

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

COLORY METAL AND GLASS, INC.	:	NOVEMBER TERM, 2005
	:	
Plaintiff,	:	NO. 01718
	:	
v.	:	COMMERCE PROGRAM
	:	
23S23 CONSTRUCTION, INC., TURCHI	:	Control Nos. 09104359, 10031910
INC., and JOHN TURCHI, JR.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 21st day of April, 2010, upon consideration of plaintiff's Motion for Further Costs from Defendants Turchi, Inc., and after a hearing held on April 6, 2010, and in accord with the Opinion issued simultaneously, it is **ORDERED** that **JUDGMENT** is entered in favor of plaintiff and against defendant Turchi, Inc. in the amount of \$56,835.82, pursuant to 73 Pa. C.S. § 501 *et seq.*

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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Defendant.	:	

OPINION

Plaintiff Colory Metal and Glass, Inc. (“Colory”) brought this action to recover unpaid amounts due to it from defendant Turchi, Inc. (“Turchi”) for construction work Colory did for Turchi. Colory asserted a claim against Turchi under the Contractor and Subcontractor Payment Act (the “CSPA”). The CSPA provides for the award of interest, penalty, and attorneys’ fees and expenses in the event the plaintiff prevails.¹

After a bench trial, this court entered an award for Colory and against Turchi in the amount of \$79,715.40, plus interest and penalty.² On December 10, 2007, after a hearing, the court awarded Colory an additional \$52,475.80 in attorneys’ fees and expenses that it had incurred through the date of award.³

Turchi appealed this court’s judgment, which was ultimately affirmed by the Superior Court in July, 2009. On September 16, 2009, Turchi paid Colory \$178,457.07, which included the damages awarded by this court (\$79,715.40), the attorneys’ fees awarded (\$52,475.80),

¹ 73 Pa. C.S. §§ 505(d), 512.

² Order dated October 16, 2007.

³ Order dated December 10, 2007.

interest and penalty through the date of judgment (\$30,367.47) and some additional interest and penalty (\$15,898.40). Colory then filed a Motion with this court requesting that additional attorneys' fees, costs, interest and penalty be awarded in connection with the appeal.

On October 19, 2009, this court denied Colory's request for an additional award under CSPA because the court believed "it is for the appellate court to award any additional amounts in connection with an appeal."⁴ That same day, the Superior Court published an opinion in which it "vacate[d] the trial court order denying CSPA [post-judgment] interest, penalty, and attorney fees and expenses," and held that "the trial court shall conduct a hearing to determine a reasonable attorney fee and expenses for the collection-of-judgment and the collection-of-fees periods."⁵

Colory filed a Motion for Reconsideration based on the Zimmerman opinion. This court granted reconsideration, vacated its Order denying Colory additional fees,⁶ directed Colory to file a Motion To Determine Amounts Due, and held a hearing on that Motion.⁷ At the hearing, Colory presented documentary evidence of the attorneys' fees it incurred post-judgment, and its counsel testified, credibly, as to the necessity of the work he did. Colory also proffered copies of the appeal brief and post-judgment motions that counsel had to file on Colory's behalf in order to preserve and enforce its judgment against Turchi

Turchi's counsel presented no evidence, expert or otherwise, that Colory's fees were excessive or unreasonable. Without the aid of an expert, this trial court cannot find that the fees

⁴Order dated October 19, 2009.

⁵ Zimmerman v. Harrisburg Fudd I, L.P., 984 A.2d 497, 505-506 (Pa. Super. 2009).

⁶ Order dated November 10, 2009.

⁷ Order dated March 2, 2010.

Colory incurred on appeal are unreasonable.⁸ All that Turchi's counsel proffered this court for consideration was counsel's amazement that the appeal cost Colory as much as the underlying trial, approximately \$50,000.⁹ Counsel's incredulous tone during cross-examination is not evidence.

Under CSPA, Colory is entitled to be made whole with an award of post-judgment interest, penalty, and attorneys' fees.¹⁰ Colory established: 1) it reasonably incurred \$51,984.99 in attorneys' fees and costs through the present; and 2) it is entitled to an additional \$4,850.83 in penalty and interest through the date that the judgment was paid. The court thereby awards Colory an additional \$56,835.82 under CSPA.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

⁸ An appeal court may be able to make such a determination *sua sponte*, but this court cannot. "Pennsylvania law does not require that an expert testify [for the party requesting an award of fees] as to the reasonableness of attorney's fees." Fid. Nat'l Title Ins. Co. v. Suburban West Abstractors, 852 A.2d 318, 322 (Pa. Super. 2004). However, the party disputing reasonableness must either proffer an expert or elicit an admission of unreasonableness during cross-examination. Turchi did neither.

⁹ Although Turchi's counsel implied that Colory's counsel should not have spent more than \$10,000 post-judgment, Turchi's counsel did not claim to have charged so little himself.

¹⁰ Zimmerman, 984 A.2d at 505.