

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: CHRISTIANSTED

ROBERT CARPENTER d/b/a,	)	
PERFORMANCE MOTORS,	)	
	)	
Plaintiff,	)	CIVIL NO. 130/1982
	)	
v.	)	ACTION FOR DAMAGES
	)	
NATIONAL UNION FIRE INSURANCE	)	
COMPANY OF PITTSBURGH, PA.,	)	
	)	
Defendant.	)	
	)	

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MEMORANDUM OPINION
January 20, 1984

This matter came before the Court for trial without a jury on November 14, 1983. After plaintiff had completed the presentation of his evidence, defendant moved for a dismissal of the claim for damages arising out of losses sustained by fire, pursuant to FED. R. CIV. P. 41(b). This Court reviewed plaintiff's evidence, made findings of fact pursuant to FED. R. CIV. P. 52(a) and granted defendant's Motion to Dismiss. Judgment was entered November 30, 1983.

Prior to trial, on March 18, 1983, defendant served upon counsel for plaintiff an offer to allow judgment to be taken against it, pursuant to FED. R. CIV. P. 68. Said offer was not accepted within the time prescribed by the rule. The judgment finally obtained was less than the offer of judgment and defendant has now moved this Court for entry of an Order awarding costs pursuant to Rule 68, which provides that if the judgment finally obtained by the offeree is not more favorable than the offer made, the offeree must pay the costs incurred after the making of the offer.

Although the motion before the Court is one for costs provided by FED. R. CIV. P. 68, the award of costs, including attorneys' fees, is determined in the same manner as costs to the prevailing litigant in a civil suit. 5 V.I.C. §541 allows attorneys fees to be taxed as costs in a civil proceeding. Lindy Bros. Builders, Inc. of Phila. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161 (C.A. 3rd 1973) provided this jurisdiction with guidelines to determine the award of attorneys fees for a litigant. Before the value of the attorneys services can be determined, [the court] must ascertain the services provided to the claimant. Id. One way for the Court to ascertain the value of an attorneys services is to review affidavits submitted by the attorney, containing

the amount of time expended in preparation and presentation of the claim, and a schedule of expenses which are proposed as allowable costs to be taxed in favor of the claimant. This procedure has constituted the common practice in this jurisdiction, and there is no reason for this court to believe that counsel for defendant is unfamiliar with such practice. In fact, defendant's Motion for costs filed on November 29, 1983, concluded with this prayer:

"Accordingly, it is respectfully submitted that this court enter an order granting defendant's Motion for an Award of Attorney's Fees in an amount to be determined upon proper application and supported by affidavit."
[emphasis added].

Notwithstanding, this Court has received no affidavit, pleading or information from which it can ascertain the value of defendant's attorney's services rendered in this action subsequent to the service of the offer of judgment upon plaintiff, and will not venture to speculate to arrive at such sum. Accordingly, no costs will be allowed on defendant's motion.

E N T E R :



IRWIN J. SILVERLIGHT, Judge

DATED: January 20, 1984