

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

APR 9 2010

MAID OF THE MIST CORPORATION
and MAID OF THE MIST STEAMBOAT
COMPANY, LTD.,

Plaintiffs

v.

ALCATRAZ MEDIA, LLC, ALCATRAZ
MEDIA, INC., and WILLIAM M.
WINDSOR,

Defendants

CIVIL ACTION NO.
1:06-CV-0714-ODE

JAMES N. HATTEN, Clerk



Deputy Clerk

ORDER

This closed civil action comes before the Court on a motion for post-judgment attorneys' fees and expenses filed by Plaintiffs Maid of the Mist Corporation and Maid of the Mist Steamboat Company, Ltd. ("Plaintiffs") against Defendant William M. Windsor ("Windsor") pursuant to 28 U.S.C. § 1927, O.C.G.A. § 13-6-11, and the Court's inherent authority [Doc. 728]. At this time, Plaintiffs move the Court to order Windsor to pay \$192,377.87 in attorneys' fees and expenses incurred by Plaintiffs as a result of certain post-judgment work done by their attorneys at the Atlanta law firm of Hawkins & Parnell LLP and the Buffalo, New York law firm of Phillips Lytle LLP [Declaration of Carl H. Anderson, Jr., Doc. 746, ¶ 89].

The Court held a hearing on Plaintiffs' motion on April 8, 2010, at which Plaintiffs appeared through counsel and Windsor appeared pro se. This written Order memorializes and supplements the findings of fact and conclusions of law announced at the close

of that hearing.¹ In short, Plaintiffs' motion, in the amount which they currently seek to recover from Windsor, is GRANTED.

The Court has the inherent authority to assess attorney's fees and expenses against a party who has acted in bad faith or vexatiously during the litigation. See Kreager v. Solomon & Flanagan, P.A., 775 F.2d 1541 (11th Cir. 1985). Also, pursuant to 28 U.S.C. § 1927,

Any attorney or other person admitted to conduct cases in any court of the United States . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

Based on the evidence taken at the hearing on Plaintiffs' motion, the Court finds that the motions submitted by Windsor in this case after May 22, 2009—when the Court denied his first Rule 60(b) motion to reopen the case—have been totally frivolous. The Court finds that Windsor filed these motions in bad faith. Windsor's spite and malice toward Plaintiffs motivated the filing of all of these motions. Windsor's conduct in filing these motions has been highly willful and wanton, objectively unreasonable, and has vexatiously and unreasonably multiplied the proceedings in this closed case and the expenses incurred to date by Plaintiffs. Windsor's conduct in filing these motions has also disrupted the efficient management of this Court's docket, has threatened to

¹ For the reasons stated in the Court's prior order setting the hearing on Plaintiffs' motion [Doc. 742 at 1-11], the Court concludes that it possesses jurisdiction to consider the motion and that the undersigned need not recuse herself.

disrupt the finality of the Consent Final Order and Judgment and other orders previously entered in this case, and has repeatedly dragged Plaintiffs back into a lawsuit in which they prevailed on the merits nearly three years ago.

Windsor presented his own testimony at the hearing on Plaintiffs' motion. Taking into account that testimony, as well as other evidence, the Court finds that Windsor possessed, during this case's entire post-judgment phase, and currently possesses the financial means to secure counsel to represent him. Also, unlike many litigants who choose to proceed pro se, Windsor has the intellectual capacity to understand and appreciate that his post-judgment motions are legally dubious and that they are fundamentally vexatious to the Plaintiffs (and to the Court). His intent to harass is evident from the invective which fills the pages of his filings. The Court believes and finds that Windsor voluntarily chose to continue representing himself in this closed case, conscious that no attorney retained on his behalf would pursue his desired ends. Windsor takes pleasure in preparing and filing pleadings himself.

The Court further finds that the \$192,377.87 in attorneys' fees, costs, and expenses incurred by Plaintiffs in response to Windsor's post-judgment motions since May 22, 2009, and itemized in detail in submissions to the Court, are entirely reasonable. Plaintiffs called two witnesses at the hearing on their motion who were familiar with the fees charged by comparable attorneys in the Atlanta and Buffalo markets and who opined that the fees charged by Hawkins & Parnell LLP and Phillips Lytle LLP were reasonable given the unique circumstances of this case's post-judgment phase.

Having considered those witnesses' testimony and the sworn declarations of Carl H. Anderson, Jr. to the extent that they also address the matter, the Court agrees.

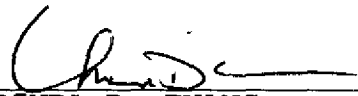
The Court further finds that the amount of work done and the time spent by Plaintiffs' attorneys to address, on Plaintiffs' behalf, the dozens of post-judgment motions filed by Windsor in this closed case was reasonable. In the filings submitted in response to Windsor's post-judgment motions, Plaintiffs' attorneys concisely stated salient arguments in opposition to Windsor's submissions. The extensive amount of work done by Plaintiffs' attorneys in responding to the post-judgment motions was not undertaken voluntarily. Rather, that work was foisted upon Plaintiffs' attorneys, and the fees for the work done foisted upon the Plaintiffs, solely and directly because of Windsor's frivolous post-judgment motions.

Having made these findings, and also finding that Windsor personally possesses the means to pay the attorneys' fees, costs, and expenses currently being sought by Plaintiffs, the Court, pursuant to 28 U.S.C. § 1927 and the Court's inherent power to control its own docket, hereby ORDERS Windsor to personally pay \$192,377.87 in attorneys' fees, costs, and expenses incurred by Plaintiffs as a direct result of the post-judgment motions that Windsor filed in this case after May 22, 2009.

The Clerk of Court is hereby DIRECTED to enter a final judgment against William M. Windsor in that amount. The Clerk of Court is also DIRECTED to issue a writ of execution for that amount in Plaintiffs' names against William M. Windsor.

The Court issues this Order without prejudice to Plaintiffs' right to submit supplemental documentation regarding any additional time spent by Plaintiffs' attorneys, and expenses incurred by Plaintiffs, in preparing for and attending the April 8 hearing or in responding to Windsor's post-judgment motions filed before May 22, 2009, which had not been ruled on by May 22, 2009, and which were not the subject of the April 8 hearing. Also, the Court issues this Order without prejudice to Windsor's right to file one response to any such documentation, if he so chooses.

SO ORDERED, this 9 day of April, 2010.



ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE