IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

LYON VILLA VENETIA, LLC, et al.	:	
	:	
Plaintiffs,	:	
	:	Case No. 351307-V
v.	:	
	:	
CSE MORTGAGE LLC, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

This complex commercial real estate litigation started on August 19, 2011, when a California real estate developer, Lyon Villa Venetia, LLC and certain of its affiliates, (collectively, "Villa Venetia")[1] sued three defendants: (1) CapitalSource Finance LLC, the original lender in this case; (2) CSE Mortgage LLC, an affiliate of and successor to CapitalSource Finance LLC, (collectively, "CapitalSource");[2] and (3) NorthStar Realty Finance Corporation ("NorthStar").[3] All of the claims asserted by Villa Venetia in each of its complaints arise out of the original Villa Venetia Loan Agreement ("Original Loan Agreement"), dated May 25, 2004, and the Tenth Modification to that agreement ("Tenth Loan Modification"), dated January 31, 2010.

[1] The affiliates all are parties to the original $35 million loan transaction and the Tenth Modification of the loan, which is the subject of this lawsuit.

[2] Both CapitalSource defendants are former or current wholly owned subsidiaries of Capital Source, Inc, a Delaware corporation, which is a publicly traded company. The parent has not been sued and the internal structure of the parent, albeit complex and interesting, is not germane to this case.

[3] The plaintiffs subsequently amended their complaint to add various NorthStar affiliates, NS Advisors LLC, NS Servicing LLC, NS/CSE Holding LLC and NRFO Sub-REIT Corp. The details of the relationships among these entities are unimportant and they will be referred to collectively simply as NorthStar.

After numerous motions and hearings, and extensive discovery, all of the plaintiffs' claims against CapitalSource and NorthStar were dismissed, without leave to further amend. However, before the plaintiffs' claims were dismissed, CapitalSource filed a counterclaim for attorneys' fees based upon the release and indemnification provisions of the Original Loan Agreement and the fee-shifting provisions of the Original Loan Agreement and the Tenth Loan Modification. After a hearing on September 14, 2012, the court granted summary judgment in favor of CapitalSource on its counterclaim. The court then held a bench trial on the issue of the amount of attorneys' fees.

For the reasons discussed below, CapitalSource's request for attorneys' fees will be granted. NorthStar's motion for fees and costs under Md. Rule 1-341 will be denied. All other relief requested by any party is denied. This is a final order.

Facts and Procedural Background

The gist of the original complaint was that CapitalSource had sold the plaintiffs' 2004 loan to NorthStar and that the alleged sale violated plaintiffs' rights under a right of first refusal contained in the Tenth Loan Modification. NorthStar promptly filed a motion to dismiss, or in the alternative for summary judgment, contending that the transaction documents between NorthStar and CapitalSource, including those filed by both companies with the Securities and Exchange Commission, demonstrated that NorthStar did not purchase the plaintiffs' loan.

In 2010, NorthStar entered into a transaction with CapitalSource in which NorthStar received a subordinated equity interest in a Collateralized Debt Obligation, along with delegated management and servicing rights for the dozens of loans contained in that securitization. Included in that securitization was the commercial real estate loan

that CapitalSource had made to the plaintiffs in 2004. CapitalSource agreed to indemnify NorthStar against all claims arising from the transaction. In short, the operative documents established that NorthStar simply purchased delegated management and servicing rights to a pool of loans, including plaintiffs' loan, all of which had been securitized years earlier and held by a securitization trust.[4] There was no sale of the plaintiffs' loan as alleged in the original complaint.

The plaintiffs then filed a series of amended complaints and shifted their legal theories. As to CapitalSource, the plaintiffs alleged that they were fraudulently induced to enter into the Tenth Loan Modification because the earlier securitization made it virtually impossible for them to exercise their right of first refusal. As to NorthStar, the plaintiffs proceeded under a theory of unjust enrichment.

After a hearing on May 22, 2012, the court dismissed the plaintiffs' claims against NorthStar with prejudice and without leave to amend. The court rejected the plaintiffs' claim that NorthStar somehow had allowed the plaintiffs mistakenly to believe that the NorthStar transaction would trigger the right of first refusal but did not tell plaintiffs that such an impression was incorrect. Despite multiple hearings, the plaintiffs offered the court no cognizable basis for concluding that NorthStar somehow was unjustly enriched by realizing the fees for the work NorthStar performed for servicing the loans that had been securitized, even under the forgiving standard of Md. Rule 2-322(b). Although the concept of unjust enrichment is elastic, *see, e.g., Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 295-97 (2007); *Berry & Gould, P.A. v. Berry*, 360 Md. 142, 151-52 (2000),

[4] This transaction is described in a Form 8-K, filed by CapitalSource, with the SEC on July 14, 2010, which is well over a year before the plaintiffs filed their original complaint in this case. The transaction also is described in NorthStar's Form 8-K, filed with the SEC on July 14, 2010. The information is readily available to any member of the public.

it is not borderless. There is simply no cogent basis in this case to conclude that NorthStar was unjustly enriched at the plaintiffs' expense.

After a hearing on May 9, 2012, the court granted CapitalSource's motion for summary judgment as to all of the plaintiffs' claims. The principal basis for this ruling was the plain language of the release contained in the Tenth Loan Modification of May 14, 2010. Section 5.2 of the Tenth Loan Modification provides in relevant part:

> As of the date hereof and as of the Effective date, each Borrower, for itself and its successors and assigns (collectively, the "Borrower Parties") hereby fully and forever releases, discharges and acquits Lender and its parent, subsidiary, affiliate and predecessor corporations, and their respective past and present officers, directors, shareholders, partners, attorneys, legal representatives, agents and employees, and their successors, heirs and assigns and each of them, of and from and against any and all claims, demands, obligations, duties, liabilities, damages, expenses, indebtedness, debts, breaches of contract, duty or relationship, acts, omissions, misfeasance, malfeasance, causes of action, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and remedies therefor, chooses in action, rights of indemnity or *liability of any type, kind, nature, description or character whatsoever, and irrespective of how, why or by reason of what facts, whether known or unknown, whether liquidated or unliquidated* (collectively, "Claims") which any of such Borrower Parties may now have, or heretofore have had against any of said persons, firms or entities, by reason of, arising out of or based upon conduct, events or occurrences on or before the Recordation . . . .

(Emphasis added).

The plaintiffs failed to cite a single reported Maryland appellate case or statute that precluded a broad release, such as that contained in the Tenth Loan Modification, from releasing all unknown claims, even unknown fraud claims. The language of § 5.2 is as broad and comprehensive as release language can be. It represents a clear intent of the parties to leave nothing open or unsettled that existed as of May 14, 2010, whether known or unknown to the parties. There is nothing in any public policy of Maryland that

was brought to my attention that prohibits sophisticated corporate parties, in a transaction of this type, from doing exactly what the release in this case plainly does – release everything. California specifically permits such a release, even the release of unknown fraud claims, if it adheres to the disclosure requirements of California statutes. *San Diego Hospice v. County of San Diego*, 31 Cal App. 4th 1048, 1053-54 (Cal. App. 1995); *Winet v. Price*, 4 Cal. App. 4th 1159, 1173 (Cal. App. 1992). The release in this case understandably contained such a disclosure as the real estate project for which the original $35 million was loaned is located in California and CapitalSource has an office in California.[5] Pennsylvania permits such a release as a matter of common law. *Three Rivers Motors Co. v. The Ford Motor Co*., 522 F.2d 885, 894-96 (3d Cir. 1975). I see no reason why Maryland should not do likewise.

Further, by reviewing CapitalSource's and NorthStar's SEC filings, the plaintiffs easily could have discovered that its original loan already had been included in the securitization trust *before* it signed the Tenth Loan Modification. As a consequence, even if CapitalSource or NorthStar knew that plaintiffs were unaware of the securitization of their loan, plaintiffs easily could have discovered this fact before they signed the Tenth Loan Modification had they bothered to look at the SEC filings. *See Canadian Commercial Workers Indus. Pension Plan v. Alden*, 2006 Del. Ch. LEXIS 42 (Del. Ch. Feb. 22, 2006).

Entitlement to Attorneys' Fees

CapitalSource presented two bases for its request for attorneys' fees, § 5.4 of the Original Loan Agreement, and § 6.10 of the Tenth Loan Modification.

[5] The parties in this case expressly recited and waived the protections of Cal. Civil Code § 1542. *See* § 5.3 of the Tenth Loan Modification.

Section 5.4 of the Original Loan Agreement provides, in pertinent part:

> Borrower shall pay, whether or not the closing of the Loan occurs, all costs and expenses incurred by Lender or any of its Affiliates, from time to time, including documentation and diligence fees and expenses, all search, audit, appraisal, recording, professional and filing fees and expenses and all other out-of-pocket charges and expenses (including UCC and judgment and tax lien searches and UCC filings and fees for post-Closing UCC and judgment and tax lien searches, if required by Lender), all internal and portfolio management fees (including of Capital Analytics) and *expenses and reasonable attorneys' fees and expenses actually incurred* (including costs and expenses of in-house counsel allocated by Lender)…(e) *in defending or prosecuting any actions, claims or proceedings arising out of or relating to Lender's transactions with Borrower*…If Lender or any of its Affiliates uses in-house counsel for any of the purposes set forth above or any other purposes under this Agreement or any other Loan Document for which Borrower is responsible to pay or indemnify, Borrower expressly agrees that its Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Lender or such Affiliate in its sole discretion for the work performed. In addition and without limiting the foregoing, Borrower shall pay all taxes (other than taxes based upon or measured by Lender's income or revenues or any personal property tax), if any, in connection with the issuance of any Note and the recording of the security documents and financing statements therefor and pursuant to the Security Documents. Lender may, at its written election, pay any such fees out of the Capital Expenditure Reserve.

(Emphasis added).

Section 6.10 of the Tenth Loan Modification provides:

> Borrower shall reimburse Lender for all sums paid or advanced under or pursuant to this Agreement or the Existing Loan Documents (including, but not limited to, costs of appraisals, environmental investigations and reports, survey and other title costs), *reasonable attorneys' fees and expenses incurred by Lender in connection with the enforcement of Lender's rights under this Agreement* and each of the other Existing Loan Documents, including, without limitation, reasonable attorneys' fees and disbursements for trial, appellate proceedings, out-of-court workouts and settlements or for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys' fees incurred in bankruptcy and insolvency proceedings such as in connection

> with seeking relief from stay in a bankruptcy proceeding. Borrower's reimbursement obligation shall be part of the indebtedness secured by the Existing Loan Documents. Borrower specifically acknowledges that, due to the complexity of the Loan, the real estate development sophistication of Borrower and the difficulties contemplated in enforcement of Lender's remedies, Lender, to protect its interest properly and completely in the event of Borrower's default, shall be entitled to retain attorneys of Lender's choice at such attorneys' customary fee rates and that Lender shall be entitled to complete and full reimbursement of reasonable attorneys' fees. Without limitation, all references to attorneys' fees and costs shall include all costs and expenses of in-house counsel allocated to Lender.

(Emphasis added).

CapitalSource contends that both of the above-quoted contractual provisions authorize an award of attorneys' fees in this case. The plaintiffs contend that § 5.4 of the Original Loan Agreement applies only to third party indemnity claims. They further contend that § 6.10 of the Tenth Loan Modification is inapplicable because, they assert, CapitalSource is not the "lender" under that agreement.

In support of the contention that § 5.4 of the Original Loan Agreement is limited to third party claims the plaintiffs assert that the Court of Appeals' decision in *Nova Research, Inc. v. Penske Truck Leasing Co., L.P.*, 405 Md. 435 (2008) is controlling. I disagree.

Nova is distinguishable for at least two reasons. First, the contract language in that case did not expressly provide for the recovery of attorneys' fees. 405 Md. at 439. Section 5.4 does. Second, the contract language in *Nova* only covered losses "caused by or arising out of" the failure to comply with the agreement. 405 Md. at 451. Here, by contrast the plain language covers attorneys' fees incurred "in defending or prosecuting any action . . . arising out of or relating to Lender's transactions with Borrower." Thus, the language of § 5.4 is more akin to that held by the Court of Appeals to cover first party

actions in *Atlantic Contracting & Material Co., Inc. v. Ulico Cas. Co*., 380 Md. 285, 302 (2004). Applying the objective rule of contract interpretation, I find the meaning of § 5.4 to be plain and unambiguous. As a consequence, there is no need to resort to parole evidence or to consider what the plaintiffs may have thought the contractual language meant. *Weichert Co. of Maryland, Inc. v. Faust*, 419 Md. 306, 324-25 (2011).

I also reject the plaintiffs' argument that CapitalSource is not the "lender" under the Tenth Loan Modification. The plaintiffs sued both CSE Mortgage LLC and CapitalSource Finance LLC in the Second Amended Complaint, which is the operative pleading. The Tenth Loan Modification recited that the agreement was made by and between the plaintiffs and "CSE Mortgage LLC, a Delaware Limited liability company, as successor to CapitalSource Finance LLC, a Delaware limited liability company ('Lender')." It is plain from reading this document that these defendants were the "lender," as defined in the Tenth Loan Modification and, therefore, may enforce its provisions, including § 6.10.

As a fall back position, the plaintiffs argue that § 6.10 is limited to circumstances in which CapitalSource is the aggressor, *i.e*., the party who started the lawsuit. They seize on the language "in connection with the enforcement of lender's rights under this Agreement. . . ." In support of this overly cramped construction of the plain language of the Tenth Loan Modification they rely on a single federal trial court decision, *BKCap, LLC v. Captech Franchise Trust 2000-1*, 701 F. Supp. 2d 1030 (N.D. Ind. 2010), *aff'd on other grounds*, 688 F.3d 810 (7th Cir. 2012). To be sure, the federal court in *BKCap* did hold that the contract language in that case, "incurred by Lender in enforcing the rights of lender under this Note or other Loan Documents" applied only when the lender is the

plaintiff, not the defendant, in a lawsuit. 701 F. Supp. 2d at 1033. In that court's view, the language under consideration required "an offensive, coercive act--such as filing a lawsuit after a default--to compel observance or obedience." 701 F. 2d at 1037. Simply defending against a borrower's claim, even if fees are sought by way of a counterclaim, was not sufficient. 701 F.2d at 1038.

I respectfully decline to follow the trial court decision in *BKCap* for two reasons. First, in contrast with the contract provision in that case, the language in § 6.10 recites that fees may be recovered "*in connection with* the enforcement of Lender's rights under this Agreement." That precise phrase, since at least 1975, has been well understood in the business community. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 733-34 (1975). Second, § 6.10 by its plain terms, is not limited to purely offensive conduct. Indeed, it would be unreasonable to so hold. CapitalSource plainly has incurred attorneys' fees and costs in connection with enforcing its rights.

The trial court in *BKCap* also seemed concerned about an undue expansion of the American rule that, ordinarily, the parties to a lawsuit bear their own costs and expenses. That concern seems to have colored its decision, along with the fact that the party seeking fees lost the case. Although the American rule assuredly prevails in Maryland, *see Nova v. Penske*, 405 Md. at 447, it has long been accepted by the Court of Appeals that the parties to a contract may provide otherwise. *Addressograph-Multigraph Corp. v. Zink*, 273 Md. 277, 288-89 (1974); *Webster v. People's Loan Etc. Bank*, 160 Md. 57, 61 (1931).

In my view, there is nothing inherently wrong or unfair about sophisticated parties to a business transaction transferring risk, including litigation risk over disputes arising

out of their deal. Further, there is nothing improper about a sophisticated borrower contractually binding himself to pay the legal fees and expenses of his lender if he sues his lender (and others) and loses. Because CapitalSource is the prevailing party, and the fees and expenses were incurred in connection with the enforcement of its rights under the Tenth Loan Modification, I need not determine whether Maryland would enforce a "winner pays" clause in a contract. *See BKCAP, LLC v. Captec Franchise Trust 2000-1*, 688 F.3d 810 (7th Cir. 2012)(declining to award attorneys' fees to a *non-prevailing* lender under a reimbursement provision.)

In summary, I hold that CapitalSource is entitled to recover reasonable attorneys' fees and expenses under both contractual provisions.

Amount of Attorneys' Fees

The attorneys' fees requested in this case are in the nature of contractual damages. Ordinarily, when considering such a request the court must employ a two-step analysis. First, the party seeking an award must prove their entitlement to attorneys' fees by a preponderance of the evidence, and under the same standards as proof of contractual damages. *Diamond Point Plaza Ltd. P'ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 761 (2007); *Bankers & Shippers Ins. Co. v. Electro Enterprises, Inc.*, 287 Md. 641, 661 (1980); *Maxima Corp. v. 6933 Arlington Dev. Ltd. P'ship*, 100 Md. App. 441, 453–54 (1994). A mere compilation of hours recorded by lawyers, and multiplied by hourly rates, is insufficient. Among other things, there must be proof of the type of services rendered as well as the necessity of those services in the litigation. *See Royal Inv. Group, LLC v. Wang*, 183 Md. App. 406, 457–59 (2008); *Long v. Burson*, 182 Md. App. 1, 29 (2008); *Maxima*, 100 Md. App. at 453–54.

Second, because the award sought is for attorneys' fees, the court also must evaluate the evidence supporting or opposing the fee award under the standards of Rule 1.5 of the Maryland Rules of Professional Conduct, along with other pertinent factors. *See Diamond Point Plaza*, 400 Md. at 757–58; *Long v. Burson*, 182 Md. App. at 26–27; *B & P Enter. v. Overland Equip. Co*., 133 Md. App. 583, 625–27 (2000); *Holzman v. Fiola Blum, Inc*., 125 Md. App. 602, 639–40 (1999). "The party requesting fees has the burden of providing the court with the necessary information to determine the reasonableness of its request." *Myers v. Kayhoe*, 391 Md. 188, 207 (2006).

The Court of Appeals recently has reiterated that the reasonableness of any contractual request is determined under Rule 1.5 of the Maryland Rules of Professional Conduct. *Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 325, 336-37 (2010).[6] Having reviewed the defendants' evidence, and the entire court file, I find that the defendants have met their burden of proof. The court also finds that the fees and expenses sought are related directly to the defense of the plaintiffs' claims in this case and that the charges are fair, reasonable and necessary. *See Royal Inv. Group, LLC v. Wang*, 183 Md. App. at 459.

As discussed below, the court focused on four key factors outlined in Rule 1.5 to reach its determination that defendants' fees are fair and reasonable.[7] I also considered the testimony of Kori Ogrosky, Esquire, general counsel for CapitalSource, and find her

[6] It was entirely appropriate for the defendants to have included in their fee petition the amount that was actually paid in respect of their indemnity agreement with the NorthStar defendants, in this case close to $85,000. *See Weichert Co. of Maryland, Inc. v. Faust*, 419 Md. at 331.

[7] The court is not required to "explicitly comment on or make findings with respect to each factor." *Monmouth Meadows*, 416 Md. at 337 n. 11. Factors two, five, six, and eight of Rule 1.5 are not relevant in this instance.

to be credible and accurate. Finally, I have reviewed all of the trial exhibits admitted at the evidentiary hearing on attorneys' fees.

a. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

In examining the "time and labor required" factor, the court takes into account what, or rather who, necessitated the defendants to devote such a substantial amount of time to this litigation. The defendants gave the plaintiffs ample opportunity to withdraw their claims or face a counterclaim for attorneys' fees. (Ex. A to Memorandum of Law In Support of Counterclaimants' Motion for Summary Judgment, Letter from D. Butler to C. Hinger dated 11/22/2011). The legal war between the plaintiffs and the defendants in this case has been hotly contested at every turn, resulting in repeated court intervention to resolve discovery disputes. Furthermore, an abundance of motions filed throughout the duration of the case required extensive briefing and lengthy hearings, most of which were initiated by the plaintiffs and could have been avoided. In short, the plaintiffs generated most of the necessity of court involvement.

In support of the fee request, the defendants have submitted detailed billing statements from counsel showing, among other things, the nature of the work performed, the timekeeper, the hourly rate for attorney time, and a listing of items of expense. The information submitted by defendants is quite precise and informative. The work for which compensation is sought plainly was related to this case, the plaintiffs' protests (which are unsubstantiated by any evidence of record) to the contrary notwithstanding.

At the evidentiary hearing, the general counsel for CapitalSource explained the invoices submitted by its litigation counsel, her internal review process, as well as those paid by CapitalSource pursuant to the indemnification agreement. The witness provided

detailed testimony that sufficiently accounted for the time billed on behalf of NorthStar. The plaintiffs had the opportunity, yet declined, to examine the general counsel of CapitalSource, who was present during the entire hearing, regarding the time spent on the defense.

Upon evaluation of the amount of time the defendants spent on their defense, the court also considered the "novelty and difficulty" of the questions presented. Although the court does not believe the issues presented to be particularly novel or difficult, the court is familiar with the demands of this type of litigation. Sophisticated parties, with the guidance of attorneys, carefully drafted the loan documents at issue. When this type of agreement is allegedly breached, it calls for attorneys with specific expertise to ensure it is construed and enforced properly. The plaintiffs, by their litigation strategy in this case, left the defendants with no option but to dedicate valuable time to defend the provisions that played a significant role in their bargained for exchange. The e-discovery alone demanded by the plaintiffs consumed 2.59 gigabytes of data, or some 230,000 paper documents.

b. The fee customarily charged in the locality for similar services.

The plaintiffs contend that the rates charged by the defendants' lawyers are unreasonably high. However, they failed to provide any supporting evidence for this contention, specifically declining to produce their own billing records for the litigation or to advise the court of the hourly rates charged by their lawyers.

My review of the evidence persuades me, and I find, that the legal fees and expenses charged by the defendants' lawyers in this case are well within the standard range charged in the District of Columbia metropolitan area in general, and in particular,

in complex civil litigation assigned to the Business and Technology Track of this court.[8] The court, having been a civil litigator in complex cases for many years prior to taking the bench, is familiar with customary billing rates.[9] In addition, the court is quite familiar with the underlying litigation, having presided over the case since its inception, which familiarity also informs the court's decision. *See David Sloane, Inc., v. Stanley G. House & Associates, Inc*., 311 Md. 36, 53 (1987); *Sczudlo v. Berry*, 129 Md. App. 529, 551 n. 3 (1999); *Milton Co. v. Unit Owners of Bentley Place Condo.*, 121 Md. App. 100, 121–22 (1998).

Importantly, the court is very familiar with the TyMetrix billing software used by the defendants to track attorney time and expenses.[10] Fortune five hundred companies (and others) routinely use this patented software to assist them to accurately track and audit attorney time and expenses, and to measure productivity. Additionally, it is apparent from the timekeeper summaries admitted into evidence that defense counsel appropriately delegated mundane or less complicated tasks to associates or other firms with lower billing rates and expense profiles.[11]

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[8] I note that the rates charges by CapitalSource's lead counsel in this case were, by negotiated agreement with the client, discounted by 20%.

[9] "Evidence of the prevailing market rate usually takes the form of affidavits from other counsel attesting to their rates or the prevailing market rate. However, in the absence of sufficient documentation, the court may rely on its own knowledge of the market." *CoStar Group, Inc. v. LoopNet, Inc.*, 106 F. Supp. 2d 780, 788 (D. Md. 2000).

[10] TyMetrix is a task based billing system first developed in 1994. Its e-billing program has been used since 1997. *See* www.tymetrix.com.

[11] For example, a majority of the document review was delegated to a firm in South Carolina that, albeit well known and distinguished in its own right, agreed to charge only $70 per hour.

c. The amount involved and the results obtained.

In its analysis, the court compared the amount originally placed at issue by the plaintiffs to the amount of fees requested by the defendants. The plaintiffs sought an amount of no less than $24,742,855 in damages. (Second Amended Complaint, DE #156). The defendants seek 2,561,541.40 in attorneys' fees and expenses. Although at first blush this amount may appear high for a case that did not proceed to trial, the amount expended was driven by the plaintiffs' litigation conduct. I find that the defendants seek an award with a reasonable relationship to the amount originally at issue and commensurate with their need to respond to the plaintiffs' discovery demands and other litigation tactics. *See Reisterstown Plaza Assoc. v. General Nutrition Center, Inc.,* 89 Md. App. 232, 246 (1991). As demonstrated by the invoices admitted into evidence, the defendants incurred the bulk of fees and expenses in effort to defend against the plaintiffs' varying allegations.[12]

Another important factor in assessing the reasonableness of the defendants' fees is the results achieved for the clients. All claims were dismissed against CapitalSource on summary judgment after its counsel successfully argued that the release provision in § 5.2 of the Tenth Loan Modification was applicable to the allegations in the second amended complaint. (May 9, 2012 Hearing Tr. at 43:2-14; 44:10-12). By the time of trial, the defendants' counterclaim for attorneys' fees was all that remained to be decided by the court.

[12] This is not a case similar to *Monmouth Meadow*. 416 Md. at 341("In the present case, more than one half of the fees are associated with pursuing additional attorney fees in a case where there has been little or no opposition and constituted 'ordinary litigation[.]'")

d. The experience, reputation, and ability of the lawyer or lawyers performing the services.

It is unquestionable that the "experience, reputation, and ability" factor plays a large role in the court's assessment of the reasonableness of the defendants' fees. Both the plaintiffs and the defendants are sophisticated corporate participants, with a lot at stake in this litigation, including reputation risk. It is logical that both parties would retain counsel with the best experience, reputation, and ability. The defendants lead counsel has been a commercial litigator for well over twenty years. The lead defense law firm is a well-known national firm with an impressive reputation throughout the legal community. The experience of defense counsel was evident to the court throughout the case, and counsel remained professional and well prepared throughout the proceedings.

For all of the above reasons, the defendants' fee petition will be granted without any reductions. Given that CapitalSource will recoup the amount it paid to NorthStar under its indemnity contract, and that NorthStar has been paid, NorthStar's motion under Md. Rule 1-341 will be denied. *See Hauswald Bakery v. Pantry Pride Enterprises, Inc*., 78 Md. App. 495, 507 (1989).

It is therefore this 16th day of October, 2012, ORDERED that the defendants' request for attorneys' fees and costs is granted in the amount of $2,561,541.40. The clerk is directed to enter a judgment against the plaintiffs and in favor of CapitalSource.

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Ronald B. Rubin, Judge