

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4972

Summary Calendar

Amarillo Services, Inc.,
Plaintiff-Appellant,
versus
Hartz Mountain Corp.,
Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(6:90 CV 274)

(March 5, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Plaintiff Amarillo Services, Inc., appeals the August 19, 1992 Order of the district court awarding plaintiff \$54,000 as reasonable and necessary attorney's fees. Finding no abuse of discretion, we affirm.

Plaintiff purchased Little Wholesale in 1988. Little Wholesale distributed pet supplies to several Albertson's stores in

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Texas and Louisiana. After Hartz Mountain Corp. ceased delivering goods to plaintiff, allegedly causing plaintiff to lose Albertson's business, plaintiff sued Hartz. Plaintiff alleged five causes of action: (1) conversion; (2) interference with contract; (3) interference with business relationship; (4) breach of contract; and (5) violation of the Texas DTPA. Following trial and post-trial motions, plaintiff prevailed on its conversion, DTPA, and breach of contract claims. The outcome on the merits was recently affirmed by this court. Amarillo Services v. Hartz Mountain, 980 F.2d 1444 (5th Cir. 1992) (table; unpublished opinion).

Plaintiff first moved for an award of attorney's fees on October 25, 1991. Under Texas law, plaintiff was entitled to recover only those fees reasonable and necessary to its breach of contract and DTPA claims, plus fees incurred pursuing the other claims arising from the same transaction which were "so interrelated that their prosecution or defense entails proof or denial of essentially the same facts." See Tex. Civ. Prac. & Rem. Code § 38.001(8); Tex. Bus. & Com. Code § 17.50(d); Stewart Title Guar. Co. v. Sterling, 822 S.W.2d 1, 11 (Tex. 1991) (internal quotation marks omitted). The district court denied the October 1991 motion for fees without prejudice, directing plaintiff to segregate its fee claims to demonstrate which expenditures were recoverable.

On May 28, 1992, plaintiff filed its Amended Motion for Award of Attorney's Fees and Expenses, seeking a total of \$214,032.74 in fees and expenses. By its Order of August 19, 1992, the district

court awarded plaintiff \$54,000 in recoverable fees. The court noted that although plaintiff was instructed to segregate its fee requests, in several areas "it failed or was unable to do so."

We review the district court's award of attorney's fees for abuse of discretion. Texas Commerce Bank N.A. v. Capital Bancshares, Inc., 907 F.2d 1571, 1575 (5th Cir. 1990); Gulf Union Industries, Inc. v. Formation Security, Inc., 842 F.2d 762, 766 (5th Cir. 1988). Plaintiff, as the party seeking to recover attorney's fees, carried the burden of proof. Stewart, 822 S.W.2d at 10. We hold that the district court did not abuse its discretion in finding that plaintiff only established its entitlement to attorney's fees of \$54,000. The district court was familiar with the course of the litigation, including the motions filed and the type of evidence adduced at trial, and took note of these facts in determining the reasonableness of the fee award. Having already directed plaintiff to segregate its claims to allow proper evaluation, the district court acted within its sound discretion in rejecting particular submissions where the court could not determine whether those submissions were recoverable under Texas law.

AFFIRMED.