

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

**JOHN CANEGATA, IN HIS CAPACITY AS
STATE CHAIRMAN OF THE REPUBLICAN
PARTY OF THE UNITED STATES VIRGIN
ISLANDS; AND ROBERT MAX SCHANFARBER,
IN HIS CAPACITY AS SECRETARY OF THE
REPUBLICAN PARTY OF THE UNITED STATES
VIRGIN ISLANDS, BOTH ACTING ON BEHALF
OF THE REPUBLICAN PARTY OF THE UNITED
STATES VIRGIN ISLANDS,**

PLAINTIFFS,

v.

**HERBERT SCHOENBOHM; HOLLAND
REDFIELD; JAMES OLIVER; FRED VIALET,
JR.; LEIGH F. GOLDMAN; AND WARREN B.
COLE,**

DEFENDANTS.

SX-16-CV-324

**ACTION FOR INJUNCTIVE RELIEF
TEMPORARY RESTRAINING
ORDER
PRELIMINARY INJUNCTION
PERMANENT INJUNCTION**

MEMORANDUM OPINION

THIS MATTER is before the Court *sua sponte*.

BACKGROUND

On August 5, 2016, this matter came before the Court for a status conference hearing. Attorney Charles E. Lockwood appeared on behalf of Defendant Warren B. Cole. Attorney Michael Joseph appeared on behalf of Defendant Holland Redfield. Defendant Fred Vialet, Jr. appeared on behalf of himself and Defendant Leigh F. Goldman. Defendant Herbert Schoenbohm appeared on behalf of himself. Defendant James Oliver did not appear but had filed a notice of unavailability on August 1, 2016, notifying the Court that he is unable to attend the hearing due to medical reasons. Neither Plaintiffs nor their counsel, Attorney Mark Eckard, attended the hearing.

Subsequently, the Court decided to impose monetary sanctions against Attorney Mark Eckard for failure to appear at the status conference hearing. On August 24, 2016, the Court entered an

order directing Defendants who appeared personally or via their counsels at the status conference hearing to file a notice, within three weeks, advising the Court of the reasonable costs and/or attorneys' fees incurred for appearing if they wish to be reimbursed (hereinafter "August 24, 2016 Order"). In response to the Court's August 24, 2016 Order, Defendant Warren B. Cole filed a timely response on September 9, 2016, Defendant Herbert Schoenbohm filed a timely response on September 12, 2016, Defendant Holland Redfield filed a timely response on September 14, 2016, and Defendant Leigh F. Goldman and Defendant Fred Violet, Jr. filed an untimely response on September 23, 2016. On September 16, 2016, Plaintiffs filed an omnibus response to the requests of Defendant Warren B. Cole, Defendant Herbert Schoenbohm, and Defendant Holland Redfield (hereinafter "Omni Response").¹

STANDARD OF REVIEW

In considering the reasonableness of the attorneys' fees, the Supreme Court of the Virgin Islands (hereinafter "Supreme Court") found guidance in the factors discussed by the Appellate Division of the District Court of the Virgin Islands in *Andrew Evans v. R&G Mortgage Corp.*, D.C. Civ. App. No. 2003/126 (D.V.I. App. Jan. 10, 2007)—namely:

the time and labor required, the novelty and difficulty of the issues involved, the level of skill needed to properly conduct the case, 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. *Judi's of St. Croix Car Rental v. Weston*, 2008 V.I. Supreme LEXIS 21,*3 (V.I. 2008).

While the Supreme Court in *Judi's* addressed the reasonableness of the attorneys' fees requested under Supreme Court Rule 30, the Court nevertheless finds the factors considered therein to be helpful in this instance. Thus, in determining the reasonableness of the attorneys' fees

¹ Plaintiffs presumably did not oppose Defendant Leigh F. Goldman and Defendant Fred Violet, Jr.'s request because it was filed after Plaintiffs filed their omnibus response.

requested in this matter, the Court is guided by the same factors the Supreme Court considered in *Judi 's*.²

DISCUSSION

Plaintiffs argued in its omnibus response that the Court's order only permitted for reimbursement of reasonable costs and/or attorneys' fees incurred for appearing at the status conference hearing, and thus, concluded that the calculation should not include time and money spent in preparation for said hearing. The Court disagrees. In order to make a proper appearance before the Court for a scheduled status conference hearing, the parties must be prepared to discuss the status of the case. It would defeat the purpose of having a status conference hearing if the parties came unprepared. Thus, the Court finds that the time and money spent in preparation for the status conference hearing should be included as part of the reasonable costs and/or attorneys' fees incurred for appearing at the status conference hearing.

Furthermore, Plaintiffs emphasized in its omnibus response that the status conference hearing only took 18 minutes, and thus, argued that the attorneys' fees should be limited to 18 minutes. However, Plaintiffs failed to take into account the time Defendants spent traveling to and from the Court, and all for nothing due to Plaintiffs' failure to appear at the status conference hearing. For the purpose of this memorandum opinion, the Court finds that the appearance at the status conference hearing, including travel time, took approximately 1.0 hour.

The Court will now address each request in turn.

Defendant Warren B. Cole

On September 9, 2016, in response to the Court's August 24, 2016 Order, Defendant Warren B. Cole filed a motion for attorneys' fees and costs. Defendant Warren B. Cole requested attorneys' fees in the sum of \$875.00. In support of his request, he included an affidavit of Attorney Charles E.

² While the Supreme Court considered the amount in controversy as a factor in *Judi 's*, the Court finds this factor inapplicable to this matter. Thus, the Court will not consider the amount in controversy here.

Lockwood of Nichols Newman Logan Grey & Lockwood, PC and a slip listing including the itemization of the attorneys' fees. The slip listing, dated September 9, 2016, included one entry on August 5, 2016 for 2.5 hours at the hourly rate of \$350.00 for the legal services provided by Attorney Charles E. Lockwood, to wit: "Prepare for and attend hearing on client's behalf. Correspondence with client/Co-D's."

First, the Court reviews the time and labor expended in this matter. According to the slip listing: Attorney Charles E. Lockwood spent a total of 2.5 hours preparing for and attending the August 5, 2016 status conference hearing and corresponding with Defendant Warren B. Cole and his co-Defendants. The slip listing did not separate the time spent on the different services listed. As the Court noted above, the Court will allocate 1.0 hour for Attorney Charles E. Lockwood's appearance at the status conference, including travel time, and allocate the remaining 1.5 hours for preparation (which the Court interprets to include correspondence with client and co-Defendants). Under the Court's allocation of the time, the Court finds the time spent by Attorney Charles E. Lockwood to prepare for the status conference hearing to be excessive.³ Second, the Court evaluates the novelty and difficulty of the issues involved. This matter was scheduled for a simple hearing—namely, a status conference hearing—for the parties to advise the Court of the status of this case after the occurrence of the Republican National Convention. Thus, the hearing did not involve any novel or complex issues. Third, the Court evaluates the level of skill required of counsel to properly conduct the case. Here, in order to prepare for the status conference hearing, Attorney Charles E. Lockwood was only required to be up to date with the status of the case. The Court finds that preparing for this hearing did not require a high degree of skill by counsel. Fourth, the Court compares the hourly rate charged in this matter with the customary charges of Virgin Islands attorneys. The Court finds the \$350.00 hourly rate charged by Attorney Charles E. Lockwood to be

³ The following two factors will further explain the Court's determination that 1.5 hours is excessive here.

higher than the customary and prevailing market rates attorneys charge in the U.S. Virgin Islands.

See, e.g., Garvey v. Estate of Moorhead, SX-13-CV-210, 2016 V.I. LEXIS 107, *11 (Super. Ct. Aug. 1, 2016) (unpublished) (“Here, without any proffer of its reasonableness from Petitioner, the Court finds the claimed hourly rate of \$400 to be excessive, and will assign as reasonable an hourly rate of \$300.”); *Chapa v. Sepe*, ST-12-CV-504, 2013 V.I. LEXIS 72, *2 (Super. Ct. June 3, 2013) (unpublished) (“While Three hundred and ninety-five dollars (\$395.00) is at the high end of the customary and prevailing market rates attorneys charge in the Virgin Islands, a majority of the hours billed were at a rate of Two hundred ninety-five dollars (\$295.00), which is a moderate hourly rate as compared to what other attorneys charge in the Virgin Islands.”). For the limited purpose of this memorandum opinion, the Court will assign a reasonable hourly rate of \$300.00. Fifth, the Court considers the benefits resulting to the client from the services. Here, as the result of Attorney Charles E. Lockwood preparing for and appearing at the August 5, 2016 status conference hearing, his client, Defendant Warren B. Cole, was adequately represented at the hearing. Thus, the Court finds that Defendant Warren B. Cole benefited from the service of Attorney Charles E. Lockwood. Lastly, the Court considers the contingency or certainty of compensation. According to Attorney Charles E. Lockwood’s affidavit, his client retained Nichols Newman Logan Grey & Lockwood, PC at an hourly rate. Thus, it appears that Nichols Newman Logan Grey & Lockwood, PC and its client did not have a contingency fee agreement. Based on the foregoing, the Court will grant Defendant Warren B. Cole’s request but reduce the attorneys’ fees to \$600.00 (preparation: 1.0 hour at the hourly rate of \$300.00; appearance: 1.0 hour at the hourly rate of \$300.00).

Defendant Herbert Schoenbohm

On September 12, 2016, in response to the Court’s August 24, 2016 Order, Defendant Herbert Schoenbohm filed a request to be recompensed for expenses incurred in preparation and attendance of hearing. Defendant Herbert Schoenbohm argued that he should be recompensed for reasonable costs, which should include the following expenses: (1) legal research for 3.5 hours at the

hourly rate of \$75.00, for a total amount of \$262.50; (2) fee for consultation with defendant's attorneys, for a total amount of \$300.00; and (3) postage of USPS Priority Mail of pleadings to Fred Valet, Jr. Esq on four occasions, for a total amount of \$19.00. Accordingly, Defendant Herbert Schoenbohm requested to be recompensed in the total amount of \$565.00, or any other amount the Court finds reasonable.

Given that Defendant Herbert Schoenbohm is not an attorney, the above analysis regarding the reasonableness of attorneys' fees is not applicable here. Nevertheless, the Court must make a determination whether the costs requested is reasonable.

As to the legal research, while the Court finds it reasonable for Defendant Herbert Schoenbohm, a pro se defendant, to spend time preparing for the status conference hearing, the Court finds 3.5 hours excessive.⁴ As the Court noted above, this matter was scheduled for a simple hearing—namely, a status conference hearing—for the parties to advise the Court of the status of this case after the occurrence of the Republican National Convention. Thus, in order to prepare for the status conference hearing, Defendant Herbert Schoenbohm was only required to be up to date with the status of the case. Nonetheless, given that Defendant Herbert Schoenbohm is a pro se defendant in this matter, and therefore, probably unfamiliar with Court proceedings, the Court finds 2.0 hours at the hourly rate of \$75.00⁵ to be reasonable here.

However, as to the consultation fee, Defendant Herbert Schoenbohm failed to provide any evidence to support his assertion that he should be recompensed for consultation fee in the amount of

⁴ Plaintiffs argued that Defendant Herbert Schoenbohm should not be reimbursed at all because he appeared pro se at the hearing and did not incur any attorneys' fees. The Court disagrees. Plaintiffs' faulty logic implies that a pro se party's time is not valuable in and of itself. Here, the fact of the matter is, Plaintiffs' failure to appear at the status conference hearing wasted everyone's time—the Court's time and Defendants' time, whether they are represented by counsel or appeared pro se. Furthermore, Defendant Herbert Schoenbohm did not request for attorneys' fees; Defendant Herbert Schoenbohm requested to be recompensed for costs incurred for the preparation and attendance of the status conference hearing. As a party scheduled to appear before the Court for a status conference hearing, Defendant Herbert Schoenbohm was required to be prepared for said hearing.

⁵ The Court finds the hourly rate of \$75.00 to be reasonable in this instance. *See e.g.* Super. Ct. R 20 (Court appointed attorneys are compensated at the hourly rate of \$75.00 or \$100.00, depending on the type of case appointed to.)

\$300.00. There is no information as to: which attorney Defendant Herbert Schoenbohm consulted with; when the consultation took place; and what the consultation was with regard to. Moreover, Defendant Herbert Schoenbohm also failed to provide an invoice, receipt, and/or affidavit related to this consultation fee. Thus, this expense will not be included as part of Defendant Herbert Schoenbohm's reasonable costs in preparing for the status conference hearing.

Similarly, Defendant Herbert Schoenbohm failed to provide any evidence to support his assertion that he should be recompensed for postage in the amount of \$19.00. There is no information as to: when Defendant Herbert Schoenbohm mailed the pleadings to Fred Valet, Jr. Esq.; and why he mailed the pleadings on four occasions to prepare for the status conference hearing. Moreover, Defendant Herbert Schoenbohm also failed to provide any receipts and/or affidavit for the postage he paid. Thus, this expense will not be included as part of Defendant Herbert Schoenbohm's reasonable costs in preparing for the status conference hearing.

Additionally, the Court will recompense Defendant Herbert Schoenbohm for his personal appearance at the status conference hearing for 1.0 hour at the hourly rate of \$75.00. Based on the foregoing, the Court will grant Defendant Herbert Schoenbohm's request but reduce the costs to \$225.00 (preparation: 2.0 hours at the hourly rate of \$75.00; appearance: 1.0 hour at the hourly rate of \$75.00).

Defendant Holland Redfield

On September 12, 2016, in response to the Court's August 24, 2016 Order, Defendant Holland Redfield filed a request to be recompensed for expenses incurred in preparation and attendance of hearing. Defendant Holland Redfield argued that he should be recompensed for reasonable costs, which should include the following expenses: (1) legal research for 5.25 hours at the hourly rate of \$200.00, for a total amount of \$1,050.00; and (2) fee for "consultation and appearance with defendant's attorneys," for a total amount of \$300.00. Accordingly, Defendant

Holland Redfield requested to be recompensed in the total amount of \$1,350.00, or any other amount the Court finds reasonable.

Defendant Holland Redfield appeared personally with his counsel, Attorney Michael Joseph, at the status conference hearing. Based on the fact that Defendant Holland Redfield did not attach an invoice, receipt, and/or affidavit of Attorney Michael Joseph for his services, the Court will construe Defendant Holland Redfield's request as a request for expenses incurred by him personally in preparation and attendance of the status conference hearing. Given that Defendant Holland Redfield is not an attorney, the above analysis regarding the reasonableness of attorneys' fees is not applicable here. Nevertheless, the Court must make a determination whether the costs requested is reasonable.

As to the legal research, for the same reasons stated above with regard to Defendant Herbert Schoenbohm's request, the Court finds 2.0 hours at the hourly rate of \$75.00 to be reasonable in this instance. As to the consultation fee, Defendant Holland Redfield failed to provide any evidence to support his assertion that he should be recompensed for consultation fee in the amount of \$300.00. There is no information as to: which attorney Defendant Holland Redfield consulted with; when the consultation took place; and what the consultation was with regard to. Moreover, Defendant Holland Redfield also failed to provide an invoice, receipt, and/or affidavit related to this consultation fee. Thus, this expense will not be included as part of Defendant Holland Redfield's reasonable costs in preparing for the status conference hearing.

Additionally, the Court will recompense Defendant Holland Redfield for his personal appearance at the status conference hearing for 1.0 hour at the hourly rate of \$75.00. Based on the foregoing, the Court will grant Defendant Holland Redfield's request but reduce the costs to \$225.00 (preparation: 2.0 hours at the hourly rate of \$75.00; appearance: 1.0 hour at the hourly rate of \$75.00).

Defendant Leigh F. Goldman and Defendant Fred Violet, Jr.

On September 23, 2016, in response to the Court's August 24, 2016 Order, Defendant Leigh F. Goldman and Defendant Fred Violet, Jr. filed a notice of filing affidavit regarding reasonable attorneys' fees and costs. According to the Court's August 24, 2016 Order, the deadline for filing a notice in response was September 14, 2016. Here, Defendant Leigh F. Goldman and Defendant Fred Violet, Jr. filed their notice on September 23, 2016, after the deadline has passed. Thus, the Court will deny their requests for reasonable costs and attorneys' fees.

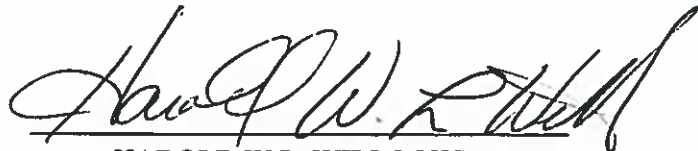
CONCLUSION

Based on the foregoing, Defendant Warren B. Cole's request for attorneys' fees will be granted but reduced to \$600.00, Defendant Herbert Schoenbohm's request for costs will be granted but reduced to \$225.00, Defendant Holland Redfield's request for costs will be granted but reduced to \$225.00, and Defendant Leigh F. Goldman and Defendant Fred Violet, Jr.'s request for costs and attorneys' fees will be denied. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 4th day of December, 2016.

ATTEST:

Estrella H. George
Acting Clerk of the Court



HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

By: 

Court Clerk Supervisor

Dated: Dec. 7, 2016

CERTIFIED TO BE A TRUE COPY
This 7th day of DEC 2016

ESTRELLA H. GEORGE
CLERK OF THE COURT

By:  Court Clerk