

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX AT CHRISTIANSTED

GEORGE TUTEIN

PLAINTIFF

VS.

SUPERIOR PLUMBING & SUPPLY
COMPANY

DEFENDANT

CIVIL NO. 496/1979

ACTION FOR BREACH OF CONTRACT

MEMORANDUM OPINION

This case is now before the Court for a determination of an award of attorney's fees to the plaintiff as the prevailing party. Attorney's fees are granted in accordance with the following opinion.

This case was an action for breach of contract and involved no new or novel issues. Counsel for the plaintiff in his Affidavit for costs and attorney's fees has requested \$900.00 as reasonable reimbursement. This is based on the computation of the 12 hours expended in the case times the normal billing rate of \$75.00 an hour.

The Court is governed in the award of attorney's fees by the Third Circuit's opinion in Lindy Bros. Builders of Philadelphia v. American R & S. San Corp., 487 F.2d 161 (3d Cir. 1973). According to Lindy Bros. the first step in making an award is to calculate the "lodestar". Id. at 168. The time spent on the case is multiplied by the hourly billing rate, producing here the \$900.00 figure. In ¶3 of the Affidavit counsel states that he accepted this case on a one-third contingency fee. Since the judgment was in the amount of \$1,375.00, one-third of that would be approximately \$460.00. A recovery of almost \$400.00 in excess of that would be a

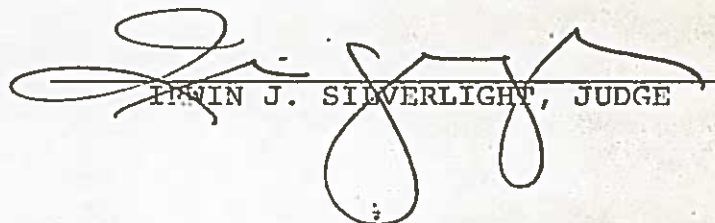
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windfall. Lindy Bros. permits the lodestar to be adjusted either upward or downward when factors such as contingency are present in the case. Because of the contingent fee arrangement here, I will adjust the lodestar downward to \$460.00.

Additionally, I will allow \$10.00 for the filing fee and \$26.00 for the service of summons and subpoenas. I will disallow the \$9.00 for the xeroxing as that is part of the normal overhead of operating a law office. I will also disallow other witness fees, if any, as being undisclosed in the record.

I therefore award \$460.00 for attorney's fees and \$36.00 for costs.

Done at Christiansted, St. Croix this 21st day of May, 1981


EDWIN J. SILVERLIGHT, JUDGE