants are responsible for their own counsel fees unless otherwise permitted by statutory authority, agreement of the parties, or some other recognized exception to the general rule. Hart v. Arnold, 884 A.2d 316 (Pa. Super. 2005). In the case at bar, Situs maintains that it is entitled to recover attorney’s fees, cost and interest pursuant to the express terms contained within the Exclusive Agency Agreement.<sup>2</sup> The court agrees.

The Exclusive Agency Agreement contains the following provision:

OWNER agrees that the rights herein granted AGENT shall be binding upon OWNER and his or its heirs, personal representatives, successors and assigns and to be responsible and pay for AGENT’S legal expenses, together with interest from the date first due at the prime interest rate of interest charged from time to

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<sup>1</sup> On June 23, 2005, the court scheduled a fair and reasonableness hearing. Situs failed to present any testimonial witnesses regarding the fairness and reasonableness of the fees requested. As such the court continued the hearing to September 20, 2005.

<sup>2</sup> Situs also claims that it is entitled to attorneys fees under the Commercial Real Estate Lien Act, 68 P. S. § 1058 (h). The Lien Act and its provisions for counsel fees only apply to a suit to enforce the lien. Here the lien was released and marked satisfied at or about the time the instant complaint was filed. Since the lien was released and marked satisfied, Situs is not entitled to attorney’s fees and costs under the Act.

time by Philadelphia National Bank, in an successful action to enforce this Agreement. (The Exclusive Agency Agreement ¶ 14).

The ultimate goal of interpreting a contract is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement. DeFazio v. Gregory, 836 A.2d 935 (Pa. Super. 2003). Where contract language is clear and unambiguous, the court shall interpret the agreement as expressed, rather than silently intended. Moreover, the courts may not rewrite the terms of an agreement that is in dispute. Banks Engineering Co., Inc. v. Polons, 697 A.2d 1020 (Pa. Super. 1997).

Here, the contract language is clear and unambiguous. PRE, defined as the Owner in the Agreement, agreed to be responsible and pay for Situs', defined as the Agent in the Agreement, expenses, together with interest in a successful action to enforce the Agreement. Accordingly, Situs is entitled to recover its expenses attorney's fees, costs and interest.

The amount of reimbursement sought by Situs is \$77,103.00. This figure represents attorney fees and costs, \$63,776.67<sup>3</sup>, and interest \$13,326.00. As it pertains to the attorney fees requested by Situs, the court finds that the amount requested is fair and reasonable. Situs called Gabriel Bevilacqua, Esquire to testify as to the reasonableness of the fees and costs requested. Mr. Bevilacqua, an attorney in Philadelphia practicing at the firm of Saul Ewing testified that the billing rates charged by the firm representing Situs are commensurate with and even lower than the average rates charged by attorneys of similar experience in the Philadelphia area and that the rates charged were fair and reasonable. (N.T. 9/20/05 p. 19, 21-25). Mr. Bevilacqua further testified that the time

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<sup>3</sup> See Plaintiff's Exhibit P-6 a debit and credit history evidencing a total billed by the firm representing Situs, payments made by Situs, courtesy adjustments and a deduction for a charge for another file; Plaintiff's Exhibit 5 statement of professional services by the expert.

and amount charged for the services identified in the bills were reasonable. (Id. p. 25-28). Mr. Bevilacqua testified that the amount of attorney conferencing was appropriate and reasonable given the complexities of the case as well as the level of experience of the associate handling the file. (Id. p. 27-28). The court finds Mr. Bevilacqua's testimony credible. Accordingly, the court finds that the fees and costs requested by Situs, \$63,776.67, are reasonable.<sup>4</sup> Situs is also entitled to interest in the amount of \$ 13,326.33 under the Agreement.<sup>5</sup>

### CONCLUSION

Based on the foregoing, Plaintiff's Motion for Attorney's Fees, Costs and Interest is Granted. Plaintiff is entitled to \$63,776.67 in the amount of fees and costs and \$13,326.33 in the amount of interest. An order consistent with this Opinion will follow.

**BY THE COURT,**

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**C. DARNELL JONES, II, J.**

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<sup>4</sup> Although a deduction should be made for any fees or costs associated with attending the September 20, 2005 hearing, P-6 does not reflect any charges for that hearing.

<sup>5</sup> According to the Agreement, Situs is entitled to interest "from the date first due at the prime interest rate of interest charged from time to time by Philadelphia National Bank..." The closing took place on May 15, 2003; therefore this is the date the interest calculations should begin. As for the rate of interest, absent from the record is any evidence of the prime rate of interest charged by Philadelphia National Bank. As a result, the court used the legal rate of interest established by statute and used in calculating post judgment interest to calculate the interest here. *See*, 42 Pa.C.S. § 8101 and 41 Pa.C. S. § 202. Furthermore, the record reflects that the subject commission was in an account bearing interest at a rate of 1.5%. (N.T. 9-20-05 p. 32). As Plaintiff's counsel noted the rate of interest should be the difference between what the escrow account earned and the 6% statutory interest. Thus, the rate of interest should be 4.5%.