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FILED IN OFFICE
IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE
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RAINES BROTHERS, INC.,

PAULA T. THOMPSON, CLERK

Plaintiff,

BY *PTS* DC

vs.

) DOCKET NO. 11C286

) DIVISION I

H. MICHAEL CHITWOOD and his wife
DEBORAH CHITWOOD, and JAMES S.
DREADEN,

Defendants.

MEMORANDUM OPINION AND ORDER

This is a cost plus construction contract case. The Plaintiff, Raines Brothers, Inc. (Raines) contracted with the Defendant, Michael Chitwood, and his deceased wife, (Chitwood) to complete substantial improvements and other construction work on the Chitwood's family home under three different job numbers. The job numbers were 6069, 0023 and 8100. The subject of this lawsuit is job number 6069, which was never paid in full, according to Raines.

Abundant proof at trial proved that the work was done at the Chitwood home and that job 6069 was substantially completed by the end of September, 2008.

At issue is whether Chitwood owes the remaining balance on job 6069, which is \$66,672.71 plus interest and "fees". The gist of Defendants' argument from the Answer filed (Counter-Petitions having been dismissed prior to trial) indicates that Raines did not introduce sufficient evidence of its costs to prove the additional \$66,672.71 due, even

though the Defendants concede that the parties had agreed on that amount. The Defendants presented no proof at trial, but relied on their Answer and trial briefs to state that this Court should involuntarily dismiss with prejudice Raines' claims against Defendants. This Court is unpersuaded.

Ample evidence was presented at trial that detailed the expenses incurred on job 6069, which was due and owing. Tellingly even Chitwood's former accountant, John Steele, testifies that each month he would receive the invoices on job 6069. He stated he had significant enough information to break down the labor and materials and other costs onto his spreadsheets, which he prepared for Chitwood. Steele further corroborated the testimony of other witnesses, that the parties had agreed to the total amount owed on job 6069 was \$66,672.71.

Steele testified that the 18% finance charge, which is at issue also in this trial, was provided in each and every statement he received from Raines. He independently verified that the calculations were correct. Steele also testified that Chitwood told him not to pay the finance charges, because "Chitwood doesn't pay finance charges or late charges." The Court finds the 18% interest should accrue from August 14, 2007.

The final argument is that Defendants Chitwood and Dreaden allege through their Answer that the term "fee" is insufficient to require the payment of attorneys fees pursuant to the contract between the parties. The Court agrees with this argument.

The Court holds that the Plaintiff is not entitled to recover attorney fees. Tennessee follows the American rule on awarding attorney's fees which states that "a party in a civil action may recover attorney fees only if: (1) a contractual or statutory

provision creates a right to recover attorney fees; or (2) some other recognized exception” applies. *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W. 3d 303, 308 (Tenn. 2009). The Tennessee Supreme Court has held that in contract cases, a contractual or statutory provision only creates the right to recover attorney fees if it “specifically or expressly provides for the recovery of attorney fees.” *Id.* at 309. In the *Cracker Barrel* case, the contract at issue provided that the prevailing party should recover “all costs and expenses of any suit or proceeding.” *Id.* at 307. The Tennessee Supreme Court held that this language was not specific enough to award attorney fees as an exception to the American rule. *Id.* at 316. In the case at hand, the contractual language is similar, stating that the prevailing party “shall be entitled to reimbursement by the other party for reasonable costs, expenses, and fees incurred” if the dispute results in litigation. Pursuant to the holding in *Cracker Barrel*, this Court finds that the contractual language here is also not specific enough to award attorney fees under the American rule.

It is therefore, ORDERED:

1. Raines is entitled to a judgment for \$66,672.71 plus accrued interest;
2. No attorneys fees shall be awarded to Raines;
3. Defendant’s Motion for Involuntary Dismissal is denied.

Costs are taxed to Defendants.

SO ORDERED.

ENTERED this 5th day of September, 2013.


JACQUELINE S. BOLTON
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been mailed, via U.S. Post Office, first class, postage pre-paid, or has been hand delivered to:

Sheri A. Fox
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450

Gary L. Henry
R. Wayne Peters
320 McCallie Avenue
Chattanooga, TN 37402

This 5th day of September, 2013.

By: M. Smith, D.C.