

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

NO. D-101-CV-2009-00440

JPC CONTRACTORS, LLC,

Plaintiff,

vs.

**RUFINA LOFTS, LLC AND U.S. BANK
NATIONAL ASSOCIATION, AS TRUSTEE FOR
THE Santa Fe COUNTY, NEW MEXICO
MULTIFAMILY HOUSING REVENUE BONDS
(VILLA GRANDE APARTMENTS PROJECT)
SERIES 1998, AND KEITH MARSHALL,**

Defendants and Third Party Defendants,

vs.

**JERRY D. POWERS AND INDUSTRIAL
CONSTRUCTORS CORPORATION,**

Third Party Defendants and Counterclaimants,

**PHIL LUCAS, INDIVIDUALLY AND AS ATTORNEY
IN FACT FOR CERTAIN HOLDERS OF THE SANTA
FE COUNTY, NEW MEXICO MULTIFAMILY HOUSING
REVENUE BONDS (VILLA GRANDE APARTMENTS
PROJECT) SERIES 1998,**

Intervenor,

vs.

**U.S. BANK NATIONAL ASSOCIATION AND
KEITH MARSHALL,**

Defendants in Intervention.

**ORDER GRANTING IN PART
INTERVENOR'S MOTION FOR ATTORNEYS' FEES**

This matter came on for hearing on December 27, 2016 on the Intervenor's Motion for Attorneys' Fees, and the Court having reviewed the parties' submissions and having heard oral

argument, Philip B. Davis, Law Office of Philip B. Davis, appearing as fee counsel for the Intervenor and Jerome Miranowski, FAEGRE BAKER DANIELS LLP, appearing for Defendant U.S. Bank, and the Court being further fully advised in the premises, Intervenor's Motion for Attorneys' Fees shall be, and hereby is, **GRANTED IN PART**, as set forth more fully below.¹

THE COURT FINDS AND CONCLUDES AS FOLLOWS:

1. Intervenor is a prevailing party under the Unfair Practice Act ("UPA") and is entitled under that statute, NMSA 57-10-12C, to his reasonable and necessary attorneys' fees as against the Defendant U.S. Bank.
2. Intervenor shall be awarded his attorneys' fees based on the hourly rates requested by his counsel, including the rate requested for Mr. Davis' paralegal, which are fair and reasonable, as follows:

D. Diego Zamora	\$375.00
Ray Vargas	\$300.00
Katherine Wray	\$225.00
Philip B. Davis	\$400.00
Kristina Bainbridge	\$125.00

3. Based on the evidence and the Court's familiarity with the case at trial, the reconstructed time records of Messrs. Zamora and Vargas are not based on the memories of the lawyers but are supported by documentation and are accurate and therefore can be relied upon by the Court in making its award of attorneys' fees.

¹ This Order is limited to the award of attorneys' fees to Intervenor's counsel and attorneys' fees and litigation expenses to Intervenor's fee counsel. At the same hearing, the Court heard argument and ruled on Intervenor's Bill of Costs and that portion of Intervenor's Motion for Attorneys' Fees and Litigation Expenses relating to merits counsel's litigation expenses, as well as Intervenor's Motion for Pre-Judgment Interest. Separate orders shall be entered on those matters.

4. Defendant Bank's objection that some of Intervenor's time should be stricken or reduced because it constituted block billing is overruled. None of Intervenor's counsel's time records contain block billing.
5. Based on the evidence and the Court's familiarity with the case at trial, Intervenor shall be compensated for the time coded in green in his counsel's revised time records which are attached to Intervenor's Reply brief (filed December 15, 2016), as Exhibits 8a, 8b and 8c (hereinafter "Intervenor's counsel's time records") as follows:

D. Diego Zamora	0.0 hours
Ray Vargas	28.0 hours
Katherine Wray	3.8 hours

6. Based on the evidence and the Court's familiarity with the case at trial, identifiable time spent related to the expert Dr. Parkman and issues relating to the secondary market purchasers is unrelated to the UPA claim and shall be withdrawn from the time coded in yellow in Intervenor's counsel's time records.
7. Based on the evidence and the Court's familiarity with the case at trial, the remaining time coded in yellow in Intervenor's counsel's time records related in one way or another to the UPA claim, is intertwined with the work done on the Intervenor's non-fee generating claims and cannot be separated out in any meaningful or reasonable way, and as such, may be compensated for subject to an overall percentage reduction to account for the intertwined nature of the time.
8. A reasoned estimate of the percentage of the hours for which compensation shall be awarded that is attributable to such intertwined time coded in yellow in

Intervenor's counsel's time records, and which is compensable under the UPA subject to an overall percentage reduction, is 50%. Any time included that may not be identifiably attributed to Dr. Parkman or the secondary market purchasers issues, or any other time unrelated to the UPA, is adequately addressed by the overall percentage reduction for intertwined hours.

9. Intervenor shall be compensated for the time coded in yellow in Intervenor's counsel's time records, subject first to the withdrawal from that time all identifiable time entries related to the expert Dr. Parkman and issues relating to damages and the secondary market purchasers, and further subject to an overall reduction of 50% of all such hours, as follows:

D. Diego Zamora 232.30 hours²

Ray Vargas 170.65 hours³

Katherine Wray 206.05 hours⁴

10. The time and expenses spent by Intervenor's fee counsel on the Motion for Attorneys' Fees and Litigation Expenses were reasonable and necessary and are compensable in their entirety. Intervenor shall be compensated for that time and expenses as set forth below.

² 477.0 hours in yellow time in Mr. Zamora's revised time record (Exhibit 8a to Reply brief) less 12.4 hours withdrawn therefrom related to Parkman/secondary market purchasers issues (477.0 hours - 12.4 hours = 464.6 hours); 464.6 hours x 50% = 232.30 hours.

³ 352.8 hours in yellow time in Mr. Vargas' revised time record (Exhibit 8b to Reply brief) less 11.5 hours withdrawn therefrom related to Parkman/secondary market purchasers issues (352.8 hours - 11.5 hours = 341.3 hours); 341.3 hours x 50% = 170.65 hours.

⁴ 419.4 hours in yellow time in Ms. Wray's revised time record (Exhibit 8c to Reply brief) less 7.3 hours withdrawn therefrom related to Parkman/secondary market purchasers issues (419.4 hours - 7.3 hours = 412.1 hours); 412.1 hours x 50% = 206.05 hours.

11. Intervenor is entitled to applicable gross receipts tax on the Intervenor's counsel's attorneys' fees and on such of his fee counsel's litigation expenses that are taxable awarded in this Order.
12. In summary, Intervenor is entitled to attorneys' fees and applicable gross receipts tax as follows:

Zamora Law Firm

D. Diego Zamora			
Green coded time	0.00 hrs.		
Yellow coded time	<u>232.30 hrs.</u>		
Total hours	232.30	@ \$375/hr.	\$ 87,112.50
Gross Receipts Tax (8.3125%)			<u>7,241.23</u>
Total Attorneys' Fees plus Tax			<u>\$ 94,353.73</u>

Vargas Law Firm

Ray Vargas			
Green coded time	28.00 hrs.		
Yellow coded time	<u>170.65 hrs.</u>		
Total hours	198.65	@ \$300/hr.	59,595.00
Gross Receipts Tax (7.3125%)			<u>4,357.88</u>
Total Attorneys' Fees plus Tax			<u>\$ 63,952.88</u>

Wray & Girard

Katherine Wray			
Green coded time	3.80 hrs.		
Yellow coded time	<u>206.05 hrs.</u>		
Total hours	209.85	@ \$225/hr.	\$ 47,216.25
Post-hearing time for revisions per Court's ruling	3.50 hrs.	@ \$225/hr	\$ 787.50
Subtotal Fees			<u>\$ 48,003.75</u>
Gross Receipts Tax (7.3125%)			<u>3,510.27</u>
Total Attorneys' Fees plus Tax			<u>\$ 51,514.02</u>

Law Office of Philip B. Davis

Philip B. Davis	
Motion-related time	32.9 hrs.
Reply-related time	19.4 hrs.

Hearing and Order-related time	<u>13.4 hrs.</u>		
Total billable hours	65.7 hrs	@ \$400/hr.	\$ 26,280.00
No charge time	9.2 hrs.		

Kristina Bainbridge			
Motion-related time	11.7 hrs.		
Reply-related time	5.5 hrs.		
Hearing and Order-related time	<u>2.2 hrs.</u>		
Total billable hours	19.4 hrs.	@ \$125/hr.	<u>2,425.00</u>
No charge time	4.2 hrs.		

Subtotal Fees		\$ 28,705.00
Gross Receipts Tax (7.3125%)		<u>2,099.05</u>
Total Attorneys' Fees plus Tax		\$ 30,804.05

Expenses (\$191.34 +158.65+192.42) =	\$542.11	
GRT on taxable expenses of		
\$60 + \$18 + \$84.25	11.86	554.27

Total Attorneys' Fees, Expenses and GRT	<u>\$ 31,358.32</u>
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13. Intervenor is further awarded post-judgment interest at 15% per annum on the attorneys' fees and fee counsel's litigation expenses awarded herein from the date of this Order.

14. Intervenor's motion for attorneys' fees is in all other respects, **DENIED**.

IT IS SO ORDERED, ADJUDGED AND DECREED.


 SARAH M. SINGLETON
 DISTRICT JUDGE

Prepared by:

/s/ Philip B. Davis
 Philip B. Davis
 Intervenor's Fee Counsel

Approved as to Form:

Approved as to Form - by email (1/31/17)

Jerome Miranowski

FAEGRE BAKER DANIELS LLP

Attorney for Defendant U.S. Bank