

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

GERTRUDE WEBER, <u>et al.</u>)	
)	Civil Action No. 3:98CV0109
Plaintiffs,)	
v.)	<u>MEMORANDUM OPINION</u>
)	
RIVANNA SOLID WASTE AUTHORITY,)	By: Samuel G. Wilson
)	Chief United States District Judge
Defendant.)	
)	

This case was originally brought by the Plaintiffs against Rivanna Solid Waste Authority (“RSWA”) under various federal and state environmental laws. Although RSWA reached a settlement agreement with two of the Plaintiffs, David Booth and Maureen Booth (the “Booths”), a dispute arose over \$200,000 held by Bank of America (the “Bank”) as collateral for RSWA’s obligations under the settlement agreement. The Bank filed a Motion to Intervene and Motion for Interpleader, which the court granted. The Booths and RSWA reached a settlement over the disputed \$200,000. However, the Bank claims that it is entitled to attorney fees and costs out of the interpleaded funds. For the following reasons, the court finds that the Bank is not entitled to attorney fees and costs out of the interpleaded funds.

I.

Plaintiffs sued RSWA claiming violations of various federal and state environmental laws. On June 16, 2000, RSWA entered into a settlement agreement with the Booths. The agreement contained a deferred payment plan which provided that RSWA would pay the Booths \$200,000 at a later date after certain conditions were met. RSWA issued a promissory note to the Booths for \$200,000 and entered into a security agreement with them. Under the security agreement, RSWA

opened a certificate of deposit (the “CD”) in the original amount of \$200,000 at Bank of America. The CD was collateral for the promissory note and the security agreement between RSWA and the Booths.

The security agreement stated that, upon default by RSWA, the Booths shall have the rights of a secured party under this agreement and under the law of Virginia, “including, but not limited to, the right to demand and receive the Collateral from any of the depositories designated above.” Attached to the security agreement was a document signed by the Bank entitled “Consent and Agreement of Depository.” In this document the Bank stated that it “consents to and recognizes the security interest granted thereby and the terms thereof.”

In April, 2001, the Booths claimed that they were entitled to the funds in the CD because RSWA allegedly was in default of its obligations. The Booths sent letters to the Bank, demanding the release of the funds and threatening litigation if the Bank denied their request. The Bank contacted RSWA, which denied that it was in default and instructed the Bank not to deliver the funds in the CD to the Booths.

Counsel for the Bank spoke to both the Booths and RSWA and determined that the parties could not reach an agreement. On May 11, 2001, the Bank filed a Motion to Intervene and a Motion for Interpleader. Included in the Motion was a request for an award of attorney’s fees incurred by the Bank in this litigation. The Bank drafted a Consent Order to the Motion to Intervene and Motion for Interpleader; however, counsel for RSWA refused to consent to the Motion, and the Bank’s counsel had to attend the court’s hearing.

On June 25, 2001, the court granted the Bank’s Motion to Intervene and Motion for Interpleader. On August 14, 2001, the Court ordered the Bank to deposit the full balance of the

CD upon its maturation into the registry of the court. After further negotiations, the Booths and RSWA settled their dispute. The Bank, however, requests that its attorneys fees and costs, which amount to \$5,359.07, be paid out of the fund held by the court. On November 15, 2001, the court entered an order releasing the funds held by the court in excess of those requested by the Bank. The court will now consider the Bank's claim for attorneys fees.

II.

Federal Rule of Civil Procedure 22, which allows interpleader actions in federal court, does not contain an express reference to costs or attorney's fees. However, a federal court has discretion to award costs and attorney fees to the stakeholder in an interpleader action whenever it is fair and equitable to do so. See 7 Wright & Miller, Federal Practice and Procedure § 1791 (2d ed. 2001). This rule is an exception to the usual American rule that parties bear their own legal costs. The rationale behind the award of attorney fees in interpleader actions is that the innocent stakeholder should not have to bear the costs of the interpleader action. Rather, the claimants, the parties that benefit from the action, should bear this cost. "The test for awarding fees and costs is a typical equitable one that is very similar to the standard used to determine whether interpleader relief ought to be granted – should the interpleading party be required to assume the risk of multiplicity of actions and erroneous election." Id. However, since an award for attorney fees depletes the fund, costs and fees are not allowed as a matter of course. See id.; U.S. v. Browne Elec. Co., 168 F. Supp. 806 (E.D. Va. 1959). Courts have denied attorneys fees in cases in which the claims are of the type that arise in the ordinary course of business for the stakeholder. 7 Wright & Miller § 1791. In these situations, the interpleading party has a threshold duty to inquire into the legitimacy of the claims and to expend some time, effort and cost in

determining whether the claimant is deserving of the funds.

Here, although the Bank does not claim that it has an interest in the disputed funds, the Bank is not simply a disinterested stakeholder without any responsibility toward the disbursement of the funds. The Bank signed a document entitled “Consent and Agreement of Depository,” in which it “consent[ed] to and recognize[d] the security interest granted [by the Security Agreement between the Booths and RSWA] and the terms thereof.” When the Bank accepted the funds, it knew that it may have to make decisions regarding the distribution of these funds. Here, the Bank has a threshold duty to inquire into the legitimacy of the Booths’ claim and to expend some time, effort and cost in determining whether the Booths should receive the funds. By accepting the \$200,000 and signing the “Consent and Agreement of Depository” the Bank assumed the risk that it would incur some costs in the management and distribution of the CD. This was a part of the Bank’s cost of doing business. While the Bank can initiate a Rule 22 interpleader action to efficiently resolve the dispute between the Booths and RSWA, the Bank should not be allowed to pass its cost of doing business on to the Booths. Thus, the court will deny the Banks’ request that its attorney fees and costs be paid out of the fund. Further, the court will order the remaining money held by the court be disbursed by check payable jointly to Gentry Locke Rakes & Moore, counsel for the Booths, and McGuire Woods LLP, counsel for RSWA. Since there are no remaining claims involving the Bank, the Bank is dismissed from this action. An appropriate order will be entered this day.

ENTER: This _____ day of November, 2001.

CHIEF UNITED STATES DISTRICT JUDGE

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GERTRUDE WEBER, <u>et al.</u>)	
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v.)	<u>ORDER</u>
)	
RIVANNA SOLID WASTE AUTHORITY,)	By: Samuel G. Wilson
)	Chief United States District Judge
Defendant.)	
)	

In accordance with the court's Memorandum Opinion entered this day, it is **ORDERED** and **ADJUDGED** that Bank of America's claim for attorney fees and costs be **DENIED**. It is further **ORDERED** that the remaining money held in the registry of the court regarding this matter be released and disbursed by check payable jointly to Gentry, Locke, Rakes & Moore, counsel for David W. Booth and Maureen T. Booth, and McGuire Woods LLP, counsel for Rivanna Solid Waste Authority. Bank of America is dismissed from this action.

ENTER: This ___ day of November, 2001.

CHIEF UNITED STATES DISTRICT JUDGE