

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

YEARWOOD ENTERPRISES, INC., d/b/a PARADISE GAS,)
)
Plaintiff,) CASE NO. ST-17-CV-77
)
v.)
)
ANTILLES GAS CORP.,)
)
Defendant.)
_____)

MEMORANDUM OPINION

This matter comes before the Court on Defendant's August 17, 2017, Petition for Attorney's Fees following the dismissal of this action with prejudice on the Plaintiff's motion.

Relying on Rule 54(d) of the Virgin Islands Rules of Civil Procedure¹ and 5 V.I.C. § 541, counsel for Defendant sought attorney's fees in the amount of \$16,630.00, as well as \$1,575.00 for time for Defendant's "antitrust specialist" Phillip Cramer, Esq. Plaintiff has not filed a response.

STANDARDS

In a civil action, a party in whose favor a decision and judgment is rendered² may recover reasonable³ costs and attorney's fees⁴ under 5 V.I.C. §§ 541-547. "Awards of attorney's fees under section 541(b) are a matter within the discretion of the... Court."⁵

¹ Effective March 31, 2017.

² 5 V.I.C. § 541(b). Indeed, "court costs... are generally only available to the prevailing party." *Maso v. Morales*, 57 V.I. 627, n. 6 (V.I. 2012) (citing *Terrell v. Coral World*, 55 V.I. 580, 583-84 (V.I. 2011)); see also FED. R. CIV. P. 54(d).

³ Although the Supreme Court of the Virgin Islands stated in *Terrell v. Coral World* that "an award of costs is mandatory without... showings of value or reasonableness," that particular holding is no longer good law in light of the Virgin Islands Rules of Professional Conduct – adopted by the Supreme Court and effective on February 1, 2011, – that require that fees and expenses be reasonable. Rule 211.1.5. *Terrell*, 55 V.I. at 587 n.7.

⁴ Although attorney's fees are "costs" under 5 V.I.C. § 541(a)(6), attorney's fees and costs are referred to separately through this Opinion for clarity.

⁵ *Acosta v. Honda Motor Co., Ltd.*, 717 F.2d 828, 844 (3d. Cir. 1983) (on appeal from D.V.I.) (citation omitted).

When requesting attorney's fees and costs under 5 V.I.C. §§ 541-547, the prevailing party's bill of costs and affidavit must be sufficiently detailed⁶ to permit the Court to discern the actual, necessary and reasonable expenses for essential services.⁷ Costs that *may* be allowed include: fees of witnesses;⁸ necessary expenses of taking depositions which were reasonably necessary in the action; expenses of publication of the summons or notices, and the postage when service is accomplished by mail; and the necessary expense of copying any public record, book, or document used as evidence on the trial.⁹ As needed, the Court removes duplicative, disproportionate or superfluous charges or services¹⁰ and eliminates "overhead costs, such as [non-evidence connected] photocopies, [non-service related] courier service, telephone calls, telecopies, ... and [regular] postage."¹¹

Absent an agreement by the non-prevailing party to the contrary, "in its discretion[, the Court] may fix by way of indemnity the [prevailing party's] attorney's fees in maintaining the action or defenses".¹² In calculating the "lodestar"¹³ amount the Court considers the following factors:

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

⁶ 5 V.I.C. § 543; see, e.g., *Lempert v. Singer*, 29 V.I. 169, 173 (D.V.I. 1993) ("[The] application contains overly general entries that do not indicate the purpose for which the attorneys engaged in such activity and which have stymied the court's review") (citation omitted) and *Keenan v. City of Philadelphia*, 983 F.2d 459, 472 (3d Cir. 1992).

⁷ 5 V.I.C. § 543; *In re Jade Mgmt. Servs.*, 386 F. App'x 145, 151 (3d Cir. 2010) (on appeal from D.V.I.) (further citation omitted). Although *In re Jade* addresses an award of attorney's fees in a bankruptcy case, the indicated factors are reflective of the process employed by this Court.

⁸ As provided in 5 V.I.C. § 660. Additionally, Section 660 makes no distinction between lay or expert witness fees, and expenses associated with transporting witnesses to trial are excluded. *Terrell*, 55 V.I. at 589-591, 585, n. 5.

⁹ 5 V.I.C. § 541(a)(1-3), (a)(5-6), (b) and (c).

¹⁰ See e.g., *Wenner v. Government of the V.I.*, 29 V.I. 158, 166 (D.V.I. 1993). Although *Wenner* is not binding upon this Court, it is well understood that a prevailing party will not be awarded fees twice for the same services or be reimbursed for unnecessary work.

¹¹ *Id.* at 163.

¹² 5 V.I.C. § 541(b).

¹³ LODESTAR, BLACK'S LAW DICTIONARY (9th ed. 2009) ("A reasonable amount of attorney's fees in a given case, usu. calculated by multiplying a reasonable number of hours worked by the prevailing hourly rate in the community for similar work, and often considering such additional factors as the degree of skill and difficulty involved in the case, the degree of its urgency, its novelty, and the like. Most statutes that authorize an award of attorney's fees use the lodestar method for computing the award").

- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (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;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.¹⁴

“[T]he court consider[s] the number of hours [prevailing] counsel spent on the case and the value of those services at a reasonable hourly rate.”¹⁵ Travel expenses not related to depositions, client meetings and conferences with co-counsel are not recoverable expenses under Section 541.¹⁶ Similarly, compensation for work performed by paralegals and non-attorney staff¹⁷ is reduced as normal overhead costs associated with running a business.¹⁸ The costs and fees to which the prevailing party is entitled may be collected by execution.¹⁹

ANALYSIS

It is beyond cavil that Defendant is the prevailing party in this action, and the Court specifically so finds. Plaintiff filed the instant Complaint and First Amended Complaint in an effort to obtain injunctive relief and an accounting for asserted restraints of trade and anticompetitive practices. That effort was unsuccessful, as the Court first dismissed one count of Plaintiff’s Complaint with prejudice and three others without prejudice through a Memorandum Opinion and Order entered June 22, 2017, granting Plaintiff leave to file a second amended complaint. Instead, Plaintiff submitted a Notice of Dismissal with Prejudice on July 14, 2017.

¹⁴ VIRGIN ISLANDS RULES OF PROFESSIONAL CONDUCT RULE 211.1.5(a).

¹⁵ *Acosta*, *supra*, 717 F.2d at 844.

¹⁶ *Terrell*, *supra*, 55 V.I. at 585; *Dr. Bernard Heller Found. v. Lee*, 847 F.2d 83, 89 (3d Cir. 1988) (on appeal from the District Court of the Virgin Islands).

¹⁷ *People v. Farrington*, Case No. ST-09-CR-450, 2012 WL 5429982, n. 32 (V.I. Super. Oct. 29, 2012); *In re Jade*, 386 F. App’x at 151 (citation omitted).

¹⁸ *Rainey v. Hermon*, 55 V.I. 875 (V.I. 2011).

¹⁹ 5 V.I.C. § 542.

Consequently, V.I. R. CIV. P. 54 and 5 V.I.C. §§ 541-547, permit the Court to allow to the prevailing party “such sums as the court in its discretion may fix by way of indemnity for attorney’s fees incurred in maintaining the action or defenses thereto”.

Once the Court has determined that a party is entitled to attorney’s fees, the question becomes whether the fees sought are reasonable.²⁰ In assessing the reasonableness of the fees and costs sought by Plaintiff, the Court is guided by Virgin Islands jurisprudence regarding the reasonableness of the fees requested under 5 V.I.C. § 541.²¹ Defendant seeks recovery for 50.4 hours at the rate of \$350.00 per hour for shareholders and \$50.00 per hour for an associate, for a total of \$16,630.00. Plaintiff claims that the application contains time actually and necessarily spent in defending this action.

Ordinarily, in the interests of justice, the Court must decline reimbursing Plaintiff in full, since to hold otherwise is usually considered contrary to the purpose of the award, to insure substantial justice to *both* parties.²² As a result, the Court has removed duplicative entries for office conferences and disproportionate consultations and superfluous research charges and services, as well as internal office operations. Thus, the Court has made appropriate reductions in the amount awarded, finding that the lesser amount for the preparation of pleadings and motions and prosecution of the defense is not only reasonable, but is also well below the amount of time ordinarily incurred in the defense of a civil action of this type.

²⁰ See *Trailer Marine Transp. Corp. v. Charley's Trucking*, 20 V.I. 286, 289 (V.I. Terr. Ct. 1984); See also *Creative Minds v. Reef Broad.*, 2014 V.I. LEXIS 82, *1 n. 2 (V.I. Super. August 12, 2014) (noting that under VIRGIN ISLANDS RULES OF PROFESSIONAL CONDUCT Rule 211.1.5(a), adopted by the Supreme Court and effective on February 1, 2011, it is required that fees and expenses be reasonable).

²¹ Regardless of whether the relief is awarded under V.I.R.Civ.P. 54 or 5 V.I.C. § 541(b), the Court must consider whether the attorney’s fees and costs are reasonable, as all Virgin Islands attorneys are subject to VIRGIN ISLANDS RULES OF PROFESSIONAL CONDUCT Rule 211.1.5(a), which requires that fees and expenses be reasonable. In addition, under both V.I. R.Civ. P. 54 and 5 V.I.C. § 541(b), an award of attorney’s fees and costs is within the discretion of the trial court and thus is not awarded as a matter of right). See *Anderson v. Bryan*, 58 V.I. 181, 186, 2013 WL 3215672 (V.I. Super. Ct. 2013) (“As awarding costs is discretionary, even the allowance of costs to a prevailing party is not a matter of right”).

²² See *Caribbean Jewelry Corp.*, *supra*, 16 V.I. at 165 (citations omitted).

And, Plaintiff requests reimbursement for attorney's fees generated by Attorney Cramer at an hourly rate of \$350.00, a rate that is in line with the customary and prevailing market rates for attorneys in the Virgin Islands. However, the Court denies reimbursement for those charges, as he appears to have been utilized solely in the capacity as a litigation consultant.

Consequently, applying the factors employed in calculating the "lodestar", the Court finds that reimbursement for 23.3 hours at \$350.00 per hour, or \$8,150.00, is reasonable under the circumstances. An Order consistent with this Opinion shall follow.

Dated: December 5, 2017.

ATTEST: Estrella H. George
Clerk of Court ____ / ____ / ____

by

Lori Boynes-Tyson
Court Clerk Supervisor

12/8/2017


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS