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HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI–DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. 15-013350 CA 25

FERNICH, INC. d/b/a THE PAINT SPOT,

Plaintiff,

v.

TRUMP ENDEAVOR 12, LLC,

Defendant.
_____/

CORRECTED FINAL JUDGMENT AWARDING ATTORNEYS' FEES, A CONTINGENCY RISK MULTIPLIER, AND COSTS TO PLAINTIFF PURSUANT TO SECTION 713.29, FLORIDA STATUTES AND FLORIDA LAW
(Supplements the Final Judgment of Foreclosure of Plaintiff's Construction Lien entered by this Court on April 25, 2016)

This matter came before the Court following the Court's April 25, 2016 entry of a Final Judgment of Foreclosure of Plaintiff, Fernich, Inc. d/b/a The Paint Spot ("Paint Spot")'s Construction Lien ("Final Judgment") against Defendant, Trump Endeavor 12, LLC ("Trump."). On April 28, 2016, Paint Spot filed a Motion to Tax Reasonable Attorneys' Fees, Fee Multiplier, and Costs (the "Motion."). On May 23, 2016, Paint Spot filed its Supplemental Memorandum of Facts and Law in Support of the Motion ("Supplemental Memo."). Trump did not file a written response to the Motion or the Supplemental Memo. On June 16, 2016, the Court held an evidentiary hearing on the Motion and Supplemental Memo (the "Hearing."). The Court, having reviewed its file and its notes taken at the Hearing, considered all testimony given (fact and expert) and documentary evidence presented at the Hearing, heard argument of counsel, and being otherwise fully advised in the premises, the Court makes the following findings of fact and conclusions of law and enters Final Judgment as follows:

I. Overview of Paint Spot's Attorneys' Fee and Cost Claims

In the Final Judgment, the Court found that Paint Spot was the prevailing party in this construction lien foreclosure action entitled to an award of reasonable attorneys' fees and costs pursuant to Sections 713.29 and 57.041, Florida Statutes. By its Motion, Paint Spot seeks an award of costs totaling $9,000.78 and reasonable attorneys and paralegals' fees totaling $157,200.00,[1] itemized as follows:

TIMEKEEPER	RATE	HOURS EXPENDED
Daniel R. Vega, Esq. (Lead Counsel)	$500.00/Hour	201.2
Vanessa A. Van Cleaf, Esq. (Associate)	$250.00/Hour	212.9
R. Paul Washington, Esq. (Associate)	$250.00/Hour	3.5
Soraida Smith (Paralegal)	$125.00/Hour	10.5
Liliana Ayala (Paralegal)	$125.00/Hour	9.5

COST ITEM	AMOUNT
Filing Fees	$422.30
Witness Fees	$53.20
Process Server Fees	$157.40
Court Reporting Fees	$5,766.42
Outside Copying Costs	$428.60
Internal Copying Costs	$648.60
Postage Costs	$9.60
Mileage Costs	$93.38
Research Costs	$545.68
Parking Costs	$172.00
Color Copying Costs	$236.70
Clerk Fees	$10.00
Trial Costs (Interpreter + Demonstrative Aids)	$456.90

[1] At the Hearing and in the Motion and Supplemental Memo, Paint Spot miscalculated the amount of attorneys' fees sought based on the number of hours spent and rates charged as totaling $156,975.00. Based on the claimed number of hours expended and hourly rates set forth herein, the true total base amount of attorneys' fees sought by Paint Spot is $157,200.00.

At the Hearing, Paint Spot's attorneys' fee expert, Mr. Ralf Rodriguez, also testified that he incurred 10 hours in connection with this case at a rate of $450.00 per hour for a total additional cost of $4,500.00.

The Motion, Supplemental Memo, and the documentary and testimonial evidence presented by Paint Spot at the Hearing revealed that Paint Spot's attorneys, the law firm of Taylor Espino Vega & Touron, P.A. ("TEVT"), took this case on a 100% contingent basis. Specifically, under TEVT and Paint Spot's written agreement, sole compensation for TEVT was "[a] court-awarded fee including multipliers and enhancements," meaning that Paint Spot would never owe TEVT any attorneys' fees unless Paint Spot prevailed in the case, triggering the fee-shifting provisions of Section 713.29. Paint Spot also would not be obligated to pay a percentage of its own recovery on the lien claim to TEVT. Based on the foregoing and Florida law, Paint Spot has also asked the Court to award it a contingency fee multiplier of 2.5 or, alternatively, 2.0.

As set forth in more detail *infra*, the Court will exercise its discretion to award Paint Spot all of its claimed reasonable attorneys' fees because the Court finds that the total amount of legal hours for which Paint Spot seeks recovery and the rates charged by TEVT's attorneys and paralegals are both reasonable and awardable under the law. The Court also finds that an attorneys' fee contingency risk multiplier of 1.75 is more than appropriate for this case. The Court further awards Paint Spot its claimed witness fee, process server, and court-reporting costs.

II. Paint Spot's claimed attorneys' fees are reasonable.

"In calculating reasonable fees, the trial court must determine the number of hours reasonably expended and a reasonable hourly rate, then multiply the two to arrive at the 'lodestar' amount." *Wolfe v. Nazaire*, 758 So. 2d 730, 733 (Fla. 4th DCA 2000). The Florida Supreme Court has stated that when "determining reasonable attorney fees, courts of this state should utilize" the following criteria:

> (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
(3) The fee customarily charged in the locality for similar legal services.
(4) The amount involved and the results obtained.
(5) The time limitations imposed by the client or by the circumstances.
(6) The nature and length of the professional relationship with the client.
(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
(8) Whether the fee is fixed or contingent.

Fla. Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985).[2]

The Court has considered all of the factors identified in *Rowe* and has examined and compared the timekeeping records submitted by both parties, which are in evidence. Applying *Rowe* to the testimonial and documentary evidence presented at the Hearing, the Court hereby makes the following findings as to (A) the paralegal rate charged by TEVT; and (B) Paint Spot's base amount of attorneys' fees, including (1) the reasonableness of the hourly rates charged by TEVT attorneys, (2) the number of hours reasonably expended by TEVT's lead and associate attorneys and paralegals; and (C) Paint Spot's entitlement to a 1.75 contingency fee risk multiplier.

A. Paint Spot's hourly paralegal rate is reasonable.

At the Hearing, Trump did not object to the reasonableness of TEVT's hourly paralegal rate of $125.00 per hour. Paint Spot also presented an attorney fee expert, Mr. Ralf Rodriguez, Esq., who testified that in his opinion the paralegal rate charged by TEVT was reasonable for the Miami–Dade County, Florida construction law market. Mr. Rodriguez further testified that his law firm may charge "a little bit more" per hour for paralegals. There was evidence admitted at

[2] Additionally, the Florida Supreme Court recently held that where fees are contested, "the billing records of opposing counsel are relevant to the issue of reasonableness of time expended in a claim of attorney's fees." *Paton v. GEICO Gen. Ins. Co.*, — So. 3d —, 41 Fla. L. Weekly S115, 2016 WL 1163372 at *5 (Fla. March 24, 2016).

the Hearing showing that one of the law firms hired by Trump in this case, Benson, Mucci, and Weiss, P.L., charged Trump $110.00 for paralegal time. Trump did not argue that this lower rate should be applied to TEVT's paralegals, and the Court notes generally that the disparity between $110.00 per hour and $125.00 per hour for paralegal time is not great.

Accordingly, the Court finds the testimony of Mr. Vega and Mr. Rodriguez that an hourly paralegal rate of $125.00 per hour is reasonable for the Miami–Dade County construction law market to be credible. The Court again notes that Trump did not contest TEVT's paralegal rate. Thus, the Court holds that the $125.00 hourly rate charged for paralegal work by TEVT is reasonable for the Miami–Dade County market.

B. Paint Spot's claimed base amount of attorneys' fees is reasonable.

At the Hearing, Trump's overarching argument was that Paint Spot's attorneys and paralegals expended too many hours in securing Paint Spot's prevailing party status in this case based solely on the simple argument that Trump paid less money to its own counsel. However, Trump's expert did not know how many hours Trump expended on the case; his testimony was solely limited to a comparison of the dollar amount Trump spent in defense of this case. Trump also contended that Paint Spot's hourly attorney rates of $500.00 for lead counsel and $250.00 for associate time were unreasonable, again simply and solely because Trump's attorney's charged Trump less per hour. For the following reasons, the Court rejects Trump's arguments.

At the Hearing, Mr. Rodriguez testified that this was a fact-intensive case that also involved complicated and novel technical construction lien law issues requiring interpretation of case law and statutes by this Court and that the hourly rates and number of hours claimed by TEVT are reasonable under the circumstances. The Court agrees with Mr. Rodriguez' thorough, credible analysis. Based on Paint Spot's Motion and Supplemental Memo and the evidence and testimony adduced at the Hearing, the Court makes the following specific findings that the hourly rates charged by Paint Spot's attorneys and the hours they expended for which recovery is sought were reasonable.

1. The hourly rates charged by Paint Spot's attorneys are reasonable.

Paint Spot's attorney fee expert Mr. Ralf Rodriguez, Esq. has been practicing construction litigation for 18 years and has been Board Certified in Construction Law since 2007. Mr. Rodriguez testified that he is a partner at the law firm of Peckar & Abramson, a firm known for its representation of clients in the construction law field. Mr. Rodriguez testified that he personally charges $450.00 per hour for his time on construction cases and opined that an hourly rate for Mr. Vega of $500.00, who has been Board Certified in Construction Law since 2006; has tried numerous construction and commercial cases; and who is a published author in the area of construction law is reasonable. Mr. Rodriguez noted there are partners at his firm who charge $500.00 per hour "and even more." Mr. Rodriguez also opined that $250.00 per hour for associate attorney time was "more than reasonable" for the Miami–Dade County market for legal services.

Trump's attorney fee expert, Mr. Miles McGrange, admitted that in the 2016 Miami–Dade County, Florida legal market, $500.00 per hour is within the range of hourly rates charged by local attorneys, albeit at the "top end." However, he opined that a $300.00 hourly rate for Mr. Vega's time would be more reasonable merely and solely because that is what Trump's lead attorneys (who are also Board Certified in Construction Law) charged Trump for this case. Mr. McGrange also opined that $150.00 per hour for associate time would be more reasonable than the $250.00 hourly rate charged by TEVT based solely on the associate rates charged by Trump's attorneys.

At the Hearing, Mr. McGrange opined that because Trump collectively paid the multiple firms that defended it this case only $63,709.26, the Court should enter a significantly reduced attorney fee award to Paint Spot. Mr. McGrange's testimony that $300.00 would be a reasonable hourly rate for Mr. Vega's time on this case and $150.00 per hour for associate attorney time was largely based on Trump's attorney fee agreement with Hernicz Legal Services, P.L. and certain

Trump attorney time-keeping records admitted into evidence at the Hearing.[3] Mr. McGrange could not answer the Court's query as to whether the hourly rates therein were "negotiated with Trump." Based on the terms of the Hernicz Legal Services, P.L, fee agreement and the content of the Benson, Mucci & Weiss, P.L. fee statements, the Court finds that the rates were negotiated.

Specifically, the Hernicz fee agreement itself shows that Mr. Hernicz' firm charged Trump an "initial rate of $300.00/hour" and associate time at $150.00 per hour; however, the Hernicz fee agreement also expressly provides for payment to the Hernicz firm of either "the amount accumulated under this fee agreement or whatever rate and amount are awarded by the court, **whichever is greater**." (emphasis in original). Trump's expert Mr. McGrange admitted that clauses reserving the right to charge a higher hourly rate upon prevailing are "very standard" in fee-shifting cases like this one. Mr. McGrange also admitted that roughly four years prior to the Hearing, he obtained a court-awarded attorney fee at a rate of $400.00 per hour for his time after prevailing at trial. Accordingly, Trump's fee agreement with the Hernicz firm clearly did not limit recovery of fees to the "initial" $300.00 and $150.00 hourly lead counsel and associate rates (respectively). Thus, there is no doubt that if Trump prevailed at trial, Trump would be asking this Court to award fees against Paint Spot for the Hernicz firm's time at higher hourly rates than the $300.00 and $150.00 "initial" rates the Hernicz firm charged Trump.

Notably, no written fee agreements between Trump and Benson, Mucci, and Weiss, P.L. or Trump and Mr. Herman Russomano, Esq. were admitted into evidence at the Hearing.[4] Based on the itemized fee records admitted by Trump, the Weiss firm charged Trump $300.00 per hour for lead attorney time, $200.00 per hour for associate time, and $110.00 per hour for paralegal time. There was no evidence as to whether those were also negotiated rates under an agreement with Trump providing for a higher court-awarded fee like the agreement between Trump and Mr.

[3] Mr. McGrange also testified that he gave no credence to the fact that Mr. Vega is Board Certified in Construction Law because he does not "believe in board certification."
[4] As explained in greater detail *infra*, Mr. Weiss and Mr. Hernicz tried the case jointly before this Court and Mr. Russomano was present in the courtroom throughout and observed the entire trial.

Hernicz was. No evidence or testimony was offered as to what hourly rate Mr. Russomano charged Trump for his time, but Mr. Weiss' fee records in evidence do show that Mr. Russomano participated in preparing the case for trial. As noted *supra*, Mr. Russomano was present in the courtroom at the trial; he did not make a formal appearance (although he had previously appeared on Trump's behalf in the case) but he did address the court several times at the close of the trial. Despite this, the Court's record is devoid of evidence as to whether Trump's fee agreements with the Weiss and Russomano firms also included provisions for court-awarded higher hourly rates in the event Trump prevailed at trial.

Of note, Mr. Weiss' fee records on page 11 of Invoice No. 44866 also indicate that a "$400 per hour" trial rate was negotiated by agreement with Trump's general counsel Alan Garten; however, the specific terms of that separate rate agreement have not been disclosed to the Court and no evidence was presented on this issue either. The Court therefore rejects Trump's argument that the hourly rates charged by Paint Spot's attorneys are unreasonable based solely on Trump collectively paying its attorneys less than Paint Spot's attorneys are seeking to recover. Again, the Court notes that Trump presented no other evidence as to why the $500.00 hourly rate for Mr. Vega and $250.00 hourly TEVT associate rate were unreasonable.

In sum, weighing the totality of the evidence presented at the Hearing, the Court finds that Mr. Rodriguez' expert testimony, supported by facts regarding Mr. Vega's expertise and background as well as the associates' experience, that $500.00 per hour for Mr. Vega's time and $250.00 per hour for associate time would be reasonable for this case to be more persuasive than Mr. McGrange's testimony that $300.00 per hour for lead counsel and $150.00 per hour would be appropriate merely because that is what Trump paid. The Court has also considered the fact that TEVT took this case on a 100% contingency fee basis when determine the reasonableness of the rates charged, which is analyzed *infra* at Part II(C) of this Judgment. Based on the foregoing, the Court concludes that Paint Spot's attorneys' fees shall be awarded at the reasonable hourly rates of $500.00 per hour for Mr. Vega and $250.00 per hour for TEVT associate attorneys.

2. The number of claimed hours expended by Paint Spot's attorneys and paralegals was reasonable.

As outlined *supra*, Paint Spot seeks to recover for 201.2 hours expended on this case by lead counsel Vega, 212.9 hours by associate Van Cleaf, and 3.5 hours by associate Washington, for a total of 417.6 hours of attorney time. Paint Spot also seeks to recover for 20 hours collectively billed by TEVT paralegals Smith and Ayala, for a global fee claim of 437.6 hours. The itemized TEVT attorney fee records admitted into evidence at the Hearing indicate that TEVT billing for this file through the Final Judgment initially totaled 463.70 hours. Based on the TEVT fee records in evidence, Paint Spot's Supplemental Memo, and Mr. Vega and Mr. Rodriguez' Hearing testimony, the Court finds that Paint Spot voluntarily reduced its potentially recoverable attorneys and paralegals' fees by 26.1 hours.

Mr. Rodriguez opined that the total amount of hours actually expended by TEVT attorneys and paralegals on this case was reasonable. His opinion was based on the complexity of the case, the aggressiveness with which Trump defended this case, the fact-intensive issues and credibility findings upon which the matter ultimately turned, and the novel, difficult construction lien law issues presented. As an example of the complex legal issues, Mr. Rodriguez noted that a tension exists in construction lien law between certain statutory provisions providing for strict construction and others providing for a substantial compliance analysis. Trump's expert opined that TEVT attorneys spent too much time on the case based solely upon a comparison between how much Trump paid to defend itself and how much Paint Spot now seeks to recover in fees. However, Trump's expert did not know how many hours Trump's attorneys expended on the matter.

Additionally, Mr. Rodriguez explained that the critical credibility determinations that only the Court could make after the bench trial on the issue of reasonable reliance made this case novel and increased the time, labor, and skill required for Mr. Vega and his team to properly perform the legal services rendered, taking time away from other files. Mr. Rodriguez also specifically highlighted the importance of a single email chain showing that Straticon's construction manager Jamie Gram timely received Paint Spot's Notice to Owner, which TEVT attorneys did not discover until after suit was filed. Paint Spot's expert also opined that in cases like this, more time is often necessarily expended by the plaintiff's firm actively prosecuting its claim than by the defendant's lawyers, who can take a more conservative approach to how much time is spent on the matter.

On the other hand, Trump's counsel questioned Mr. Vega extensively on whether the number of TEVT hours claimed by Paint Spot was reasonable based on Mr. Vega's experience, reputation, and ability as a Board Certified Construction Law attorney. Notably, Trump did not argue this case was simple or run-of-the-mill. Trump also did not attack any specific timekeeping entries made by Mr. Vega during the course of litigation. Instead, Trump's counsel and expert only insinuated that because Mr. Vega is Board Certified in this area of law, the case should have been less time-consuming for his firm, without any expert opinion of what a reasonable number of hours for the TEVT firm would be. In response, Mr. Vega explained that the bulk of his time was spent preparing for and appearing at the many important hearings held in this case; preparing for, taking, and defending nine depositions; overseeing all legal briefing; and preparing for and conducting the oral examinations of all the roughly seven (7) critical witnesses who testified at trial.

Trump's attorneys also contended that the hours expended by TEVT associate attorneys was too high, again only because Trump paid less per hour associate time. Critically, the Court notes that TEVT associate attorney time was billed at half the rate of Mr. Vega's. Mr. Vega also testified that because this case was both factually and legally complicated—largely due to the issues raised by Trump's defenses—the time the firm's associates (primarily Ms. Van Cleaf) needed to devote to researching, legal briefing, and reviewing the documentary evidence and deposition transcripts for incorporation into the necessary briefing in this case was heightened. Mr. Vega testified further that the amount of time necessary to properly prosecute this case precluded TEVT attorneys from devoting time to other cases. To highlight this point, Mr. Vega noted that throughout litigation, Trump's counsel Mr. Hernicz "made it abundantly clear" to him that Trump believed it "was going to win on summary judgment." Mr. Hernicz's firm conducted itself as such both in its discovery and motion practice.

However, due to the amount of time and effort expended by Mr. Vega, Ms. Van Cleaf, and the firm's paralegals, Paint Spot successfully convinced this Court that the proper course was to deny Trump's summary judgment motion and later, after a bench trial, enter the Final Judgment enforcing Paint Spot's Claim of Lien and awarding Paint Spot all of the damages it sought in this case. The Court finds that TEVT's time could not have produced a better result for its client. Based on the Court's review of TEVT's itemized fee records, it is also clear to the Court that much of TEVT associate Van Cleaf's reasonable hours spent on this case were devoted to analyzing, researching, and briefing the Court on the unique and critical reasonable

reliance and substantial compliance issues raised by Trump's primary argument that Paint Spot's lien was defective based on certain documentary evidence.[5]

Further, Ms. Van Cleaf second-chaired the trial and Mr. Vega testified that she prepared all related legal memoranda, which he then edited as is customary at the TEVT firm. Trump's expert contended, without any back up as to why aside from noting that the case was briefed pre-trial, that Ms. Van Cleaf spent too much time drafting Paint Spot's proposed final judgment. This was the only specific objection Trump made to timekeeping entries by any TEVT attorneys or paralegals. The Court finds that the time was spent reasonable and notes as an initial matter that as explained further *infra*, that there is no record of how many hours Mr. Hernicz and Mr. Russomano spent on Trump's competing proposed judgment.

Regarding the TEVT firm's time spent on the post-trial proposed findings of fact and conclusions of law, he Court finds it important that in lieu of trial closing arguments, at the request of both Mr. Hernicz and Mr. Russomano, the Court asked the parties to submit competing proposed findings of fact and conclusions of law for the Court to edit and work from when making its ultimate determination on the merits of this cause. Thus, when preparing Paint Spot's proposed final judgment, the Court finds it was necessary for TEVT's attorneys to spend time analyzing all of the fact-based testimony that was actually given by the multiple witnesses who testified at trial, and the documents that were actually admitted into evidence at trial, and then apply those facts to the pertinent law. The Final Judgment ultimately entered by this Court in Paint Spot's favor was roughly fifteen pages long and comprised detailed factual findings and legal conclusions. Accordingly, the Court finds that the time spent by Ms. Van Cleaf drafting

[5] The Court notes that Ms. Van Cleaf also incurred time preparing a mediation statement that Trump's own counsel rendered unnecessary by unilaterally canceling mediation—based on Trump's position that it would win this case on summary judgment—which eventually caused the parties to dispense with mediation altogether.

Paint Spot's proposed final judgment and the time Mr. Vega spent editing the document and overseeing Ms. Van Cleaf's work was reasonable.

Finally, at the Hearing, Trump's primary position was that Paint Spot's attorneys and paralegals' hours are unreasonable when compared with how much money Trump spent on this case. Trump's expert did not know how much many hours Trump's attorneys expended. According to a post-Hearing summary submitted to the Court by Trump, Trump now posits that the Hernicz and Weiss firms collectively billed 245.4 hours in attorney and paralegal time, with Mr. Hernicz billing 97.4 hours on the case and Mr. Weiss expending 77.2 hours. However, based on the Court's review of the Trump attorney fee records admitted into evidence at the Hearing, the Court finds that the Trump summary is not accurate and that Trump's fee records admitted into evidence do not constitute a good benchmark for comparison to TEVT's timekeeping records.

First, on their face, the timekeeping records of Trump's attorneys show that the Hernicz and Weiss firms collectively wrote off over 20 hours of attorney and paralegal time that was actually spent on this case but not charged to Trump.[6] It would be wholly inaccurate to consider only the hours Trump's attorneys billed on this case without regard for how much time the attorneys and paralegals actually spent in Trump's defense against the lien claim. In reality, the Trump attorney timekeeping records show that Mr. Hernicz documented spending roughly 98.1 hours in connection with this case and Mr. Weiss documented roughly 99.1 hours. The hours Trump contends its attorneys spent are also mostly partner time (i.e., one would expect the time spent to be less for certain tasks), while TEVT utilized associate attorneys more heavily.

[6] *See e.g.* Weiss Invoice No. 44866 at entries dated 3/23/2016, 3/24/2016, 3/28/2016, 4/5/2016, 4/11/2016, 4/12/2016, 4/14/2016, and 4/15/2016, all of which indicate that attorney and paralegal time was spent but not charged to Trump.

Second, and most critically, the Weiss firm records clearly show that both Mr. Hernicz and Mr. Russomano also spent time preparing the case for trial; however, this Court received no record in evidence of how many hours the other two attorneys' firms actually devoted to preparing for and attending the trial. For example, the Weiss firm's Invoice No. 44664 at page 2 documents telephone conferences with Mr. Hernicz regarding "collaborative efforts to prepare for trial . . . and to discuss issues in dispute and trial strategy." A review of Weiss Invoice Nos. 44664 and 44866 in whole reveal that Mr. Hernicz was, in fact, actively involved in the preparation of Trump's overall trial strategy, exhibit selection, motion in limine, opening statement, motion for involuntary dismissal, and witness preparation. Mr. Hernicz also jointly tried the case before this Court along with Mr. Weiss. Based on the Weiss firm's Invoice No. 44866 at page 11 (entry dated 4/19/16), it appears Mr. Hernicz also participated in preparing Trump's post-trial proposed findings of fact and conclusions of law. However, Trump did not submit any of Mr. Hernicz' April 2016 trial-related timekeeping records into evidence—only Mr. Weiss' itemized trial-related timekeeping records were provided for comparison.

Finally, although Mr. Russomano informed this Court at the Hearing that he "wasn't involved" in this case until after the trial, Weiss Invoice No. 44866 shows that Mr. Russomano was in fact part of Trump's trial preparation team.[7] As previously noted, Mr. Russomano formally appeared in this case on April 12, 2016 and was also present in the courtroom throughout the April 15, 2016 trial and addressed the Court several times. However, Trump did not offer any evidence documenting the number of hours Mr. Russomano devoted to the trial or the hourly rate charged.

[7] *See e.g.* Weiss Invoice No. 44866 at entries dated 4/12/2016, 4/13/2016, 4/14/2016.

Based on the foregoing analysis, the Court finds that the negotiated amount of money Trump actually paid to defend itself against Paint Spot's claim is not dispositive of whether Paint Spot's claimed attorneys' and paralegal hours are reasonable; therefore, the Court was not persuaded by the testimony of Trump's expert on this issue. The Court emphasizes that the critical factual determination it must make is whether Paint Spot's attorneys and paralegals reasonably spent the amount of time on this case for which Paint Spot seeks recovery from Trump. Given this requirement, the incomplete Trump fee records admitted into evidence at the Hearing simply do not provide an accurate benchmark for comparison. Further, conservatively estimating that Mr. Hernicz and Mr. Russomano collectively spent roughly the same amount of time as Mr. Weiss preparing for and attending trial (99.1 total hours), the gap between Trump's total attorney hours (raised from 245.4 to 344.5 hours) and the time claimed by TEVT's attorneys and paralegals (437.6 hours) lessens significantly. The Court also notes once again that Trump did not contest the hours or the rates in any other way except for broadly (1) objecting to Ms. Van Cleaf's time spent preparing proposed findings of fact and conclusions of law; and (2) otherwise simply comparing TEVT's hours to the negotiated gross dollar amount that Trump actually paid. The Court has also considered the fact that TEVT took this case on a 100% contingency fee basis when determining the reasonableness of TEVT's claimed hours, which is analyzed *infra* at Part II(C) of this Judgment.

Accordingly, based on the preceding analysis, the Court finds that Mr. Vega and Mr. Rodriguez' testimony on the issue of whether the number of hours Paint Spot spent on this case to be more credible than the testimony of Trump's expert. The Court therefore holds that the collective claimed 437.6 hours Paint Spot's attorneys and paralegals devoted to this case were

reasonable given the circumstances. The precise numbers of hours and rates, by timekeeper, are set forth with more particularity both *supra* and in this Court's Conclusion.

C. Paint Spot is entitled to a contingency fee risk multiplier of 1.75.

Fee multipliers ranging from between 1 and 2.5 are permitted under Florida law. *See Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 834 (Fla. 1990). "[T]he primary policy that favors the consideration of the multiplier is that it assists parties with legitimate causes of action or defenses in obtaining competent legal representation even if they are unable to pay an attorney on an hourly basis. In this way, the availability of the multiplier levels the playing field between parties with unequal abilities to secure legal representation." *Bell v. U.S.B. Acquisition Co., Inc.*, 734 So. 2d 403, 411 (Fla. 1999); *see also Lane v. Head*, 566 So. 2d 508, 510 (Fla. 1990) ("One of the purposes of *Rowe* was to encourage attorneys to take cases under contingency-fee arrangements, thereby making legal services more widely available to those who otherwise could not afford them."). Additionally, "[a]s is obvious, some contingency-fee cases will result in a financial loss to the lawyers who handle them. Accordingly, *Rowe* recognized that attorneys taking contingency-fee cases are entitled to a higher than usual reimbursement in successful contingency-fee cases, which would offset their other losses." *Id.*

The Florida Supreme Court has determined that application of a multiplier is not automatic. *See Quanstrom*, 555 So. 2d at 831. In tort and contract-related cases where the attorney has taken the case on a contingent fee basis, trial courts must consider and apply "the following factors in determining whether a multiplier is necessary":

> (1) whether the relevant market requires a contingency fee multiplier to obtain competent counsel; (2) whether the attorney was able to mitigate the risk of nonpayment in any way; and (3) whether any of the factors set forth in *Rowe* are applicable, especially, the amount involved, the results obtained, and the type of fee arrangement between the attorney and his client. Evidence of these factors must be presented to justify the utilization of a multiplier.

Quanstrom, 555 So. 2d at 834. The three *Quanstrom* prongs must not be read "in isolation, and too narrowly. *Quanstrom* requires that a trial court consider evidence in support of each of the three *Quanstrom* prongs in order to award a contingency fee multiplier." *TRG Columbus Venture, Ltd. v. Sifontes*, 163 So. 3d 548, 552 (Fla. 3d DCA 2015).

When evaluating the *Quanstrom* prong of whether the relevant market requires a contingency fee multiplier to obtain competent counsel, a fee multiplier has been applied when there was "expert testimony that it would have been difficult to find an attorney willing to take [the] case without the opportunity for a multiplier." *McCarthy Bros. Co. v. Tilbury Const., Inc.*, 849 So. 2d 7, 10 (Fla. 1st DCA 2003), *rev. denied*, 857 So. 2d 197 (Fla. 2003). The "complexity of the case **and the relative financial positions of the parties *(emphasis added)***" are also considered. *Id.* at 8–10 (considering the relative financial positions of a subcontractor and a general contractor/building owner when awarding a multiplier in an action based on nonpayment by owner for sheet-rocking services).

The Florida Supreme Court has upheld the application of a contingency risk multiplier when the non-prevailing party was a large corporation and career litigant that made a calculated business decision to "go to the mat," "stand and fight," and "go toe-to-toe over the issue" instead of resolving the case for a reasonable amount, inflating litigation fees and costs for the prevailing party through its "militant resistance" against a valid claim. *State Farm Fire & Cas. Co. v. Palma*, 555 So. 3d 836, 837–838 (Fla. 1990) (quoting the District Court's analysis with approval). Last year, the Third DCA also observed that a multiplier is appropriate in certain cases to "level the playing field" when (1) a small plaintiff takes on a large business entity; or (2) other attorneys in the pertinent market would be unwilling to take a case on contingency where "several defenses elected by the defendant presaged protracted discovery and a hard fought

trial." *Citizens Property Ins. Corp. v. Pulloquinga*, 183 So. 3d 1134, 1137–1138 (Fla. 3d DCA 2015).

The "risk of nonpayment" factor is determined by reviewing the fee agreement between the prevailing party and its attorney. *See Wolfe v. Nazaire*, 758 So. 2d 730, 734 (Farmer, J., concurring specially). A multiplier may be awarded if "the fee is in some way dependent on the outcome of the case," i.e., "there was some risk that a fee would never be due. It is the risk that no fee will ever be due, even though substantial work is performed, that gives rise to the recognition that an enhancement may be appropriate." *Id.* (Farmer, J., concurring specially). The final *Quanstrom* multiplier prong requires trial courts to consider the *Rowe* factors, "especially the amount involved, the results obtained, and the type of fee arrangement between the attorney and his client." 555 So. 2d at 834.

Finally, with regard to the amount by which trial courts may multiply attorneys' fees, the Florida Supreme Court has set forth the following parameters:

> If the trial court determines that success was more likely than not at the outset, it may apply a multiplier of 1 to 1.5; if the trial court determines that the likelihood of success was approximately even at the outset, the trial judge may apply a multiplier of 1.5 to 2.0; and if the trial court determines that success was unlikely at the outset of the case, it may apply a multiplier of 2.0 to 2.5.

Quanstrom, 555 So. 2d at 834. Both attorney and paralegal fees may be multiplied. *See State Farm Mut. Ins. Co. v. Edge Family Chiropractic, P.A.*, 41 So. 3d 293, 297 (Fla. 1st DCA 2010) ("[B]ecause the paralegal's work is part of the legal services provided to the client, there is no principled reason to treat paralegal fees any different from attorney's fees in regards to the application of the multiplier").

The Court hereby incorporates its preceding *Rowe* findings as if set forth fully herein.

At the Hearing, Paint Spot's owner, Juan Carlos Enriquez, testified that he determined legal counsel would be necessary for Paint Spot to collect on its roughly $32,000.00 lien claim when Trump and Straticon representatives began raising complex legal defenses to avoid paying for the paint supplied to the Trump National in Doral, Florida. He specifically stated that Trump and Straticon informed that Paint Spot had no lien rights. Mr. Enriquez also explained that the amount of the lien at issue is "a lot of money to me" and stated that when he hired TEVT, his company was struggling to survive due to nonpayment by both Trump and certain parties to unrelated cases.

Mr. Enriquez informed the Court that from the outset, Paint Spot was "looking for somebody who would work with me that would take [this case] on a contingency . . . because I didn't have the money" to pursue collection for the paint and related materials his company supplied to the Trump project. He testified specifically that at the time, Paint Spot could not afford to pay hourly attorney rates, especially going against a company with the kind of resources Trump had. By the time Paint Spot contacted TEVT, Mr. Enriquez had already attempted to obtain payment by contacting multiple top Trump executives and lawyers to no avail. Mr. Enriquez further stated that if Paint Spot's other unrelated matters had not settled quickly, "I would have had to close my stores." Importantly, Mr. Enriquez also informed the Court that he consulted three other lawyers about this case who refused to take it on a contingent fee basis, explaining that TEVT/Mr. Vega was "the only one" willing to work with Paint Spot on this matter without requiring continuing payment from Paint Spot on an hourly basis. The Court finds that Mr. Enriquez' testimony at the Hearing was very credible and also notes that Trump did not contest any of Mr. Enriquez' testimony in this regard. The Court also notes that the relationship between TEVT and Paint Spot began around April 2015 when Paint Spot brought

this case, and two others that stemmed from an unrelated project and settled quickly, to Mr. Vega.

At the Hearing, Mr. Rodriguez opined that very few, if any, local construction attorneys would be willing to take this case on a contingency fee basis, even with the possibility for a multiplier. He explained that the amount in controversy (roughly $32,000.00) would be too small for most seasoned construction firms to agree to take on a risky case like this without hourly compensation. To support this conclusion, he noted that the factually unique nature of this particular case and the likelihood of an uphill battle was apparent from the outset, as was already known that Trump intended to challenge the sufficiency of Paint Spot's lien based on the Notice to Owner issues.

The Court agrees with Mr. Rodriguez' conclusion, which is bolstered by his testimony that the case was extremely daunting at the outset before the critical email message showing that Straticon's Jamie Gram timely received a copy of Paint Spot's Notice to Owner in November 2014 was discovered. The Court also notes as relevant to this issue that Paint Spot admitted documentation into evidence at the Hearing showing that Jamie Gram, copying Trump representatives, began feigning ignorance as to Paint Spot's identity and claim of lien from the moment Mr. Vega became involved in the matter, asking Mr. Vega whether a payment demand TEVT sent to Straticon in early April 2015 was "sent to us in error" due to T&G Constructors being listed on one of the documents submitted in support of the demand.[8] The evidence also shows that Mr. Gram was well aware of Paint Spot's claim, as he had been discussing payment directly with Mr. Enriquez for months before Mr. Vega became involved.[9]

[8] *See* 04/06/2015 email from J. Gram to D. Vega and R. Lackey, cc P. Bertot
[9] *See* 12/10/2014 email chain between Paint Spot and Mr. Gram

At the Hearing, Mr. Rodriguez testified further that the complicated nature of this case required a construction lawyer with intimate knowledge of Florida's complex construction lien law. Mr. Vega testified that TEVT's practice is roughly 95% construction law and explained that his particular "niche . . . expertise is the lien law. This is what I know and do and I probably know it better than most construction lawyers because that's really what I've been involved in." Mr. Vega explained that in addition to handling many construction lien cases throughout his construction law career (which began in 1998), he has also authored Florida Bar Journal articles on this particular niche of construction law. He further testified that the associate attorneys who worked on this file collectively have over ten years of experience in construction law and that the primary associate assigned to the case, Ms. Van Cleaf, has been practicing construction law under Mr. Vega's oversight since graduating law school and passing the bar in 2011.

Mr. Rodriguez and Mr. Vega both testified that TEVT was unable to mitigate the risk of nonpayment for fees expended on this case in any way, and the Court, having heard the testimony and reviewed the fee agreement between Paint Spot and TEVT, agrees. Mr. Enriquez' credible Hearing testimony also highlights the disparity in size and financial resources between Trump and Paint Spot, which the Court notes is even greater in this case than the difference in size between the building owner and contractor in *McCarthy*. The evidence shows that Mr. Vega made numerous attempts to settle the case both to avoid a lawsuit in the first instance and to avoid the need for a trial. Mr. Vega also explained to this Court that Trump never offered to settle this case until the eve of trial and only after TEVT had incurred a substantial amount of fees, rendering the settlement offer worthless. Trump also never served a proposal for settlement. The Court finds that similar to the large career litigant in *Palma* who took an all-or-nothing stance, here, corporate Trump made a business decision to "go to the mat" and put up "militant

resistance" to Paint Spot's valid claim of lien—in other words, as put by Mr. Vega at the Hearing, Trump elected to fight this case "tooth and nail" instead of resolving it for a reasonable amount, driving up Paint Spot's litigation fees and costs. Trump's business decision also meant this was an all or nothing case for Paint Spot.

At the Hearing, Trump's attorneys pointed out that Mr. Vega spent time trying to settle this case before entering into a written contingency agreement with Paint Spot and filing this lawsuit, contending that no entitlement to a multiplier can be had based on *Michnal v. Palm Coast Development, Inc.*, 842 So. 2d 927 (Fla. 4th DCA 2003).

In *Michnal*, the Fourth DCA reversed a multiplier awarded to an attorney who originally filed suit on an hourly basis but converted it to a contingency agreement midway into the lawsuit because ongoing litigation became more difficult than anticipated. *See id.* at 934–935. The appellate court determined the trial court erred by multiplying the attorney's fees given its clear finding that "a multiplier was not warranted at the time the [client]'s case was filed." *Id.* at 934. The *Michnal* court reasoned that allowing an attorney to obtain a fee multiplier in the middle of litigation, "asserting the case 'became' harder than anticipated" would present a problematic expansion of multiplier jurisprudence, which, as explained *supra*, exists to provide financially underprivileged clients with difficult cases access to the court system at the outset. 842 So. 2d at 935.

The Court notes that here, 3.1 pre-suit hours (over a two-month period) were documented in TEVT's timekeeping records for Mr. Vega before the lawsuit was filed and before the fee agreement was signed. Mr. Vega testified that when it became clear there was no way to resolve the case without filing a lawsuit, he had a "sit down conversation" with Mr. Enriquez about entering into a written contingency fee agreement because Mr. Enriquez could not afford to pay

hourly for TEVT to file and prosecute a legal action on its behalf. Based on the evidence and testimony adduced at the Hearing, it is clear to the Court that the written agreement between Paint Spot and TEVT was entered contemporaneously with the filing of Paint Spot's Complaint, mere days later and before service of the Complaint was perfected upon Trump. This case is entirely distinguishable from *Michnal* on that basis alone, as this lawsuit never started as an hourly agreement and then changed to a contingency—it was a contingency fee case from the outset of the judicial proceedings. To find otherwise, would serve as a deterrent to counsels who may want to help citizens of limited resources to resolve cases against well-resourced parties before the need to file full-blown complaints.

Michnal is also distinguishable because here there was ample expert testimony given at the Hearing to support this Court's conclusion that the difficulty of this case was known and required a multiplier at the outset. Based on the Court's previous analysis of the evidence and testimony presented at the Hearing, the Court finds that before suit was filed, Trump's defenses to the sufficiency of Paint Spot's lien certainly presaged protracted discovery and a hard-fought trial, were the case to make it that far. The Court also concludes that with Paint Spot being unable to pay hourly for the lawsuit, and TEVT not knowing that the critical email showing Jamie Gram received Paint Spot's Notice to Owner existed when the firm entered into the contingency fee agreement and filed suit, there is no question that at the time of filing, this case certainly required the possibility of a multiplier to obtain competent counsel. There was also ample uncontroverted testimony from Mr. Enriquez, Mr. Rodriguez, and Mr. Vega that (1) three other lawyers rejected Paint Spot's request for a contingency fee agreement for this case; and (2) as a general matter, competent construction law attorneys in the relevant market would not take this case on contingency without the possibility of a multiplier.

Therefore, the Court finds that Paint Spot is entitled to a contingency risk multiplier on its recovery of attorneys' fees from Trump in the amount of 1.75. The Court is applying a 1.75 multiplier because, as set forth above, success at the outset of this case was unlikely. Without Mr. Vega's extensive experience and intimate knowledge of the construction lien law, and his team's dedication to this case, Trump's Board Certified construction attorneys may have been able to convince this Court to grant Trump's summary judgment motion, leaving Paint Spot (and TEVT) with nothing and also exposing Paint Spot to paying Trump's attorneys' fees for the case—which Mr. Enriquez testified would have bankrupted his business.

III. Paint Spot shall recover its claimed witness fee, process server, and court-reporting litigation costs totaling $5,977.02 from Trump.

In general, the Florida Supreme Court has issued guidelines for trial courts to consider when awarding litigation costs. *In re Amendments to Uniform Guidelines for Taxation of Costs*, 915 So. 2d 612 (Fla. 2005). However, "[t]he Guidelines . . . are advisory only and trial courts have broad discretion in awarding otherwise nontaxable costs. Accordingly, 'the trial court may deviate from [the] guidelines depending on the facts of the case as justice may require.'" *Rodrigo v. State Farm Ins. Co.*, 166 So. 3d 933, 934 (Fla. 4th DCA 2015) (quoting *Madison v. Midland Nat'l Life Ins. Co.*, 648 So. 2d 1226, 1228 (Fla. 4th DCA 1995)). "[W]hen doing so, the trial court is required to sufficiently identify what nontaxable costs are being awarded and is further required to make specific findings as to the unique and extraordinary circumstances justifying such an award." *Id.*

Generally, costs such as Paint Spot's filing fees, postage costs, mileage costs, research costs, parking costs, clerk fees, trial costs (interpreter and demonstrative aids), and expert witness costs, are nontaxable. The Court finds that although the defense of this case was vigorous and aggressive, it was not of an extraordinary nature such that a full cost award is

justified. However, the Court will award Paint Spot its taxable witness fee costs ($53.20), process server costs ($157.40), and court-reporting costs ($5,766.42), for a total cost award of $5,977.02.

CONCLUSION

Based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED AND ADJUDGED** that Plaintiff, Fernich, Inc. d/b/a The Paint Spot, whose address is 10445 SW 109 Street, Miami, Florida 33176, shall recover from Defendant, Trump Endeavor 12, LLC, whose address is 725 Fifth Avenue, New York, New York 10022, reasonable attorneys' fees in the amount of **$275,100.00**, which includes a contingency risk multiplier of 1.75, reasonable taxable costs in the amount of **$5,977.02**, for a total fee and cost award of **$280,977.02,** plus prejudgment interest in the amount of **$2,972.89**,[10] for a total award of **$283,949.91**, which shall continue to bear interest pursuant to Section 55.03, Florida Statutes, which is itemized as follows, and for which let execution issue forthwith:

1. Reasonable attorneys' fees:

    a. Daniel R. Vega, Esq.: 201.2 hours at a rate of $500.00 per hour, for a total of **$100,600.00**;

    b. Vanessa A. Van Cleaf. Esq.: 212.9 hours at a rate of $250.00 per hour, for a total of **$53,225.00**;

    c. R. Paul Washington, Esq.: 3.5 hours at a rate of $250.00 per hour, for a total of **$875.00**;

    d. Soraida Smith, Paralegal: 10.5 hours at a rate of $125.00 per hour, for a total of **$1,312.50**; and

[10] Prejudgment interest is calculated at the statutory rate of 4.78% per annum from the date of Paint Spot's entitlement to attorneys' fees and costs (April 25, 2016) through and including July 18, 2016 (81 days). *See Quality Engineered Installation, Inc. v. Higley South, Inc.*, 670 So. 2d 929, 930–931 (Fla. 1996) (holding that "interest accrues from the date the entitlement to attorney fees is fixed through agreement, arbitration award, or court determination, even though the amount of the award has not yet been determined").

e. Liliana Ayala, Paralegal: 9.5 hours at a rate of $125.00 per hour, for a total of **$1,187.50**.

2. Reasonable Costs

a. Witness Fees: **$53.20**;

b. Process Server Fees: **$157.40**; and

c. Court-Reporting Fees: **$5,766.42**.

3. Jurisdiction over this matter is expressly retained as to all post-judgment enforcement matters permitted under Florida law.

IT IS FURTHER ORDERED AND ADJUDGED that the Final Judgment of Foreclosure of Plaintiff, Fernich, Inc. d/b/a The Paint Spot's Construction Lien entered by the Court in this action on April 25, 2016 shall be **SUPPLEMENTED** to include the amount of **$283,949.91**, plus interest from the date of this Judgment against Defendant, Trump Endeavor 12, LLC.

THE CLERK OF COURT IS HEREBY DIRECTED to include an additional **$283,949.91**, plus interest from the date of this Judgment through the date of any future foreclosure sale of the real property located at 4400 NW 87 Avenue, Doral, Florida 33178-1606, in addition to the amounts that the Court ordered due to Plaintiff in the April 25, 2016 Final Judgment of Foreclosure of Plaintiff's Construction Lien and for this amount to be expressly included and subject to the foreclosure sale as to Defendant, Trump Endeavor 12, LLC (which was originally scheduled to take place on June 28, 2016 at 9:00 a.m. but which was directed to be canceled by this Court's order dated June 7, 2016).

DONE and ORDERED in Chambers at Miami-Dade County, Florida, this _____ day of _____, 2016.

_____
CIRCUIT COURT JUDGE

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 07/18/16.

_____
JORGE E. CUETO
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.
Judge's Initials **JEC**

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Copies furnished to:
Daniel R. Vega, Esq.
Vanessa A. Van Cleaf, Esq.
Charles B. Hernicz, Esq.
Bradley R. Weiss, Esq.
Herman J. Russomanno, III, Esq.