

SUPREME COURT OF ARKANSAS

Phi Kappa Tau Housing Corp. v. Wengert

86 S.W.3d 856, 350 Ark. 335 (2002) · No. No. 02-231 · Decided October 24, 2002

SUMMARY

The Supreme Court of Arkansas addressed attorney's fees and litigation costs arising from a landlord-tenant dispute involving a fraternity house lease. The court held that the lease required recovery of all costs incurred in connection with the litigation, including deposition costs, and modified the judgment to award PKT its full requested costs of \$2,907.19. The court affirmed the trial court's \$3,500 attorney's-fee award.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Donald L. Corbin
JURISDICTION	Arkansas
DECIDED	October 24, 2002
DOCKET	No. 02-231
DISPOSITION	affirmed
PROCEDURAL POSTURE	Second appeal concerning attorney's fees and litigation costs awarded after a jury trial in a landlord-tenant dispute.
STANDARD OF REVIEW	Attorney's-fee awards are reviewed for abuse of discretion. The interpretation of the lease is reviewed according to its plain language, and the trial court's factual finding concerning recoverable deposition costs was not clearly erroneous.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Phi Kappa Tau Housing Corporation, a/k/a PKT Housing, Rick Marcum, Anthony Capo v. Matt Wengert, Paul Wengert, Angie Wengert

TOPICS

- landlord tenant
- contract interpretation
- contracts
- remedies
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the lease required PKT to receive all litigation costs incurred in connection with the action, including deposition costs, rather than only reasonable costs.
2. Whether the trial court abused its discretion by awarding the appellants \$3,500 in attorney's fees instead of the \$51,525.50 requested.

HOLDINGS

1. The lease's provision awarding the prevailing party "all costs incurred in connection with such action" required recovery of all costs incurred in connection with the litigation, without a separate reasonableness limitation. Because the undisputed costs totaled \$2,907.19, PKT was entitled to that full amount, including the deposition costs.
2. The trial court did not abuse its discretion by awarding \$3,500 in attorney's fees rather than the \$51,525.50 requested.

KEY QUOTATIONS

"The plain language of the lease provides for an award of "all costs incurred in connection with" any action for recovery of the premises, or for any sum due under the lease, or because of any act arising out of the possession of the premises." (859)

"The prosecution of the original claim against the Wengerts and the defense of the third party claim are hopelessly intertwined and the plaintiff attorney's records have not segregated the legal work or costs associated with the different actions." (862)

FACTUAL BACKGROUND

PKT leased a house from the Wengerts for use by its fraternity. After a dispute over the lease and possession of property, PKT brought a replevin and conversion action and sought return of its security deposit, while the Wengerts asserted a lease-breach counterclaim. The jury awarded PKT \$8,500 for conversion and \$4,000 for the security deposit, awarded the Wengerts \$2,000 on their counterclaim, and found Marcum and Capo not liable on the third-party claims. The lease provided that the prevailing party would receive all costs incurred in the action, including a reasonable attorney's fee.

PROCEDURAL HISTORY

PKT sued the Wengerts for replevin and conversion and recovery of a security deposit; the Wengerts counterclaimed for breach of the lease and filed third-party claims against Marcum and Capo. The jury awarded PKT \$8,500 for conversion and \$4,000 for the security deposit, found Marcum and Capo not liable on the third-party claims, and awarded the Wengerts \$2,000 on their counterclaim. The trial court initially denied attorney's fees, the court of appeals affirmed, and the Arkansas Supreme Court reversed in *Marcum v. Wengert*, 344 Ark. 153, 40 S.W.3d 230 (2001), remanding for consideration of fees and costs. On remand, the trial court awarded

PKT \$1,750 in fees and \$1,623.19 in costs, and awarded Marcum and Capo \$1,750 in fees. The Supreme Court affirmed the fee award but modified PKT's cost award.

DISPOSITION

affirmed

CASES CITED

- Marcum v. Wengert, 70 Ark. App. 477, 20 S.W.3d 430 (2000)
- Marcum v. Wengert, 344 Ark. 153, 40 S.W.3d 230 (2001)
- First Nat'l Bank v. Griffin, 310 Ark. 164, 832 S.W.2d 816 (1992), cert. denied, 507 U.S. 919, 113 S. Ct. 1280, 122 L. Ed. 2d 673 (1993)
- Griffin v. First Nat'l Bank, 318 Ark. 848, 888 S.W.2d 306 (1994)
- Newcourt Fin., Inc. v. Canal Ins. Co., 341 Ark. 452, 17 S.W.3d 83 (2000) (per curiam)
- Chrisco v. Sun Indus., Inc., 304 Ark. 227, 800 S.W.2d 717 (1990)
- Boatmen's Trust Co. v. Buchbinder, 343 Ark. 1, 32 S.W.3d 466 (2000)