

2006 Baltimore City LLC	:	IN THE
Plaintiff	:	CIRCUIT COURT
v.	:	FOR BALTIMORE CITY
Lucky Crosby Sr., <i>et al.</i> ,	:	
Defendants	:	Case No. 24-C-06-9061
:	:	:
:	:	:
Property Homes, LLC	:	IN THE
Plaintiff	:	CIRCUIT COURT
v.	:	FOR BALTIMORE CITY
Bryan Chiapparelli, <i>et al.</i> ,	:	
Defendants	:	Case No. 24-C-07-9010
:	:	:
:	:	:
Upper Fells Point Properties, Inc.	:	IN THE
Plaintiff	:	CIRCUIT COURT
vs.	:	FOR BALTIMORE CITY
Neighborhood Inner City	:	
Enterprise, LLC, et al.,	:	
Defendant	:	Case No. 24-C-07-6462
:	:	:
:	:	:
Fidelity Tax LLC	:	IN THE
Plaintiff	:	CIRCUIT COURT
v.	:	FOR BALTIMORE CITY
Damaion Rich, et al.,	:	
Defendant(s)	:	Case No. 24-C-07-5600
:	:	:
:	:	:

MEMORANDUM OPINION

In all four of these tax foreclosure cases, there has been a request for the Court to set the redemption amount and the plaintiff’s attorney has provided an affidavit and documentation to support a specific amount. *See Tax-Property* § 14-829(a). In each case,

as of the date of the affidavit, the plaintiff has paid \$0 for attorney's fees and/or expenses, and/or the plaintiff's attorney or family member is the sole or partial owner of the plaintiff. The question before the Court is whether the documentation provided is sufficient for the Court to conclude that the requested amounts are in fact reimbursement for fees and expenses actually paid by the plaintiffs or realistically expected to be paid by the plaintiffs, in the event there is no redemption.

The applicable statute for determining the redemption amount states:

[O]n redemption, the plaintiff or the holder of a certificate of sale is entitled to be **reimbursed for expenses incurred** in any action or in preparation for any action to foreclose the right of redemption. In addition, the plaintiff or holder of a certificate of sale, on redemption, is entitled to be **reimbursed** for fees paid for recording the certificate of sale, for reasonable attorney's fees, provided that the fees may not exceed \$400 unless an action to foreclose the right of redemption has been filed, for expenses incurred in the publication and service of process by publication, for reasonable fees for a necessary title search, and for taxes, together with interest and penalties on the taxes, arising after the date of sale that have been paid by the plaintiff, including, in Baltimore City only, taxes, interest, and penalties paid in accordance with subsection (c) of this section and interest at the rate of redemption provided in § 14-820 of this subtitle from the date of payment to the date of redemption. The plaintiff or holder of a certificate of sale is not entitled to be reimbursed for any other expenses.

Tax-Property § 14-843(a) (superceded)(emphasis added).¹

¹The statute was amended on April 24, 2008 but all references in this Memorandum Opinion will be to the statute prior to the amendments because the amendments do not apply to these cases because the tax sales occurred prior to April 24, 2008. *See* 2008 Md. Laws Chapter 333 Section 2 “[T]his Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any tax sale held before the effective date of this Act or any proceeding that relates to a tax sale held before the effective date of this Act.”

On December 11, 2008, this Court issued an opinion in - *In re Attorney's Fees in Tax Sales Foreclosures*, Case No. 24-C-03-3443,² setting out the criteria and documentation required by a plaintiff seeking reimbursement of attorney's fees and expenses under Tax-Property § 14-843(a). As described in detail in that opinion, after the statutory cap on attorney's fees was lifted in 2003, the amount charged for attorney's fees rose at an extremely rapid rate. The requests for attorney's fees almost uniformly did not state the amount "paid or payable" to the attorney by the plaintiff in the event that there was no redemption. Citing *Friolo*, 373 Md. 501, 510 (2003), the Court noted that this omission was crucial.

Many of the plaintiffs have a continuous and ongoing relationship with one law firm—one plaintiff has 500 cases pending with the same firm. It is interesting to note that while some plaintiffs' attorneys did attach a copy of a fee agreement, only one presented evidence of the amount *actually paid or payable* by the plaintiff if there is no redemption, or if the Court sets the redemption amount less than the agreed upon fee amount.[FN 46]That is a

[FN 46]One plaintiff's motion states that the plaintiff "has not yet been billed" and "will not be billed" until the property is redeemed or a final judgment is granted, and that any bill "will reflect any payment received by [sic from] any third party." That same motion states that "[p]laintiff also is completely satisfied that the amount Plaintiff's Counsel charges for attorney fees and expenses is reasonable for the services provided." A motion filed by a different attorney states that "the continuing relationship with counsel's law firm is evidence of the reasonableness of the attorney's fees and expenses charged." None of these statements answers the crucial question of what plaintiff will pay if there is no redemption or if the amount allowed is less than that requested.

crucial omission. *See Friolo*, 373 Md. at 510 ("Nowhere, in either the motion or the amendment, did Friolo allege what arrangement she had with her attorneys with respect to a fee--whether they had accepted the case on an hourly basis, whether there was a set fee for the litigation, whether there was some sort of contingency fee arrangement, whether they had agreed not to charge her any fee at all but accept only what the court may award under the statutes, whether any fee awarded by the court was to be in addition to or

²Available at <http://www.baltocts.sailorsite.net/civil/opinions.html>

applied as a credit against any fee charged to her.”) Its absence is particularly glaring where the amount of attorney’s fees reimbursable by defendants has increased at such a rapid pace since the cap was lifted in 2003.

In re Attorney’s Fees at 34-35. In an effort to address the issue, the Court stated that, in the future, a request for attorney’s fees would have to include “the amount that has been and actually will be paid by the plaintiff in the event that there is no redemption, or the attorney’s fees awarded by the Court are less than the amount sought.” *Id.* at 35.

These four cases are a few of 100 or more cases before the Court in which, as of the date of the request to redeem, the plaintiff has paid \$0 for attorney’s fees and/or expenses and/or the plaintiff’s attorney or family member is the sole or partial owner of the plaintiff. For the reasons stated below, the affidavits and documentation supplied do not convince the Court that the amounts requested are for reimbursement as opposed to a non-bonafide fee obligation for the sole purpose of securing court approval. The Court either does not believe that the amounts requested are for reimbursement or the documentation is insufficient to prove that it is for reimbursement. In some instances, the Court does not believe that the money has been paid (in the few instances where there is a claim that it has been paid) or, that there is a realistic expectation that it will be paid by the plaintiff if there is no redemption (in those instances where no money has been paid as of the date of filing). In other instances, there is inadequate information to support a finding that the amounts requested are for reimbursement. In either instance, giving plaintiffs and their attorneys the benefit of the doubt, the Court will allow a short time for plaintiffs to file supplemental documentation and affidavits in support of the requests.

The citation in *In re Attorney’s Fees* to *Friolo* was an incomplete explanation of the importance of information on whether the plaintiff had actually paid or incurred the amounts.

The attorney's fees statute in *Friolo* was similar to attorney's fees in civil rights cases and provided that the court "may award . . . reasonable counsel fees and other costs." 373 Md. at 514 *quoting* Md. Labor and Employ. § 3-507.1. Attorney's fees in civil rights cases are awarded in part to encourage highly skilled lawyers to take cases where the result is far from assured. "[B]ecause of the nature of these cases," the experience, reputation, and ability of the lawyer or lawyers performing the services, "is not determinative in a way that it may be in . . . civil rights cases." *In re Attorney's Fees* at 36. "Especially in civil rights cases, there is a need to ensure that highly skilled lawyers are willing to take the cases because the result is far from assured." *Id.* Thus, in civil rights cases, the amount of attorney's fees is dependent on the level of success achieved. In the tax foreclosure cases, the award of attorney's fees is mandatory and is not dependent on level of success. "Unlike civil rights statutes where the Court *may* award attorney's fees, here the award is mandatory and is in no way dependent on the amount of taxes due, the costs of the certificate, or the value of the real estate." *In re Attorney's Fees* at 19.

Although an award of attorney's fees and expenses is mandatory in these cases, an award is intended solely as reimbursement for fees and expenses actually paid or actually payable by plaintiffs.

[T]he plaintiff or the holder of a certificate of sale is entitled to be **reimbursed for expenses incurred** in any action or in preparation for any action to foreclose the right of redemption. In addition, the plaintiff or holder of a certificate of sale, on redemption, is entitled to be **reimbursed** for fees paid for recording the certificate of sale, for reasonable attorney's fees, . . . , for expenses incurred in the publication and service of process by publication, for reasonable fees for a necessary title search. . . .

Tax-Property § 14-843 (emphasis added). In *Fidelity v. Rich*, Case No. 24-C-07-5600,

plaintiff's attorneys argue that the amount paid by plaintiffs is irrelevant:

Plaintiff argues that, while § 14-843 is a reimbursement statute, the statute explicitly states that the Plaintiff is to be reimbursed for reasonable attorney's fees "incurred." The legislature could have chosen the word "paid," but intentionally used "incurred." ***Therefore, the amount actually paid by the Plaintiff is irrelevant to the assessment of whether the fees claimed are reasonable.

This Court disagrees.

As this Court detailed in its discussion of the statutory scheme and the history of § 14-843, the point of the reimbursement statute is to encourage plaintiffs to buy the tax certificates with the assurance that they will not lose money in the event the certificate is redeemed. *In re Attorney's Fees* at 6-14. Thus, the Court noted that "[i]n 1955, the statute was amended to provide that a certificate holder also could recover 'for *actual* attorney's fees, not to exceed the sum of \$100.00.'" *Id.* at 11. In 1985, it was increased to \$250 and one of the reasons was that "the increased attorney's fees will help cover the legal costs incurred." *Id.* at 12 (citation and internal quotation marks omitted). When it was increased in 1995, the Senate Floor Report noted that "[t]estimony indicated that it is almost impossible to find an attorney to handle an action to foreclose for \$250.'" *Id.* at 12. In 2003, when the cap was eliminated for cases filed, the Floor Reports stated that "when an action to foreclose the right of redemption has been filed, the cases are generally more complex and require more time. This bill would allow those attorneys to be more adequately compensated." *Id.* at 13. This history shows that the focus has always been on covering the attorney's fees that a plaintiff would otherwise have to pay.

Ownership of the Plaintiff

In *In re Attorney's Fees* the Court also expressed concern that "there is often a thin

line between plaintiffs and attorneys.” *Id.* at 35. The law is clear that a party who represents himself may not recover attorney’s fees. *See Kay v. Ehler*, 499 U.S. 432 (1991) (an attorney who represents himself is not eligible for attorney’s fees in a civil rights case) and *Weiner v. Swales*, 217 Md. 123 (1923) (attorney’s fees denied to an attorney who represented himself in a confessed judgment case). Thus, it is important to determine if the plaintiff and the plaintiff’s attorney are one and the same. If so, expenses are recoverable, but not attorney’s fees. Additionally, as this Court noted in *In re Attorney’s Fees*, one of the factors to be taken into account in determining if a fee is reasonable is “the nature and length of the professional relations with the client.” Slip op. at 34-35 citing Md. Rule of Professional Conduct Rule 1.5(6). In an effort to shed some light on the issue, the Court imposed a requirement that plaintiffs’ counsel state in the affidavit

whether the attorney or the attorney’s spouse, parents, children or siblings have any ownership interest in the property or will benefit financially in any way other than through the payment of attorney’s fees and whether the client has paid or will be required to pay the requested amounts if there is no redemption.

In re Attorney’s Fees at 35. Because the issue was not squarely before it, the Court added a footnote that this information would not be “determinative of what the reimbursable fee will be.”

Thus the question arises: are the plaintiff and the plaintiff’s lawyer one and the same when the lawyer is the sole or partial owner of the plaintiff? A corporation is a separate legal entity. *Turner v. Turner*, 147 Md.App. 350, 425 (2002). A “Maryland court may pierce the corporate veil only based on fraud or proof that it is necessary to enforce a paramount equity. The rule regarding paramount equities applies when substantially all the stock of a corporation is owned by a single individual, and other factors clearly demonstrate a disregard

of the corporate structure.” *Id.* at 423. A corporate veil is pierced when it is necessary to prohibit a shareholder/owner from using the corporate entity as a shield or sword against a third party. *Id.* A corporate veil may not be pierced lightly and the Maryland reported cases suggest that fraud is a key element. *Id.* at 429 (“Despite the notion that a court may pierce the corporate veil to enforce a paramount equity, appellant has not referred us to any Maryland case in which the corporate veil was pierced on grounds other than fraud. (citations omitted)).

While the information before the Court may not rise to fraud, whether the fees and expenses are, in fact, paid by the legal entity is relevant to whether there is a disregard for the corporate structure, and more importantly, whether a defendant should be required to “reimburse” for fees never intended to be paid. This Court is convinced that the ownership issue is the same whether the owner is the attorney or a member of the attorney’s immediate family. As explained more fully below, the history of the exorbitant rise of attorney’s fees and expenses in this area,³ the responses in some of the cases described below, in combination with practices known to the Court, suggests that at a minimum, there is a need for some controls to insure that the plaintiff is not simply a fiction for requiring defendants to pay fees not otherwise payable.

Reimbursement

In re Attorney’s Fees assumed that a statement that fees and expenses are “paid or payable,” would be sufficient to insure that a party seeking redemption would pay no more

³See e.g. *In re Attorney’s fees*, slip op. at 46 n.62 noting that one attorney charged 50 cents a page for copying. In several instances, before this Court capped copying costs, this lawyer has submitted requests for reimbursement of several hundred dollars for copying costs. It is extremely unlikely that any arms length client actually paid 50 cents per page for copying.

for attorney's fees and expenses than the plaintiff would pay if there was no redemption. However, the responses filed in several instances since *In re Attorney's Fees* have caused the Court to reconsider this issue. As pointed out in *In re Attorney Fees*, the Court may consider its knowledge in determining whether a fee is reasonable. *Id.* at 16-17 citing *Milton Co. v. Bentley Place*, 121 Md. App. 100, 121 (1998) ("chancellor may rely upon his own knowledge and experience in appraising the value of an attorney's services"); *Johnson v. Baker*, 84 Md. App. 521, 543-44 (1990) (trial judge is in a position to evaluate if the fees are reasonable); *Randolph v. Randolph*, 67 Md. App. 577, 589 (1986) ("a trial judge may make an award of counsel fees . . . on the basis of his own knowledge, gleaned from the record and his own observations at trial, of the attorney's services and their value"); and *Kline v. Chase Manhattan Bank*, 43 Md. App. 133, 145 (1979)(evidence of the reasonableness of the attorney's fees was not required because "the trial judge was thoroughly familiar with the nature of the proceedings. . . ").

Over the course of the last three years, this Court has become intimately familiar with practices in tax foreclosures in Baltimore City. Several examples illustrate why this Court does not believe, based on the evidence it has seen in these cases, that the amounts requested are for a reimbursement when \$0 has been paid at the time of the request. First, as recited in *In re Attorney's Fees*, fees and expenses rose rapidly to an unrealistic point after the cap was removed. Second, prior to the issuance of its opinion, the Court is aware that many plaintiffs' counsel regularly negotiated and reduced the amount of the fees requested, which suggests that the amount requested was not what the plaintiff was ever expected to pay. Third, since *In re Attorney's Fees*, the Court has held hearings where some attorneys have admitted that the plaintiff has or will pay less than the amount requested in the petition.

Fourth, the following specific examples also point to the problem of discerning what fee is actually being charged the plaintiff in these cases and whether the legal entity is separate from the plaintiff.

The first three examples involve the attorneys for plaintiff 2006 Baltimore City, LLC.⁴ In *2006 Baltimore City, LLC v. Crosby*, Case No. 24-C-06-9061, the first request for a redemption amount in this case was filed prior to this Court's opinion in *In re Attorneys' Fees*. After that opinion, the Court entered an order setting a redemption amount. A Motion for Reconsideration was filed as to that amount and attached to it was plaintiff's counsel "Supplemental Affidavit for Attorneys' Fees and expenses for the Property Known as 1500 Leslie Street" on January 30, 2008. As of the date of filing, the plaintiff had paid attorney's fees of \$0 and, according to the affidavit, would pay "the entire fee set forth in this Affidavit [\$2,947.50 attorney's fees] if the property is not redeemed. If the redemption amount set by the Court is less than the requested amount, Plaintiff will pay the requested amount." The attorney's fee requested is \$2,947.50 and the justification for requesting a fee higher than the presumptive amount set in *In re Attorney's Fees* is:

The fee in this case should be the fee that Plaintiff agreed to pay attorneys for work performed. The fixed fee determined by this Court should be increased to the actual fee that Plaintiff agreed to pay attorneys for their work. Moreover, the attorneys working in this case have substantial experience that is out of the ordinary. Specifically, Mr. Nusbaum has over 44 years experience. His value to this case should be recognized in the fee.⁵

⁴This attorney filed 308 cases in 2006 and 144 cases in 2007 where 2006 Baltimore City, LLC is the named plaintiff.

⁵This was stated in the affidavit, there was no motion or memorandum requesting the Court reconsider its decision in *In re Attorney's Fees* to set a presumptive fixed fee.

In response to the amount of expenses paid, the affidavit states, “Plaintiff paid expenses: \$0, and the additional amount that is payable by the Plaintiff if the property is not redeemed \$877.08 [the amount of requested expenses].” The expenses included costs for filing fee for two attorneys⁶ and charged copies at 25 cents per page instead of the 10 cents as stated in *In re Attorney’s Fees*, with no explanation provided for the increased amount. The affidavit also states that “Mr. Nusbaum, a shareholder of Nusbaum & Himelfarb, P.A., is co-counsel in this case, and a part owner of 2006 Baltimore City, LLC.” It does not state the percentage of his ownership.

Before the Court ruled on the Motion for Reconsideration, Plaintiff filed an Amended Response to Motion to Fix Redemption and attached a “Second Supplemental Affidavit for Attorneys’ Fees and Expenses” requesting attorneys’ fees of \$1300. Because the fee amount was the presumptive amount set in *In re Attorneys’ Fees*, the explanation justifying a higher fee was deleted. In all other respects the affidavit was the same. Based on the information presented, the Court does not believe that the requested amounts will be paid by the plaintiff if there is no redemption.

The finding that the requested sums will not be paid by the plaintiff, 2006 Baltimore City, LLC is bolstered by what occurred involving this same plaintiff and the same lawyers in two other cases. In *2006 Baltimore City, LLC v. Francis Smith*, Case No. 24-C-06-9031, the plaintiff requested attorney’s fees of \$2,780. The justification for seeking fees beyond the flat rate was a claim that finding the defendant had been particularly difficult. In the affidavit

⁶The Court has previously ruled that filing fees for two attorneys are not reasonable and a defendant does not have to pay for a plaintiff’s decision to have two separate attorneys enter an appearance.

in support of the petition, the lawyer stated that the plaintiff had paid \$0 in attorney's fees and if the property was not redeemed would "pay the entire previously agreed fee." The evidence of the "previously agreed fee" was the retainer agreement, which stated that the client would pay a flat fee of \$400 before suit was filed and an additional flat fee of \$1860 "for all work necessary to prepare and file a complaint," and that "after the initial filing," the client would pay "\$275 per hour."

However, at a hearing on the petition to redeem, when asked about the number of hours it took to do the claimed "extra work" to locate the defendant, the lawyer stated that he had not kept track of the number of hours spent because of the Court's opinion that was issued in December, 2007. The retainer agreement was entered into on May 11, 2006 and the lawsuit was filed on November 22, 2006. When asked what fee the plaintiff would pay if there was no redemption, the lawyer stated the plaintiff would pay \$2260 (the \$400 flat rate and the \$1860 additional rate for filing the suit). When asked why there would not be a charge for the hourly rate as stated in the fee agreement, the lawyer stated it was because of this Court's December, 2007 opinion. When asked about the difference between \$2260 (the amount claimed that the plaintiff would pay) and \$2780 (the amount requested for the defendant to pay), the lawyer provided no explanation. In addition to having paid no attorney's fees in advance, the plaintiff had not paid any advance expenses. The title company paid the attorney's fees before the court issued a decision. This Court does not believe that the amount requested was ever a real number that the plaintiff was going to pay.⁷

⁷The title company may have paid the higher amount as defendants in these cases often complain that title companies and mortgage companies often pay the amounts requested without investigation and then pass the costs on to the defendants.

The case of *2006 Baltimore City, LLC v. Wheeler*, Case No. 24-C-06-9043, is also telling. On March 17, 2008, over three months after this Court decided *In re Attorney's Fees* setting a presumptive fixed fee of \$1300 if no affidavit of compliance had been filed and \$1500 if one had been filed, plaintiff filed a response to motion to fix redemption amount seeking attorney's fees of \$2,770. The reason given for the higher fee was the same as that stated in *Crosby* discussed above. As in the other cases, the affidavit further stated that "\$0" had been paid by the plaintiff in attorney's fees and expenses but that if the property is not redeemed plaintiff would pay "the entire previously agreed fee." The Affidavit further stated that if the amount set by the Court is less than the requested amount, "Plaintiff will pay the agreed-upon fee." As with the other cases, the plaintiff had paid \$0 in expenses. In addition, the affidavit did not specify if the title work had been done by plaintiff's counsel or by a third party.⁸ Furthermore the request attached receipts for postage of \$12.22 but requested postage for \$35.88.⁹ Attached to the affidavit was also a document that had been given to the defendants dated January 24, 2008, requesting \$2,770 for attorney's fees.

⁸*In re Attorney's Fees* states:

Sometimes the title work is done by plaintiffs' counsel and sometimes by a third party and sometimes it is impossible to tell which one. The request should clearly indicate if the title search was done by plaintiff's attorney or a third party. If by a third party, a receipt should be attached. If by plaintiff's attorney then, as with all other fees and expenses, the request should clearly indicate if plaintiff has or will pay the fee if there is no redemption

Slip Op. at 44.

⁹*In re Attorney's Fees* states:

For first class and certified mailings, the request should state the recipients of the mailings, the number of mailings, whether they were certified, etc. *** A receipt should be attached.

Slip Op. at 46.

Because one of the defendants had requested a hearing, the case was set in for a hearing. On the day before the hearing, plaintiff's counsel submitted a consent order signed by one of the plaintiff's lawyers and one of the defendants, setting a redemption amount of "[\\$1,300]¹⁰ attorneys' fees, \$1,038.88 expenses, \$220.72 in taxes, and \$86.21 in interest. . . ." The Court finds that the requested amounts were never real, but were simply a device to get additional moneys from the defendants. There was never a realistic expectation that the amounts would be paid by 2006 Baltimore City, LLC.

In cases involving other plaintiffs, there is insufficient evidence to convince this Court that the amounts requested are reimbursements as opposed to creations for the sole purpose of obtaining a court order. In *Property Homes, LLC v. Bryan Chiapparelli*¹¹, Case no. 24-C-07-9010, an attorney who prior to *In re Attorney's Fees* regularly requested fees of \$3000 or more, filed an affidavit that did not state either what interest the attorney or the attorney's spouse had in the plaintiff or how much had been paid or would be paid by plaintiff for fees and expenses. After a hearing in which the Master recommended no attorney's fees, plaintiff filed an amended affidavit that states:

The Plaintiff has already paid attorney's fees of \$0.0 and will pay \$1,500 in the foreclosure action, \$750.00 for deed preparation, submission and recording, \$250.00 for a Motion for Writ of Possession in additional attorney fees if the property is not redeemed. If the redemption amount set by the Court is less than the requested amount, the plaintiff will pay the amount of attorney's fees ordered by the court.

¹⁰The proposed submitted consent order did not state the amount of attorney's fees but on inquiry, plaintiff's counsel informed the Court that was an error and that the amount in fact was \$1300.

¹¹This is one of 127 cases in 2007 and 25 cases in 2008 filed by this attorney on behalf of *Property Homes, LLC*.

(Underlining in original.)¹² The affidavit also stated that the spouse of one of the attorney's in the firm has an interest, amount unspecified, in the plaintiff. In contrast to other cases, the affidavit states that the plaintiff has paid all of the expenses requested except the dismissal fee (which is only payable if the property is redeemed) and the "Plaintiff is responsible for reimbursing the law firm for the full amount of expenses incurred." Based on this evidence, this Court is not convinced that the \$1500 will be paid if there is no redemption.

In *Upper Fells Point Properties, Inc.*¹³ v. *Neighborhood Inner City Enterprises, LLC*, Case No. 24-C-07-6462, the plaintiff requests attorney's fees in the amount of \$1200 and recites that "[t]he Plaintiff will pay counsel whatever attorney's fees the court determines are reasonable (sic) no fees have been advanced or paid to counsel at this time." The plaintiff's attorney is the owner of all outstanding shares of stock in the plaintiff. The affidavit states that the plaintiff "has paid or will pay" the amount requested for expenses "regardless of what amount the court fixes." There is a footnote that states in part that "[t]he title search fee of \$250.00 will be paid to the plaintiff's attorney upon redemption or completion of this action. The plaintiff paid for the copies [i.e. copying costs]." There is insufficient documentation to convince the Court that plaintiff will pay the attorney's fees.

In *Fidelity Tax LLC v. Rich*, Case No. 24-C-07-5600, none of the attorneys or their family members have any interest in the plaintiff. The firm represents the plaintiff in 127 cases filed in this Court in 2007 and the Court has the same concerns about whether the

¹²The fees in italics are fees for work to be done after a judgment foreclosing the right of redemption is entered. Thus by definition they would not be payable by a defendant who redeems.

¹³This attorney filed 5 cases in 2006, 16 in 2007 and 7 in 2008 where Upper Fells Point Properties is the named plaintiff.

plaintiff will pay the attorney's fees in the amount requested. The statement on attorney's fees states:

The Plaintiff has already paid attorney's fees of \$0 and will pay \$3,500 in additional attorney's fees if the property is not redeemed. If the redemption amount set by the Court is less than *the requested amount*, Plaintiff will pay the balance due.

(Italics added.) It is not clear whether the "requested amount" refers to the amount that plaintiff requests the Court to order defendant to pay, or to another amount. In a memorandum in support of the argument the counsel states, "[p]laintiff has paid no attorney's fees to date, but has incurred the amount of \$3,500 pursuant to the retainer agreement. Plaintiff's attorney will bill the Plaintiff the \$2,000 shortfall between the \$1,500 presumably allowed by this Court, and the \$3,500 fee agreed to in the retainer agreement." Based on this evidence, the Court is not convinced that there is a realistic expectation that the \$3500 will be paid by the plaintiff in the event that there is not a redemption.

Conclusion

In sum, after reconsideration, this Court concludes that the information initially requested in *In re Attorneys' Fees* is not sufficient to insure that the requested attorney's fees and expenses are in fact fees and expenses that the plaintiff will pay if there is no redemption. Therefore, when the plaintiff's attorney or the attorney's immediate family has any interest in the plaintiff, the affidavit must state the ownership and the percentage of ownership by the attorney or attorney's family member. In addition in those cases, an award will be granted only for fees and expenses where there is proof of actual payment by the plaintiff or proof of a history of actual payments. Regardless of ownership, if the plaintiff has paid \$0 at the time the affidavit is filed, there must be proof of history of actual payments or other evidence

to demonstrate to the Court that the fee being requested is a fee where there is a realistic expectation that it will be paid by the plaintiff in the event there is not a redemption.

Dated: July 28, 2008

Judge Evelyn Omega Cannon