

This evidence was sufficient for a rational trier of fact to find Lucas personally liable for negligent construction of the pool, and the trial court did not err in denying Lucas' motion for directed verdict on this issue.¹²

5. Lucas contends the trial court erred in awarding attorney fees and costs under OCGA § 9-15-14(b). OCGA § 9-15-14(b) allows a court, in its discretion, to award attorney fees and expenses of litigation if the court

finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct.

An action "lacks substantial justification" if it is "substantially frivolous, substantially groundless, or substantially vexatious."¹³

In the present case, the trial court did not abuse its discretion in finding that Lucas' defense lacked substantial justification. And, contrary to Lucas' contention, a review of the trial court's order shows that the trial court did set out specific facts supporting its finding that Lucas' defense lacked substantial justification. These findings included the following facts: Lucas' actions caused the pool, concrete decking, steps, vinyl liner and other aspects of the pool and surrounding area to become damaged, Lucas "did not correct the problems or damages of the improperly installed pool," and even the jury inquired during deliberations whether it could award Lewis more damages than Lewis requested and whether it could award attorney fees to Lewis. These findings are supported by the evidence in the case, and we will not disturb the trial court's discretion in making the award pursuant to OCGA § 9-15-14(b).¹⁴

[13] However, an award of attorney fees and costs under Georgia law can only be

12. See *Id.* at 766-767, 487 S.E.2d 362; see also *Brown v. Rentz*, 212 Ga.App. 275, 276-277(2), 441 S.E.2d 876 (1994) (reversing grant of summary judgment to corporate officer on claim of negligent construction).

13. OCGA § 9-15-14(b).

authorized if there is sufficient proof of the actual costs and the reasonableness of those costs.¹⁵ In the present case, Lewis' counsel filed the motion for attorney fees and expenses of litigation pursuant to OCGA § 9-15-14, and attached a sworn affidavit and exhibit generally describing the time and expenses expended during the case. Lewis' counsel reaffirmed his affidavit and stated in his place the facts contained in the affidavit. He also stated that the time listed in the affidavit was for approximately ten hours less than the actual time he expended on the case, and he stated that his hourly rate is reasonable and appropriate for an attorney who has practiced twenty-five years in Atlanta.

[14] Lewis' attorney, however, did not offer any further break down of the time he expended, and the time sheet attached to the affidavit does not break down the time by hours expended or provide any detailing regarding the activities conducted by the attorney. Instead, the time sheet is merely a half-page summary of 49 hours spent by the attorney in "various conferences and telephone calls," "sending and receiving various letters and telephone calls," "preparation of the Pre Trial Order," "trial preparation," "trial of the case," etc. This summary is particularly inadequate in view of Lewis' withdrawal of claims at the trial.

Lewis withdrew his request for punitive damages after Lucas moved for a directed verdict on that claim following Lewis' presentation of his case to the jury. In addition, at the conclusion of the trial, Lewis withdrew his contract claims. The broad statements in Lewis' attorney's affidavit "fail to demonstrate the function or substance of the task with sufficient particularity to permit the court to distinguish between time and expenses attributable to [Lewis' successful neg-

14. Compare *Johnston v. Correale*, 285 Ga.App. 870, 870-871(1), 648 S.E.2d 180 (2007).

15. See *Southern Cellular Telecom v. Banks*, 209 Ga.App. 401, 402, 433 S.E.2d 606 (1993).

ligence] claim and time and expenses attributable to [his withdrawn] claims.”¹⁶

[15] “A determination of the amount of an award of attorney fees cannot be based on guesswork.”¹⁷ Here, the state of the evidence is insufficient to support the award made. Because Lewis failed to prove the value of his attorney fees on his successful negligence claim with the requisite degree of certainty, the trial court’s judgment as to those fees must be vacated. The case is remanded for an evidentiary hearing to establish the amount of attorney fees related solely to the prevailing claim Lewis is entitled to recover. The judgment in favor of Lewis on the negligent construction claim is affirmed.

Judgment affirmed in part, reversed in part and case remanded with direction.

BARNES, C.J., and PHIPPS, J., concur.



293 Ga.App. 259

MORRILL et al.

v.

**COTTON STATES MUTUAL
INSURANCE COMPANY.**

No. A08A1391.

Court of Appeals of Georgia.

July 24, 2008.

Reconsideration Denied Aug. 8, 2008.

Certiorari Denied Nov. 17, 2008.

Background: Homeowners insurer filed declaratory judgment action seeking a ruling on its obligations under liability coverage with respect to personal property claim of named insured’s ex-wife and legal representation of executrix of named insured’s estate personally. Executrix counterclaimed for wrongful denial of coverage for the estate’s personal property loss. The

16. *Id.*

Superior Court, Rabun County, James E. Cornwell, J., granted summary judgment that counterclaims were time-barred. Executrix appealed.

Holdings: The Court of Appeals, Blackburn, P.J., held that:

- (1) insurer did not waive one-year time limit for claims on policy, and
- (2) insurer did not breach contract or act in bad faith.

Affirmed.

1. Insurance ⇌3564(4)

Regulation that prohibited homeowners insurance policy from containing a limitations period of less than two years did not apply to policy renewed before June 20, 2006. Ga. Comp.R. & Regs. 120-2-19-.01, 120-2-20-.02.

2. Insurance ⇌3564(3)

An insurance policy provision placing a one-year limitation upon the right of the policyholder to sue the insurer is valid and enforceable, when not prohibited by applicable insurance regulations.

3. Insurance ⇌3565(3)

Homeowners insurer’s conduct during negotiation of claim for property loss from alleged arson did not result in waiver of one-year time limit for claims against insurer in policy; although insurer initially informed executor of named insured’s estate of policy’s potential coverage for paying off mortgage and loss of personal property, insurer told executor, five months after fire, that it was still deciding whether fire was intentional, and less than one month later, insurer informed executor that it viewed fire as a result of arson and would deny any claim by estate. Ga.Comp.R. & Regs. 120-2-19-.01.

4. Insurance ⇌3571

Judgment ⇌181(23)

Pretrial Procedure ⇌751

Insurer’s summary judgment motion was not an improper or untimely method for

17. *Id.*