

DIVISION OF ST. CROIX

ROXANNE SERRANO
COURT CLERK SUPERVISOR

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

INTEROCEAN INSURANCE AGENCY, INC.	)	
	)	
	)	
	)	
Plaintiff,	)	CIVIL NO SX-06-CV-177
vs.	)	
	)	
	)	
CAMIRA JOSEPH,	)	ACTION FOR BREACH OF
	)	CONTRACT AND DAMAGES
Defendant.	)	

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court pursuant to remand of the Supreme Court of the Virgin Islands by Opinion and Order filed September 25, 2013 (S. Ct. Civ. No. 2011-0111) and Mandate issued October 18, 2013, reversing this Court's Order entered September 28, 2011. Pending are dispositive motions and responses filed by both parties, as follows:

Plaintiff's Motions:

- 12(c) Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment ("Plaintiff's Motion on the Pleadings"), filed November 2, 2006; Defendant's Motion in Response to Plaintiff's Motion for Judgment on the Pleadings ("Defendant's Opposition"), filed February 5, 2007; and Plaintiff's Reply to Defendant's Opposition, filed February 15, 2007.
- Plaintiff's Response to Defendant's Motion for Summary Judgment and Counter Motion for Summary Judgment ("Plaintiff's Counter-Motion"), filed April 2, 2007. Defendant did not respond directly to this filing.

Defendant's Motion:

- Motion of Defendant Camira Joseph for Summary Judgment and Memorandum of Law in Support ("Defendant's Motion"), filed February 6, 2007; Plaintiff's Response, filed February 15, 2007; and Defendant's Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment, filed March 9, 2007.¹

Also pending is Defendant's (Appellant's) Motion for Costs and Attorney's Fees ("Motion for Costs"), filed with the Supreme Court of the Virgin Islands on October 3, 2013 and deemed refiled in this Court pursuant to Order entered July 11, 2014. Inter-Ocean's Response to Appellant's Motion for Attorney's Fees and Costs, on Remand ("Response re Costs") was filed with this Court on October 22, 2013.

Pursuant to this Court's Order entered May 1, 2014, Plaintiff filed its Bench Brief on May 28, 2014 and Defendant filed her Bench Brief on June 5, 2014.

For the reasons that follow, Defendant's Motion is granted; Plaintiff's Motion on the Pleadings and Plaintiff's Counter-Motion are denied; and Plaintiff's Amended Complaint is dismissed with prejudice. Defendant's Motion for Costs is granted in part and denied in part.

BACKGROUND

Defendant allowed her 18 year old brother, Sheldon Joseph, to operate her insured vehicle on November 8, 2002. Sheldon Joseph was involved in a one-vehicle accident resulting in various injuries to the vehicle's passenger as well as damage to government property. As a result

¹ Defendant filed the following duplicitous motions: Defendant's Motion in Response to Plaintiff's Motion for Judgment on the Pleadings, identical to the original, was filed March 14, 2007; Motion of Defendant Camira Joseph for Summary Judgment and Memorandum of Law in Support, identical to the original, was filed, March 14, 2007. In response, Plaintiff filed its Motion to Strike on April 3, 2007, which is hereby GRANTED.

of the accident, Sheldon Joseph was cited for reckless driving.

The passenger and the Government of the Virgin Islands filed claims with plaintiff which insured Defendant's vehicle for damages and expenses incurred as a result of the accident. Plaintiff paid \$10,000.00 to the injured passenger and \$287.25 to the Government for damages to a guardrail.²

By its Amended Complaint in this matter, Plaintiff attempted to recover from Defendant these payments made since the permissive driver of the insured vehicle was less than 25 years old, violating an endorsement to the applicable automobile liability insurance policy. This Court awarded Summary Judgment to Plaintiff, granting judgment of restitution for the amounts paid in light of Defendant's breach of the insurance agreement. The Supreme Court of the Virgin Islands reversed this Court's Judgment on appeal, holding that the policy endorsement excluding coverage for drivers under the age of 25 violated the Virgin Islands Compulsory Automobile Liability Insurance Act, and remanded the matter to this Court for further proceedings consistent with its Opinion and Order.

DISCUSSION

A moving party will prevail on a motion for summary judgment where the record shows that there is no unresolved genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), applicable pursuant to Super. Ct. R. 7; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). The reviewing court must determine whether there exists a dispute as to a material fact, the determination of which will affect the outcome of the action

² Defendant's policy limits were \$10,000.00 per person for bodily injury, with a cap of \$20,000.00 per accident, plus \$10,000.00 for property damage per accident.

under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Such a dispute is genuine if the evidence is such that a reasonable trier of fact could return a verdict for the nonmoving party. *Id.* In analyzing the evidence, the court must consider the pleadings and full factual record, drawing all justifiable inferences in favor of the nonmoving party, to determine whether the movant has met its burden of showing that there is no unresolved genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A party opposing a motion for summary judgment may not rest upon the allegations or denials within its pleadings, but must set forth specific facts showing that there is a genuine issue for trial, such that the jury or judge as fact finder could reasonably find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248. The nonmoving party asserting that a fact is genuinely disputed must support the assertion by “citing to particular parts of materials in the record...” Fed. R. Civ. P. 56(c)(1)(A). *See also Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008), citing Rule 56(e) prior to its 2010 amendment. “As to materiality, only those facts that ‘might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.’” *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248).

I. Defendant Joseph is entitled to judgment as a matter of law.

a. There are no genuine issues of material fact in dispute.

The Supreme Court agreed with this Court’s conclusion that the facts of this case are not in dispute and that the matter is ripe for entry of summary judgment. In the absence of any dispute regarding a genuine issue of material fact, the Court proceeds to examine whether Defendant is entitled to judgment as a matter of law.

- b. Pursuant to the Supreme Court's holding, Defendant is entitled to judgment as a matter of law.

The Supreme Court addressed the issue of “whether the Compulsory Automobile Liability Insurance Act—20 V.I.C. § 701 *et seq.*—should supersede the named driver exclusion” endorsement included in Defendant’s insurance policy. *Joseph v. Inter-Ocean Insurance Agency, Inc.*, 59 V.I. 820, 823-24 (V.I. 2013).

The Court held that Virgin Islands law “requires an owner of a motor vehicle to purchase a policy of liability insurance in specified amounts as a prerequisite to registering a motor vehicle in this Territory.” *Id.* at 824; *See* 20 V.I.C. § 701. More importantly, the Court found that:

[T]his statutory omnibus clause supersedes and invalidates any conflicting policy provision.” *See* 20 V.I.C. § 701 *et seq.* (requiring all liability insurance policies issued in this Territory to comply with the requirements of the Compulsory Automobile Liability Insurance Act); 20 V.I.C. § 704(c)(3) (“The policy, the written application therefore, if any, and any rider or endorsement *which does not conflict with the provisions of this Chapter* shall constitute the entire contract between the parties.”) (emphasis added); *see also Auto Owners Ins. Co. v. Rollison*, 663 S.E.2d 484, 490 n.5 (S.C.2008) (statute defining an insured under an automobile insurance policy is controlling if the terms of an insurance policy excluding coverage are in conflict with the requirements of the statute).

Joseph, 59 V.I. at 824-25 (citing *Fields v. W. Preferred Cas. Co.*, 437 So.2d 344, 346-47 (La.Ct.App.1983) (same); 7 Am.Jur.2d *Automobile Insurance* § 225 (same) (collecting cases)).

Because all Virgin Islands liability insurance policies must comply with the requirements of the Compulsory Automobile Liability Insurance Act, policies may not exclude at will certain persons based on the preferences of the insurance carrier. Therefore, Sheldon Joseph, who operated “an insured vehicle with permission from the named insured, must be extended automobile insurance for the compulsory policy limits” regardless of the policy’s exclusionary provision. *Joseph*, 59 V.I. at 825.

Since Plaintiff's insurance exclusion contradicted Virgin Islands Law, the exclusion was invalid and Plaintiff has no right to subrogation with respect to Defendant. *Id.* at 826. With no basis under the law to recover the amounts paid to claimants, Plaintiff's Motion on the Pleadings and Plaintiff's Counter-Motion must be denied; Defendant's Motion must be granted and Plaintiff's Amended Complaint must be dismissed with prejudice.

II. The Court will award Defendant a portion of the attorney's fees requested.

Defendant's attorney Eszart A. Wynter, Sr., Esq. requests an award of attorney's fees incurred in the amount of \$10,200.00 for services performed by Dolace McLean, Ph.D., Esq., including legal research and drafting Defendant/Appellant's appellate brief. Defendant requests an additional \$18,550.00 in fees for services of Attorney Wynter, consisting of \$1,750.00 for oral argument before the Virgin Islands Supreme Court and \$16,800.00 for various out of court legal services. *See* Motion for Costs, In Court Hourly Worksheet and Out of Court Hourly Worksheets.

Plaintiff argues that Attorney Wynter's hourly rate of \$300.00 for out of court work is unreasonable; that Attorney Wynter has failed to justify why this amount is reasonable; and that Attorney Wynter has not produced a client services agreement to justify his requests. Response re Costs, at 2. Additionally, Plaintiff argues that Attorney Wynter's statement of services, as provided to Defendant Joseph, includes time expended on the previous small claims matter between the parties. Plaintiff submits that attorney representation of litigants in the Small Claims Division is not permitted, and it is therefore improper to pass this cost on to Plaintiff.

A prevailing party may recover costs, including reasonable attorney's fees, pursuant to 5 V.I.C. § 541(a). In considering an award for reasonable attorney's fees, "the amount of... fees to be awarded to the prevailing party is intended to be an indemnification for a fair and reasonable portion... and not for the whole amount charged by the attorney." *Chapa v. Sepe*, 2013 WL 8609242, at * 1 (V.I. June, 3, 2013)(citing *Trailer Marine Transp. Corp. v. Charley's Trucking, Inc.*, 20 V.I. 286, 290 (Terr.Ct.1984) (internal citations omitted)).

Specifically, "[f]or work to be included in the calculation of reasonable attorneys' fees, the work must be 'useful and of a type ordinarily necessary' to secure the final result obtained from the litigation." *Chapa*, at *1(citing *Banco Popular de Puerto Rico v. Carew*, 2009 WL 2413675, at *1 (D.V.I. Aug. 3, 2009)). Therefore, when calculating the lodestar amount or "the reasonable number of hours expended at the reasonable hourly rate," this Court takes into account:

The time and labor required, the novelty and difficulty of the questions involved the skill requisite properly to conduct the cause, the customary charges of the bar for similar services, the amount involved in the controversy, the benefits resulting to the client from the services, and the contingency or certainty of compensation.

Chapa, at *1(citing *Banco Popular de Puerto Rico*, at *1). The Court will not consider requests for attorney fees that are duplicative, excessive or redundant. *See, e.g., Wenner v. Government of the V.I.*, 29 V.I. 158, 166 (D.V.I.1993).

In this case, the Court notes that Defendant is the prevailing party. The Virgin Islands Supreme Court ultimately granted the relief requested by Defendant/Appellant, and by this Order this Court enters judgment in favor of Defendant, consistent with holding of the Supreme Court.

However, the Supreme Court noted that Defendant improperly framed the argument on appeal and the Court's ruling was wholly inconsistent with Defendant's appellate arguments.

Joseph, 59 V.I. at 824-25, n.3.³ As such, much of Defendant's research and work-product was not "useful and of a type ordinarily necessary to secure the final result obtained from the litigation." *Chapa*, at *1.

The Court accepts Attorney Wynter's hourly rates of \$350.00 for in-court services and \$300.00 for other services as fair and reasonable for an attorney with his experience and record, and will also award the same \$300.00 hourly fee as charged for the work of Attorney McLean. Contrary to Plaintiff's Response re Costs, the billing proofs produced reflect no reference to any work done relative to an action in the Small Claims Division. However, the Court does note that much of the reported attorney time expended is duplicative and, therefore, non-compensable. *See Wenner*, 29 V.I. at 166. The Court will briefly examine the specifics of the proofs presented of the attorney time for which Defendant seeks reimbursement.

Defendant requests an award of attorney's fees for a total of 21 hours expended by Attorney Wynter in drafting the initial Appellant's brief.⁴ Defendant also seeks compensation for 13.5 hours expended by Attorney McLean outlining, preparing, drafting and finalizing Appellant's brief. Defendant seeks an additional 20 hours for Attorney Wynter's review of cases that Attorney McLean had reviewed.⁵ Defendant reports that Attorney McLean was retained to review case law

³ Defendant argued that since Plaintiff had no obligation to pay Defendant's claim under the insurance contract, it therefore had no basis upon which to seek indemnification from Defendant. The Court noted that Defendant's position was "...flawed and misappl[ies] the applicable law."

⁴ Defendant's proofs reflect that Attorney Wynter spent 16 hours drafting the brief; 2 hours compiling the joint appendix; and 3 hours reviewing Appellee's brief.

⁵ The Out of Court Hourly Worksheet reflects that Attorney Wynter billed two hours to review each of the following cases: *Nelson v. Progressive Cas. Ins. Co.*; *J.C. Penny life Insurance v. Pilosi*; *State Farm v. Dressler*; *Tapio v. Grinnell Mut. Reinsurance*; *One hour to review Global Const. Co. v. Essex Ins.*; *Mellon Bank v. Aetna*; *State Farm v. Dressler*; *Lopez v. Dairyland*; *Pierce v. Oklahoma Prop.*; *Farmers v. Cocking*; *Zaccarias v. Allstate*; *Bruckner v. County Oil*; *United Farm v. Hanley*; *State Farm v. Washington*; *Poulous v. U.S. Fid.*; and *Meyer v. Riegel Products Corp.*

and prepare the appellate brief. As such, in its consideration of an award of reasonable attorney fees and costs to the prevailing party on appeal, the Court regards Attorney McLean's compensation as the primary attorney time expended for the preparation of the brief.

The Court will make an award to Defendant recognizing Attorney McLean's 34 hours expended in appellate work, but will not award the additional 21 hours spent by Attorney Wynter essentially duplicating the appellate work of Attorney McLean. Further, an award of fees is reasonable if "useful and of a type ordinarily necessary to secure the final result obtained from the litigation." *Chapa*, at *1. Here, the Supreme Court found Defendant's appellate argument "flawed" and a misapplication of applicable law. Counsel's time expended to appeal the judgment of the trial court was "necessary to secure the final result obtained from the litigation" even though the argument presented on appeal was not "useful" in securing a reversal of the judgment below and ultimately prevailing in the case. As such, the Court will reduce by one-third the rate of compensation charged for time spent on the appellate work, and will award 34 hours at the reduced rate of \$200.00 per hour (\$6,800.00).

The Court will also grant Defendant's requests for reimbursement of time expended by Attorney Wynter for court appearances and non-duplicative case research and preparation, as follows: 5 hours in-court, billed at \$350.00 (\$1,750.00); and 33.2 hours out-of-court time, billed at \$300.00 (\$9,960.00), for a total award to Defendant in the sum of \$18,510.00.

In light of the foregoing, it is hereby

ORDERED that Plaintiff's Motion on the Pleadings and Plaintiff's Counter-Motion for Summary Judgment are DENIED. It is further

ORDERED that the Motion of Defendant Camira Joseph for Summary Judgment is

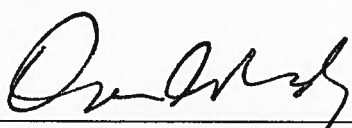
GRANTED. It is further

ORDERED that Plaintiff's Amended Complaint is DISMISSED WITH PREJUDICE. It is further

ORDERED that Defendant's Motion for Costs is GRANTED in part, and DENIED, in part. It is further

ORDERED that Defendant is awarded from Plaintiff the sum of \$18,510.00 as indemnification for her attorney fees incurred.

DATED: September 12, 2014.

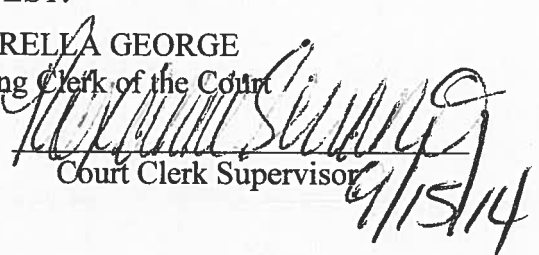


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By:


Court Clerk Supervisor 9/15/14