

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

JAMES MEYERS,

PLAINTIFF,

ST-97-CV-878

v.

JAMES DERR AND DORI DERR,

DEFENDANTS.

MEMORANDUM OPINION

THIS MATTER came before the Court on Plaintiff James Meyers' (hereinafter "Plaintiff") motion for costs and attorney's fees, filed on April 18, 2016. No opposition was filed in response.

BACKGROUND

On November 10, 1997, Plaintiff commenced this action against Defendant James Derr and Defendant Dori Derr (together, "Defendants"). On March 23, 2016, the Court entered a judgment in the total amount of \$347,090.00 against Defendants in Plaintiff's favor. On April 18, 2016, Plaintiff filed this instant motion for costs and attorney's fees.

STANDARD OF REVIEW

Title 5, Section 541 of the Virgin Islands Code¹ (hereinafter, "Section 541") governs the award of attorney's fees and costs in civil matters. The prevailing party routinely requests, and the

¹ Title 5, Section 541 of the Virgin Islands Code provides:

(a) Costs which may be allowed in a civil action include:

- (1) Fees of officers, witnesses, and jurors;
- (2) Necessary expenses of taking depositions which were reasonably necessary in the action;
- (3) Expenses of publication of the summons or notices, and the postage when they are served by mail;
- (4) Compensation of a master as provided in Rule 53 of the Federal Rules of Civil Procedure;
- (5) Necessary expense of copying any public record, book, or document used as evidence on the trial; and
- (6) Attorney's fees as provided in subsection (b) of this section.

(b) The measure and mode of compensation of attorneys shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto; provided,

Court often grants, an award for attorney's fees and costs, so long as they are provided for within the confines of the Section 541. The language of Section 541 and case law are clear that the decision to award attorney's fees and costs, and the amount to be awarded, is within the Court's discretion. Title 5 V.I.C. § 541; *Kaloo v. Estate of Small*, 62 V.I. 571, 584 n. 11 (V.I. 2015) (noting that a trial judge has discretion in determining reasonable attorney's fees and costs); *see also, Pedro v. Huggins*, SX-98-CV-792, 53 V.I. 98, 105-06 (Super. Ct. Mar. 5, 2010) (unpublished). In *Kaloo*, the Supreme Court pointed out that the "attorney's fees awards should represent a 'fair and reasonable portion of... [the] attorney's fees incurred in the prosecution or defense of the action, and not [necessarily] the whole amount charged by the attorney.'" 62 V.I. at 584 fn. 11 (quoting *Estien v. Christian*, 11 V.I. 464 (3d Cir. 1975) (applying the "lodestar" test in determining the reasonableness of attorney's fees under Section 541)) (emphasis in original). In considering the reasonableness of the attorney's fees, the 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).²

however, the award of attorney's fees in personal injury cases is prohibited unless the court finds that the complaint filed or the defense is frivolous.

(c) For the purposes of this section, "frivolous" means:

- (i) without legal or factual merit; or
- (ii) for the purpose of causing unnecessary delay; or
- (iii) for the purpose of harassing an opposing party.

² While the Supreme Court in *Judi's* addressed the reasonableness of the attorney's fees requested under Supreme Court Rule 30, the Court nevertheless finds the factors considered therein to be helpful in this instance. Thus, the Court is guided by the same factors the Supreme Court considered in *Judi's*.

DISCUSSION

In his motion, Plaintiff requested for costs and attorney's fees incurred from litigating this lawsuit. In support of his motion for costs and attorney's fees, Plaintiff filed the affidavit of Eszart A. Wynter, Esq. and the following attachments: (1) a copy of the invoice from Visions Law Firm; (2) a copy of the invoice from the Law Offices of Eszart A. Wynter, Sr., P.C.; (3) a copy of the invoice from the Law Offices of Wayne L. Sprauve; (4) a copy of the invoice from the Law Offices of Herbert Muriel; (5) a copy of the invoice from Archie Jennings, Esq.; (6) a copy of the receipts from Clive Rivers, Esq.; (7) a copy of the invoice from the Law Offices of Andrew L. Capdeville; (8) a copy of the Law Offices of Stylish Willis; (9) a copy of the letter from Udo Penther; and (10) a copy of various certified mail receipts; and (11) a copy of the receipts from BW Emerald Beach.

The Court notes at the outset that Plaintiff is the prevailing party in this matter based on the judgment the Court entered against Defendants and in Plaintiff's favor. The Court further notes that this is not a frivolous personal injury action. Thus, Section 541 is applicable. The Court will review each attachment and determine whether the costs and attorney's fees requested therein fall within the confines of Section 541.

1. Dolace McLean, Esq. at Visions Law Firm

Here, Plaintiff sought the recovery of \$6,075.00 in attorney's fees, which accounts for 40.50 hours of work performed by Dolace McLean, Esq. from June 1, 2014 to August 14, 2014, at the hourly rate of \$150.00.

First, the Court reviews the time and labor expended in this matter. According to the invoice of Dolace McLean, Esq. at Visions Law Firm, 40.50 hours were spent on reviewing documents, taking notes, researching applicable law, preparing motions, and attending meetings. The Court finds the services rendered and the time spent by Dolace McLean, Esq. to be reasonable. Second, the Court evaluates the novelty and difficulty of the issues involved. Plaintiff filed this instant lawsuit

against Defendants as the result of their encroachment and excavation from Plaintiff's property. The Court finds that the issues involved herein is somewhat novel and complex. Third, the Court evaluates the level of skill required of counsel to properly conduct the case. The Court finds that this matter required a decent degree of skill by counsel to navigate through the various issues raised in the lawsuit. Fourth, the Court compares the hourly rate charged in this matter with the customary charges of Virgin Islands attorneys. The Court finds the \$150.00 hourly rate charged by Dolace McLean, Esq. to be more than reasonable—to wit, it is less 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.”); *Interocean Ins. Agency v. Joseph*, SX-06-CV-177, 2014 V.I. LEXIS 73, *10 (V.I. Super. Ct. Sep. 12, 2014) (unpublished) (the court accepted the attorney'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”). Fifth, the Court considers the amount in controversy and the attorney's fees requested. In *Judi's*, the Supreme Court found that the attorney's fees is unlikely to be reasonable when the attorney's fees requested was almost four times the amount in controversy. 2008 V.I. Supreme LEXIS 21 at *3. Here, the amount in controversy was \$347,090.00³ and the attorney's fees requested was \$6,075.00. The Court finds that the relationship between the amount in controversy

³ This is the amount Plaintiff was awarded in damages.

and the attorney's fees requested to be within reason. Sixth, the Court considers the benefits resulting to Plaintiff from the services. Here, as the result of the services rendered by Dolace McLean, Esq., and other attorneys, Plaintiff obtained a favorable outcome. The Court finds that Plaintiff benefited from the service of Dolace McLean, Esq. Lastly, the Court considers the contingency or certainty of compensation. Based on the invoice submitted, it appears that Plaintiff retained Dolace McLean, Esq. at the hourly rate of \$150.00. Thus, the Court concludes that Plaintiff and Dolace McLean, Esq. did not have a contingency fee agreement. Based on the foregoing, the Court finds the attorney's fees sought by Plaintiff as to Dolace McLean, Esq. to be reasonable.

2. Eszart A. Wynter, Sr., Esq. at the Law Offices of Eszart A. Wynter, Sr., P.C.

Here, Plaintiff sought the recovery of \$18,208.33 in attorney's fees, which accounts for 61.00 hours of work performed by Eszart A. Wynter, Sr., Esq. from July 19, 2007 to September 12, 2008, at the hourly rates of \$300.00 and \$350.00, and \$1,006.60 in costs, which accounts for fees related to travel, accommodation, docket, and transcripts. Additionally, Plaintiff also sought the recovery of \$53,000.00 in attorney's fees, which accounts for work performed by Eszart A. Wynter, Sr., Esq. from September 12, 2008 to the present, and \$978.30 in costs. However, Plaintiff failed to provide a copy of the invoice from the Law Offices of Eszart A. Wynter, Sr., P.C. that includes the period from September 12, 2008 to the present. Virgin Islands Rule of Civil Procedure 54, which governs costs—including attorney's fees, provides that "[a] bill of costs shall precisely set forth each item thereof, so that the nature of the charge can be readily understood." V.I. R. CIV. P. 54(d)(1)(C). Additionally, "[c]opies of all invoices in support of the request for each item shall be appended to the verified bill of costs." *Id.* As such, the Court will grant Plaintiff leave to supplement and reserve ruling on Plaintiff's motion for costs and attorney's fees as to Eszart A. Wynter, Sr., Esq.

3. Wayne L. Sprauve, Esq. at the Law Office of Wayne L. Sprauve

Here, Plaintiff sought the recovery of \$5,000.00 in attorney's fees, which accounts for the retainer fee of Wayne L. Sprauve, Esq. and for work performed by Wayne L. Sprauve, Esq., both at a flat rate. However, due to the lack of description in the invoice, the nature of the work performed by Wayne L. Sprauve, Esq. remains unclear.⁴ As noted above, Virgin Islands Rule of Civil Procedure 54, which governs costs—including attorney's fees—provides that "[a] bill of costs shall precisely set forth each item thereof, so that the nature of the charge can be readily understood" and requires "[c]opies of all invoices in support of the request for each item shall be appended to the verified bill of costs." V.I. R. CIV. P. 54(d)(1)(C). As such, the Court will similarly grant Plaintiff leave to supplement and reserve ruling on Plaintiff's motion for costs and attorney's fees as to Wayne L. Sprauve, Esq.

4. Herbert Muriel, Esq. at the Law Office of Herbert Muriel

Here, Plaintiff sought the recovery of \$15,960.00 in attorney's fees, which accounts for work performed by Herbert Muriel, Esq., at a flat rate. However, due to the lack of description in the invoice, the nature of the work performed by Herbert Muriel, Esq. remains unclear.⁵ See V.I. R. CIV. P. 54(d)(1)(C) ("[a] bill of costs [including attorney's fees] shall precisely set forth each item thereof, so that the nature of the charge can be readily understood."). Thus, the Court will similarly grant Plaintiff leave to supplement and reserve ruling on Plaintiff's motion for costs and attorney's fees as to Herbert Muriel, Esq.

⁴ The invoice from Wayne L. Sprauve, Esq. simply indicated that: (1) on July 15, 1996, Plaintiff was charged \$2,500.00 for "Retainer on Acct."; and (2) on August 6, 1997, Plaintiff was charged \$2,500.00 for "Professional services rendered."

⁵ The invoice from Herbert Muriel, Esq. simply described the majority of the professional services rendered as "Legal Work" or "Legal Services."

5. Archie Jennings, Esq.

Here, Plaintiff sought the recovery of \$5,600.00 in attorney's fees, which accounts for 26.80 hours of work performed by Archie Jennings, Esq. from June 5, 2005 to February 27, 2007, at the hourly rate of \$200.00.

First, the Court reviews the time and labor expended in this matter. According to the invoice submitted, 26.80 hours were spent on reviewing documents, reviewing and drafting correspondences, preparing for trial, and attending meetings. The Court finds the services rendered and the time spent by Archie Jennings, Esq. to be reasonable. For the second and third factors, the Court already held that the Court finds the issues involved are somewhat novel and complex and that this matter required a decent degree of skill by counsel to navigate through the various issues raised in the lawsuit. Fourth, the Court compares the hourly rate charged in this matter with the customary charges of Virgin Islands attorneys. The Court similarly finds the \$200.00 hourly rate charged by Archie Jennings, Esq. to be more than reasonable—to wit, it is less than the customary and prevailing market rates attorneys charge in the U.S. Virgin Islands.⁶ Fifth, the Court considers the amount in controversy and the attorney's fees requested. In *Judi's*, the Supreme Court found that the attorney's fees is unlikely to be reasonable when the attorney's fees requested was almost four times the amount in controversy. 2008 V.I. Supreme LEXIS 21 at *3. Here, the amount in controversy was \$347,090.00⁷ and the attorney's fees requested was \$5,600.00. The Court finds that the relationship between the amount in controversy and the attorney's fees requested to be within reason. Sixth, the Court considers the benefits resulting to Plaintiff from the services. Here, as the result of the services rendered by Archie Jennies, Esq., and other attorneys, Plaintiff obtained a favorable outcome. The Court finds that Plaintiff benefited from the service of Archie Jennings, Esq. Lastly,

⁶ The Court is cognizant that the customary and prevailing market rates for U.S. Virgin Islands attorneys from 2005 to 2007 was likely lower than the current customary and prevailing market rates. Even with that in mind, the Court still finds the \$200.00 hourly rate to be reasonable.

⁷ This is the amount Plaintiff was awarded in damages.

the Court considers the contingency or certainty of compensation. Based on the invoice of Archie Jennies, Esq., it appears that Plaintiff retained Archie Jennies, Esq. at the hourly rate of \$200.00. Thus, the Court concludes that Plaintiff and Archie Jennings, Esq. did not have a contingency fee agreement. Based on the foregoing, the Court finds the attorney's fees sought by Plaintiff as to Archie Jennings, Esq. to be reasonable.

6. Clive Rivers, Esq.

Here, Plaintiff sought the recovery of \$175.00 in attorney's fees, which accounts for two consultations with Clive Rivers, Esq. Based on the receipts submitted, Plaintiff consulted with Clive Rivers, Esq. on June 7, 2007 for a flat rate of \$100.00 and again on a date unknown for a flat rate of \$75.00. However, due to the lack of description on the receipts, the nature of the consultations remains unclear.⁸ See V.I. R. CIV. P. 54(d)(1)(C) ("[a] bill of costs [including attorney's fees] shall precisely set forth each item thereof, so that the nature of the charge can be readily understood."). Thus, the Court will similarly grant Plaintiff leave to supplement and reserve ruling on Plaintiff's motion for costs and attorney's fees as to Clive Rivers, Esq.

7. Andrew L. Capdeville, Esq. of the Law Offices of Andrew L. Capdeville

Here, Plaintiff sought the recovery of \$300.00 in attorney's fees, which accounts for one consultation with Andrew L. Capdeville, Esq. Based on the invoice submitted, Plaintiff consulted with Andrew L. Capdeville, Esq. on a date unknown for a flat rate of \$300.00. However, due to the lack of description on the invoice, the nature of the consultation remains unclear.⁹ See V.I. R. CIV. P. 54(d)(1)(C) ("[a] bill of costs [including attorney's fees] shall precisely set forth each item thereof, so that the nature of the charge can be readily understood."). Thus, the Court will similarly grant

⁸ Both receipts from Clive Rivers, Esq. simply indicated "Consultation" without any further description.

⁹ The invoice from Andrew L. Capdeville, Esq. simply described the professional services rendered as "Legal Consultation."

Plaintiff leave to supplement and reserve ruling on Plaintiff's motion for costs and attorney's fees as to Andrew L. Capdeville, Esq.

8. Stylish Willis, Esq. at the Law Office of Stylish Willis

Here, Plaintiff sought the recovery of \$100.00 in attorney's fees, which accounts for one consultation with Stylish Willis, Esq. Based on the invoice submitted, Plaintiff consulted with Stylish Willis, Esq. on April 3, 2007 for a flat rate of \$100.00. However, due to the lack of description on the receipt, the nature of the consultation remains unclear.¹⁰ See V.I. R. Civ. P. 54(d)(1)(C) ("[a] bill of costs [including attorney's fees] shall precisely set forth each item thereof, so that the nature of the charge can be readily understood."). Thus, the Court will similarly grant Plaintiff leave to supplement and reserve ruling on Plaintiff's motion for costs and attorney's fees as to Stylish Willis, Esq.

9. Vincent A. Fuller, Esq. of the Law Offices of Vincent A. Fuller

Here, Plaintiff failed to provide any support for his request for attorney's fee for the work performed by Vincent A. Fuller, Esq. Thus, for the same reason stated above as to Eszart A. Wynter, Sr., Esq., the Court will similarly grant Plaintiff leave to supplement and reserve ruling on Plaintiff's motion for costs and attorney's fees as to Vince A. Fuller, Esq.

10. Udo Penther

Here, Plaintiff sought recovery of \$2,000.00 in costs, which accounts for the professional service of Udo Penther. However, the March 4, 2013 letter submitted never specified the nature of the professional services provided by Udo Penther.¹¹ See V.I. R. Civ. P. 54(d)(1)(C) ("[a] bill of costs [including attorney's fees] shall precisely set forth each item thereof, so that the nature of the charge can be readily understood."). Thus, the Court cannot discern whether this falls under the

¹⁰ The receipt from Stylish Willis, Esq. simply indicated "Legal Consultation" without any further description.

¹¹ The March 4, 2013 letter simply outlined Udo Penther's fee proposal. On the last page of the March 4, 2013 letter, there was a notation indicating that Udo Penther received \$2,000.00 on April 5, 2013.

allowable costs of Section 541. Nevertheless, the Court will grant Plaintiff leave to supplement and reserve ruling on Plaintiff's motion for costs and attorney's fees as to Udo Penther.

11. Postage Fees

Here, Plaintiff sought recovery of costs related to various certified mail. However, Plaintiff failed to include any information related to the certified mail attached. *See* V.I. R. CIV. P. 54(d)(1)(C) ("[a] bill of costs [including attorney's fees] shall precisely set forth each item thereof, so that the nature of the charge can be readily understood."). Thus, the Court cannot discern whether the postage fees requested fall under the allowable costs of Section 541. Nevertheless, the Court will similarly grant Plaintiff leave to supplement and reserve ruling on Plaintiff's motion for costs and attorney's fees as to these postage fees.

12. Accommodation Fees

Here, Plaintiff sought recovery of \$728.82 in costs, which accounts for fees related to accommodations at BW Emerald Beach in St. Thomas, U.S. Virgin Islands on September 4, 2008 and February 20, 2014. Accommodation fees do not appear to fall under the allowable costs of Section 541. Thus, the Court will deny Plaintiff's motion for costs and attorney's fees as to accommodation fees.

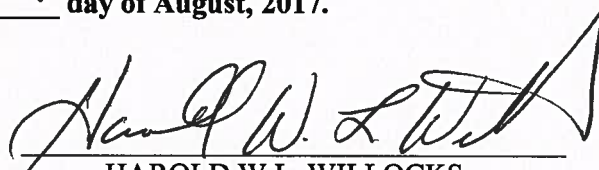
CONCLUSION

Based on the foregoing reasons, the Court will grant Plaintiff's motion for costs and attorney's fees as to Dolace McLean, Esq. and Archie Jennings, Esq. and deny Plaintiff's motion for costs and attorney's fees as to accommodation fees (BW Emerald Beach). The Court will grant Plaintiff leave to supplement and reserve ruling on Plaintiff's motion for costs and attorney's fees as to Eszart A. Wynter, Sr., Esq, Wayne L. Sprauve, Esq., Herbert Muriel, Esq., Clive Rivers, Esq., Andrew L. Capdeville, Esq., Stylish Willis, Esq., Vincent A. Fuller, Esq., Udo Penther, and postage fees. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 29th day of August, 2017.

ATTEST:

Estrella H. George
Clerk of the Court



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

By:



Court Clerk Supervisor

Dated:

8/29/17