

**BUDAGHER V. SUNNYLAND ENTERS., 1979-NMSC-100, 93 N.M. 640, 603 P.2d
1097 (S. Ct. 1979)**

**ROBERT BUDAGHER, Sheriff of Sandoval County, Trustee for
and on behalf of H. E. Leonard, Winona Leonard, and
Leonard Motor Company, beneficiaries, and H. E.
LEONARD, WINONA LEONARD and LEONARD MOTOR
COMPANY, individually,
Plaintiffs-Appellees,**

vs.

**SUNNYLAND ENTERPRISES, INC., JOHN E. KINSCHERFF and COUNTY
OF SANDOVAL, Defendants-Appellants.**

No. 12318

SUPREME COURT OF NEW MEXICO

1979-NMSC-100, 93 N.M. 640, 603 P.2d 1097

December 17, 1979

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY, George H. Perez,
District Judge.

COUNSEL

Poole, Tinnin & Martin, Paull Mines, Douglas Seegmiller, Albuquerque, New Mexico,
For Appellants.

Gallagher & Walker, Peter E. Gallagher, Dale B. Walker, Albuquerque, New Mexico, For
Appellees.

JUDGES

FRANCHINI, D.J., wrote the opinion. MACK EASLEY, Justice, WILLIAM R. FEDERICI,
Justice.

AUTHOR: FRANCHINI

OPINION

{*641} FRANCHINI, District Judge.

{1} This matter comes before this Court for a second time. The first decision in this case
is reported in 90 N.M. 365, 563 P.2d 1158 (1977). In that decision this Court held that

the trial court abused its discretion in refusing to consider evidence concerning reasonableness of attorney's fees in the sum of \$45,399.23 awarded as a result of a foreclosure suit. That decision noted that a provision in a mortgage note for a 10% attorney's fee would entitle the mortgagor only to a reasonable fee with 10% as the upper allowable limit. The case was remanded to the trial court for a hearing on the reasonableness of the fee; a hearing was held and the sum of \$45,399.23 was again set by the court below. This second appeal resulted.

{2} A determination of the first issue presented on this appeal is dispositive of this case.

{3} The issue is whether or not the trial court abused its discretion, after a hearing, in allowing attorney's fees in the amount of \$45,399.23. We find no abuse of discretion.

{4} The recent case of **Fryar V. Johnsen**, 93 N.M. 485, 601 P.2d 718 (1979) set out several factors to be considered in determining the reasonableness of a fee. These include:

(1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;

.....

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

.....

(7) the experience, reputation and ability of the lawyer or lawyers performing the services;

Id. at 487, 601 P.2d at 720.

{5} A reading of the record in this case convinces us that the trial court considered all of these factors.

{6} Neither the record nor the briefs in this case show an abuse of discretion on the trial court's part. The award of attorney's fee in this case is not excessive considering the factors set out above.

{7} We affirm.

{8} IT IS SO ORDERED.

We concur:

MACK EASLEY, Justice, WILLIAM R. FEDERICI, Justice.