IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

SANDY PHILLIPS, individually and as surviving parent of Jessica Ghawi, decedent; LONNIE PHILLIPS, individually and as surviving parent of Jessica Ghawi, decedent

Plaintiffs : Civil Action No. 1:14-cv-02822-RPM

٧.

BRIAN PLATT, d/b/a BTP Arms, et al.

Defendants :

DEFENDANT PLATT'S MOTION FOR ATTORNEYS' FEES UNDER RULE 54(d) AND D.C.COLO.LCivR 54.3

The Defendant, Brian Platt d/b/a BTP Arms ("Platt"), through counsel, pursuant to Fed. R. Civ. P. 54(d) and D.C.COLO.LCivR 54.3 moves for an order granting him reasonable attorneys' fees and costs for these reasons:

I. GROUNDS FOR RELIEF

Plaintiffs filed his action alleging that as a result of deaths and injuries arising from the Aurora Century 16 shootings, they were entitled to an injunctive relief that would regulate internet sales by the Defendants of firearms, ammunition and other equipment. Plaintiffs asserted that tort claims sounding in negligent entrustment, negligence and public nuisance entitled them to that relief.

Platt, along with other defendants, filed a motion to dismiss under Rule 12(b)(6).

On March 27, 2015, after conducting a hearing on the pending motions, the Court granted the Rule 12(b)(6) motions of the defendants and entered judgment.

Phillips v. Platt, et al.

Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R 54.3

Page 2

C.R.S. §13-17-201 provides in part:

In all actions brought as a result of a death or an injury to person or property occasioned by the tort of any other person, where any such action is dismissed on motion of the defendant prior to trial under rule 12 (b) of the Colorado rules of civil procedure, such defendant shall have judgment for his reasonable attorney fees in defending the action....

When Colorado state law tort claims are dismissed under Fed. R. Civ. P. 12(b).Federal courts are to use §13-17-201 as a fee recovery provision. *Jones v. Denver Post Corp.*, 203 F.3d 748, 757 (10th Cir. 2000).

The action brought by the Plaintiffs was clearly brought "as a result of a death or injury to person." Plaintiffs alleged that the death occurred as a result of torts committed by the Defendants. The statute therefore applies and entitles Platt to an award of attorneys' fees.

II. ATTORNEYS' FEES CLAIMED

In defending the action, two law firms provided Platt with legal services: (1)

Sasscer, Clagett & Bucher, of Upper Marlboro, Maryland and (2) Messner Reeves LLP

of Denver Colorado.

A. <u>Services by Sasscer, Clagett & Bucher ("SCB")</u>

Attached is the affidavit of Phillip R. Zuber, Esquire, which describes under oath the summary of the relevant qualifications and experience of each person at SCB providing legal services for Platt; a description of the services rendered; the amount of

Phillips v. Platt, et al.

Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R 54.3

Page 3

time spent; the hourly rate charged; and the total amount claimed. The total amount claimed for services and costs by SCB is \$23,714.99.

B. Services by Messner Reeves, LLP

Attached is the affidavit of Bruce A. Montoya, Esquire, which describes under oath the summary of the relevant qualifications and experience of each person at Messner, Reeves providing legal services for Platt; a description of the services rendered; the amount of time spent; the hourly rate charged; and the total amount claimed. The total amount claimed for services and costs by Messner Reeves is \$9,854.90.

III. REQUEST FOR RELIEF

Having successfully defended on a Rule 12(b)(6) Motion the Plaintiffs' action brought "as a result of the death" of a person and sounding in tort, Platt is entitled to an award of attorneys' fees. Platt requests the entry of judgment against the Plaintiffs in the amount of \$33,569.89.

Phillips v. Platt, et al.
Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R
54.3
Page 4

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 10th day of April 2015.

Respectfully submitted,

_/s/__Phillip R. Zuber_(w/consent)_

Phillip R. Zuber, Esquire Sasscer, Clagett & Bucher 5407 Water Street, Suite 101 Upper Marlboro, MD 20772 (301) 627-5500/ (301) 627-4156 fax pzuber@scblawyers.com

/s/ Bruce A. Montoya

Bruce A. Montoya, Esq. Messner Reeves, LLP 1430 Wynkoop St., Suite 300 Denver, CO 80202 (303) 623-1800 bmontoya@messner.com

Attorneys for Defendant Brian Platt, d/b/a BTP Arms

Phillips v. Platt, et al.
Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R
54.3
Page 5

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April 2015, I electronically filed the foregoing **Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R 54.3** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filings to the following:

Thomas W. Stoever, Jr., Esq. Paul W. Rodney, Esq. Arnold & Porter, LLP 370 Seventeenth St., Suite 4400 Denver, CO 80202 Counsel for Plaintiffs

Andrew A. Lothson, Esq. James B. Vogts, Esq. Swanson, Martin & Bell, LLP 330 North Wabash, Suite 3300 Chicago, IL 60611 Counsel for Lucky Gunner

Marc F. Colin, Esq. Bruno, Colin & Lowe, P.C. 1999 Broadway, Suite 3100 Denver, CO 80202 Counsel for Lucky Gunner

Patrick J. Rooney, Esq.
Donald Chance Mark, Jr., Esq.
Peter A.T. Carlson, Esq.
Fafinski, Mark & Johnson
775 Prairie Center Dr., Suite 400
Eden Prairie, MN 55344
Counsel for The Sportsman's Guide, Inc.

Phillips v. Platt, et al.
Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R 54.3
Page 6

Ronald L. Wilcox, Esq.
Peters / Mair / Wilcox
1755 Blake St., Suite 240
Denver, CO 80202
rwilcox@peterslaw.net
Counsel for the Sportman's Guide, Inc.

M. Andrew Zee, Esquire
United States Department of Justice
Civil Division, Federal Programs Branch
450 Golden Gate Ave., Room 7-5395
San Francisco, CA 94102
m.andrew.zee@usdoj.gov
Counsel for United States

and hereby certify that I have mailed via U.S. mail, postage prepaid, to the following non-CM/ECF participants:

Jonathan E. Lowy, Esq.
Elizabeth Burke, Esq.
Kelly Sampson, Esq.
Brady Center to Prevent Gun
Violence
840 First St., N.E., Suite 400
Washington, D.C. 20005
Counsel for Plaintiffs

Gold Strike E Commerce, LLC c/o Christopher E. Russell 511 E. Colgate Dr. Tempe, AZ 85283

_/s/__Bruce A. Montoya_

Bruce A. Montoya, Esq.