

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

GERALD ROY, ROY'S CONSTRUCTION,	)	
INC., ROY'S DEVELOPMENT, LLC, and 17-31	)	Case No. ST-13-CV-525
FRENCHMAN'S BAY, LLC,	)	
	)	ACTION FOR BREACH OF
Plaintiffs,	)	CONTRACT, FRAUD,
vs.	)	UNJUST ENRICHMENT,
	)	QUANTUM MERUIT,
THOMAS POLEON (a/k/a THOMAS LIMA),	)	PROMISSORY ESTOPPEL,
PARCEL 17-31 ESTATE FRENCHMAN'S	)	CONVERSION, BREACH
BAY, NO. 4 FRENCHMAN'S BAY QUARTER	)	OF FIDUCIARY DUTY,
ST. THOMAS USVI, and SUSAN	)	DECLARATORY
NURANJALI, LLC,	)	JUDGMENT, QUIET
	)	TITLE, ACCOUNTING,
Defendants.	)	AND DISSOLUTION
	)	

MEMORANDUM OPINION

Before the Court is Defendant Nuranjali, LLC's¹ Memorandum of Costs. Plaintiffs have not filed a response to the Memorandum or otherwise opposed the amount of costs and fees Nuranjali demands. After reviewing Nuranjali's Affidavit and bill of costs accompanying its Memorandum, the Court will award \$18,768.46 in attorneys' fees and costs.

BACKGROUND

Plaintiffs filed their Complaint in this matter on October 7, 2013. Of ten counts, only Counts VIII and IX of the Complaint concerned Defendant Nuranjali,

¹ Nuranjali informed the Court that it is improperly identified in the caption as "Susan Nuranjanli, LLC". See Mem. of Costs 1.

LLC. On May 27, 2014, Nuranjali filed a Motion for Summary on those two counts. The Court granted the Motion on December 12, 2016 and dismissed with prejudice Counts VIII and IX. On December 20, 2016 Nuranjali's Counsel (hereinafter, "Counsel") filed their Memorandum of Costs with accompanying Affidavit and bill of costs. Plaintiffs offered no response. The Court directed Plaintiffs in an October 23, 2017 Order to file a response to the Memorandum by November 30, 2017. Plaintiffs did not do so, and the Memorandum remains unopposed.

LEGAL STANDARDS

"In the courts of the Virgin Islands . . . the American Rule against shifting fees to the losing party does not apply." *Prosser v. Prosser*, 40 V.I. 241, 242 (D.V.I. App. 1998). "Rather, '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 defense thereto.'" *Id.* (citing 5 V.I.C. § 541(b)).

Title 5, Section 541 of the Virgin Islands Code provides a list of costs which may be allowed in civil matters, including attorney's fees:²

- (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

² The statute includes attorney's fees under costs. For the sake of clarity, the Court will refer to costs separately from attorney's fees.

(6) Attorney's fees as provided in subsection (b) of this section.

Absent agreement by the parties, it is in a court's discretion to allow to a prevailing party such sums incurred in maintaining an action at trial or defense thereto. 5 V.I.C. § 541(b). Courts regularly exercise this discretion and "often grant[] an award for attorney's fees and costs, so long as they are provided for within the confines of [§] 541." *Kokinda v. Thelusma*, 2017 V.I. LEXIS 132, *7 (V.I. Super. Ct.) (citing *Kalloo v. Estate of Small*, 62 V.I. 571, 584 n. 11 (V.I. 2015)).

When granting fees and costs, "a court should do so with an eye toward making any award a fair and reasonable portion of those attorney's fees it finds were reasonably incurred." *Thomas v. V.I. Bd. of Land Use Appeals*, 2018 V.I. LEXIS 78, *6. "The starting point for determining a fair amount of attorney's fee to award is the 'lodestar', the reasonable number of hours worked multiplied by the prevailing hourly rate in the community for similar work." *Id.* A court should then evaluate the reasonableness of the fee amount requested considering such factors as:

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

Id. (citing V.I. S. Ct. R. Rule 211.1.5(a)). Any final award of attorney's fees, "should represent a fair and *reasonable* portion of the attorney's fees incurred . . . and need not necessarily be the whole amount charged by the attorney." *Id.* (quoting *Kalloo*, 62 V.I. at 584 n. 11.

APPLICATION

I. Attorneys' Fees.

Counsel claim \$22,504.00 for attorneys' fees.

As discussed, Plaintiffs have not submitted an opposition to Counsel's bill of costs, thus no specific time entries have been challenged. The Court has reviewed the entries and finds that the majority evidence necessary and appropriate billings. However, a small number of the entries appear duplicative or to evidence excessive time. "[A] court may, as needed, remove duplicative, disproportionate or superfluous charges or services." *Thomas*, 2018 V.I. LEXIS 78, *15 (quoting *Creative Minds, v. Reef Broad.*, 2014 V.I. LEXIS 82, *4 (Super. Ct.)) (internal quotations omitted). Because the Court finds they are duplicative or represent excessive time billed, the Court will strike the following entries:

	Att'y	Description	Hrs/Rate	Amount
12/17/2013	MJD	Follow up with counsel re completion of stipulated scheduling order and rule 26 production and disclosures	0.40 350/hr	\$140.00
12/23/2013	MJD	Follow up with counsel re pending dispositive motions, rule 26 disclosures and stipulated scheduling order	0.40 350/hr	\$140.00

12/26/2013	MJD	Follow up with counsel re stipulated scheduling order and completion of Rule 26 production	0.50 350/hr	\$175.00
1/16/2014	MJD	Review latest filings on motion to dismiss; follow up with counsel re revised stipulated scheduling order	0.50 350/hr	\$175.00
1/20/2014	MJD	Work on completing rule 26 production and scheduling order	0.50 350/hr	\$175.00
1/30/2014	MJD	Complete stipulated scheduling order and follow up with client and counsel re same; work on draft discovery and rule 26 production	0.50 350/hr	\$175.00
3/28/2014	MJD	Work on completing discovery responses	0.30 350/hr	\$105.00
4/22/2014	MJD	Follow up re status of claim; work on completing discovery among the parties; research motion to dismiss claims against our insured	0.60 350/hr	\$210.00
5/23/2014	MJD	Review plaintiff's discovery responses; work on completing rule 26 production and disclosures of insured	0.50 350/hr	\$175.00
5/23/2014	CAB	Revise Rule 26 Disclosures	0.30 275/hr	\$82.50
9/15/2014	SL	Work on and finalize mediation summary	0.40 200/hr	\$80.00
Total:				\$1632.50

The above entries dated December 17, December 23 and December 26, 2013 are disapproved as they are duplicative of work described in entries dated December 9, 2013, December 27, 2013 and January 3, 2014.

The above entries dated January 16, January 20, and January 30 are disapproved as they are duplicative of work described in entries dated January 17, January 20 and January 22, 2014.

The above entry dated March 28, 2014 is disapproved as it is duplicative of work described in other entries also dated March 28, 2014 and March 31, 2014.

The above entry dated April 22, 2014 is disapproved as it is duplicative of work described in another entry dated the same day as well as April 25, 2014.

The above entries dated May 23, 2014 are disapproved as they are duplicative of work described in entries dated May 20, 2018.

Finally, the above entry dated September 15, 2014 is disapproved as it is duplicative of work described in entries dated September 12, 2014 and September 16, 2014.

Therefore, the Court will deduct from the total amount it awards the amount billed for those entries, \$1632.50.

Apart from those entries, the records reflect reasonable hours billed for services offered, and the total number of hours billed does not appear excessive or unreasonable given the length of time Counsel represented Nuranjali (over three years) and the success Nuranjali obtained (summary judgment on all counts against it). However, of those remaining entries, Counsel have billed approximately 13.2 hours for services done by paralegals, for a billable amount of \$2,286.50. Though the Virgin Islands Supreme Court has yet to pronounce on whether paralegal fees may be included in an award of attorneys' fees, this Court has repeatedly held they may not. *E.g., Gov't of the V.I., Dep't of Education v. St. Thomas/St. John Educational Admr's Ass'n Local 101*, 2017 V.I. LEXIS 126, *3-4 (Super. Ct.) ("[C]ompensation for work performed by paralegals and non-attorney staff is reduced as normal overhead costs associated with running a business."); *Creative Minds*, 2014 V.I. LEXIS 82, *4 (writing the same); *Chapa v. Sepe*, 2013 V.I. LEXIS 72, *5 (Super. Ct.) (finding no

authority for the awarding of fees for paralegals and declining to do so) (citing *Morcher v. Nash*, 40 V.I. 256, 258 n. 1 (D.V.I. 1998); *Coral World (V.I.), Inc. v. Ross*, 2000 U.S. Dist. LEXIS 14060, *5 (D.V.I. 2000)); *but see Williams v. United Corp.*, 2009 V.I. Supreme LEXIS 1, *8 ([P]aralegal fees are of the same nature as attorney's fees[.]); *Bauman v. V.I. Water & Power Authority*, 2016 U.S. Dist. LEXIS 57604, *4-7 (D.V.I.) (including paralegal fees in computation of attorney's fees)³. The Court finds no caselaw from a Virgin Islands court supporting the inclusion of paralegal fees in attorneys' fees, and thus tends to think they should not be included. Additionally, not including them in this case will still produce an award that represents a fair and reasonable portion of the fees incurred by Counsel. Thus, the Court will exclude the paralegal fees, and will deduct an additional \$2,286.50 from the amount it will award.⁴

Finally, regarding the rates charged by Counsel: Attorney Duensing billed \$350 per hour; Attorney Brookhart, \$275 per hour; and Attorney Sauerwein, \$225 per hour. The Court in the past have accepted rates of \$300 and higher in the past. *E.g.*,

³ *Bauman* is a case from the District Court of the Virgin Islands, so while the court in that case included paralegal fees in its computation of attorney's fees, that case is not binding on this court as it relates to interpretations of Virgin Islands law. In *Williams*, the V.I. Supreme Court found that paralegal fees are "of the same nature" as attorney's fees without explicitly holding that paralegal fees could be included as attorney's fees under § 541; instead, the court found that since no attorney's fees could be awarded because that case was a personal injury case, no paralegal fees could be awarded either. However, that finding doesn't compel the finding that, *had* the Supreme Court awarded fees in that case, it would have necessarily included paralegal fees in that award.

⁴ The Court reiterates that, even if the V.I. Supreme Court later concludes that paralegal or non-attorney fees can or should be included in attorney's fees, whether and what amount of fees to award is influenced by the Court's discretion; the Court in any event deems the total award of attorney's fees after excluding paralegal fees to be an appropriate and reasonable portion of the total fees incurred by Counsel.

Thomas, 2018 V.I. LEXIS 78 (accepting a rate of \$300 per hour for an experienced attorney); *Yearwood Enters. v. Antilles Gas Corp.*, 2017 V.I. LEXIS 171, *4 (Super. Ct.) (“Plaintiff requests reimbursement for attorney’s fees generated by Attorney [] at an hourly rated [sic] of \$350.00, a rate that is in line with the customary and prevailing market rates for attorneys in the Virgin Islands.”); *Interocean Ins. Agency v. Joseph*, 2014 V.I. LEXIS 73, *10 (Super. Ct.) (“The Court accepts [Attorney 1’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, and will also award the same \$300.00 hourly fee as charged for the work of [Attorney 2].”). The Court is satisfied here that the rates charged by Counsel are in line with prevailing rates in the Virgin Islands, and will make no adjustments the attorneys’ fees based on rates.⁵

From the attorneys’ fees the Court will deduct \$3,919.00. It will award attorneys’ fees in the total amount of \$18,768.46.

II. Costs.

Counsel claim \$457.91 in costs.

Section 541 only permits the recovery of certain costs. Counsel list one entry for “Lexis-Nexis research fees” of \$6.80. “Computer legal research charges and copying costs are general overhead expenses that are not compensable costs’ under [§] 541.” *Thomas*, 2018 V.I. LEXIS 78, *25 (quoting *Mahabir v. George*, 2014 V.I. LEXIS 20, *3 (V.I. Super. Ct.)); *Morcher v. Nash*, 32 F. Supp. 2d 239, 243 (D.V.I.

⁵ Again, Plaintiffs have made no attempt to challenge the rates billed by Counsel.

1998). The Court will not award costs for Counsel's legal research and will deduct \$6.80 from Counsel's costs.

Nor will the Court award costs for amounts paid for "Mediation Fee services". The Court does not find mediation fees are encompassed in the language of 5 V.I.C. § 541 and has found no support in caselaw for the inclusion of that type of fee in § 541 costs. The Court will deduct an additional \$266.67 from Counsel's costs.

Finally, Counsel billed a single entry of \$0.98 with no description of the item. Therefore, that sum of \$0.98 will be deducted from costs.

Following those deductions, the balance is \$183.46, and the Court will award that sum for costs.⁶

CONCLUSION

After reviewing Counsel's Affidavit and bill of costs and making appropriate reductions, the Court will award \$18,585.00 in attorneys' fees and \$183.46 in costs.

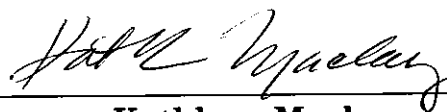
⁶ Counsel billed multiple entries for "Photocopies", "Postage", and "Long distance calls" without offering any additional detail for those entries. The V.I. Supreme Court has suggested that, "[m]erely listing a date and cost under the general label 'Photocopies' makes it impossible for this Court to determine whether the amount requested for photocopying is reasonable or includes duplicative charges." *Williams*, 2009 V.I. Supreme LEXIS 1, *7-8. At the same time, "the Supreme Court in *Rainey v. Hermon* disapproved of a court's reducing an attorney's billable hours because the court, 'concluded that the attorney's fees for communicating with a third party were unnecessary because it could not determine how many of these calls were necessary . . .'" *Thomas*, 2018 V.I. LEXIS 78, *19 n. 31 (quoting *Rainey*, 55 V.I. 875, 883 (2011) and at 886 ("With no explanation . . . and no evidentiary support for its conclusion that the calls were unnecessary, the Superior Court's arbitrary reduction of the attorney's bill by twenty-four and a half hours was clearly erroneous.")) (brackets omitted). In *Rainey*, the court noted that the attorney's client "never asserted that [the attorney] spent unnecessary time on her case or that any of the telephone calls [billed] were unnecessary" when concluding no evidence supported the Superior Court's reduction. *Id.* at 885. Here, Counsel have submitted an Affidavit stating that the costs in its bill of costs were "incurred . . . [in] prosecuting this action," and Plaintiffs have not asserted that those costs were unnecessary. The Court therefore hesitates to find the entries were unnecessary or unrelated to this action merely because they fall under vague headings. Therefore, it will allow the entries in this instance.

The Court finds this to be a reasonable portion of those fees and costs it finds were necessarily and reasonably incurred by Counsel in defending Nuranjali in this action.

The Court will award \$18,768.46 in fees and costs.

An Order consistent with this Memorandum will follow.

DATED: December 14, 2018

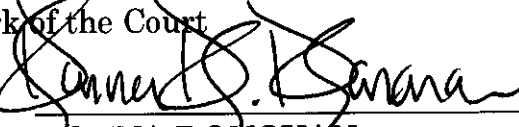


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE

Clerk of the Court

BY: 

DONNA DONOVAN

Court Clerk Supervisor 12/17/2018