

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

GOVERNMENT OF THE VIRGIN ISLANDS,	)	
DEPARTMENT OF EDUCATION,	)	
	)	
Plaintiff,	)	CASE NO. ST-13-CV-499
	)	
v.	)	
	)	
ST. THOMAS/ST. JOHN EDUCATIONAL	)	
ADMINISTRATOR'S ASSOCIATION LOCAL 101,	)	
on behalf of LISA FORDE,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION

This matter comes before the Court on Defendant's November 3, 2016, Motion for Costs¹ and Attorney Fees following the Virgin Islands Supreme Court's July 20, 2017, Opinion and Order affirming this Court's October 26, 2016, Order confirming an arbitrator's award.²

Relying on Rule 54(d) of the Federal Rules of Civil Procedure,³ counsel for Defendant sought attorney's fees in the amount of \$9,542.50 through a Motion for Costs and Attorney Fees filed on November 3, 2016.⁴ Plaintiff Government of the Virgin Islands filed its Opposition to the Motion on November 30, 2016, objecting to Defendant's inclusion in the application for attorney's fees both time spent in prosecuting the Rights Arbitration case and time spent in the defense of this case. Plaintiff claims that the Court can only confirm the award as it was rendered by the arbitrator and that the Court is powerless to award additional attorney's fees for the defense of this case, such that Defendant is entitled to nothing more than the attorney's fees awarded by the arbitrator.

¹ The Motion seeks only attorney's fees and does not seek any other costs.

² The arbitrator awarded Defendant attorney's fees for the prosecution of the arbitration.

³ Effective March 31, 2017, that provision has been replaced by Rule 54(d) of the Virgin Islands Rules of Civil Procedure, which

⁴ No application is before the Court seeking attorney's fees and costs incurred in defending the appeal filed by Plaintiff.

STANDARDS

In a civil action, a party in whose favor a decision and judgment is rendered⁵ may recover reasonable⁶ costs and attorney's fees⁷ 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."⁸

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 detailed⁹ to permit the Court to discern the actual, necessary and reasonable expenses for essential services.¹⁰ Costs that *may* be allowed include: fees of witnesses;¹¹ 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.¹² As needed, the Court removes duplicative, disproportionate or superfluous charges or services¹³ and eliminates "overhead costs, such as

⁵ 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).

⁶ 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.

⁷ 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.

⁸ *Acosta v. Honda Motor Co., Ltd.*, 717 F.2d 828, 844 (3d. Cir. 1983) (on appeal from D.V.I.) (citation omitted).

⁹ 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).

¹⁰ 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.

¹¹ 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.

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

¹³ 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.

[non-evidence connected] photocopies, [non-service related] courier service, telephone calls, teletypes, ... and [regular] postage.”¹⁴

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”.¹⁵ In calculating the “lodestar”¹⁶ 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;
- (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.¹⁷

“[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.”¹⁸ Travel expenses not related to depositions, client meetings and conferences with co-counsel are not recoverable expenses under Section 541.¹⁹

Similarly, compensation for work performed by paralegals and non-attorney staff²⁰ is reduced as

¹⁴ *Id.* at 163.

¹⁵ 5 V.I.C. § 541(b).

¹⁶ 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”).

¹⁷ VIRGIN ISLANDS RULES OF PROFESSIONAL CONDUCT RULE 211.1.5(a).

¹⁸ *Acosta, supra*, 717 F.2d at 844.

¹⁹ *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).

²⁰ *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).

normal overhead costs associated with running a business.²¹ The costs and fees to which the prevailing party is entitled may be collected by execution.²²

ANALYSIS

As a preliminary matter, Plaintiff's argument that the Court can award only those attorney's fees included in the arbitrator's award, such that the Court is powerless to award fees for the defense of this case, is unavailing. The July 31, 2013, Arbitrator's Award of Attorney's Fees entered judgment against the Government of the Virgin Islands in the amount of \$6,517.50, \$4,207.50 was to be paid to the Law Offices of Pedro K. Williams, with the balance to be paid to Sanford Amerling & Associates. Plaintiff filed this action asking the Court to vacate that award, and on December 17, 2014, the Hon. Adam G. Christian orally denied that request and confirmed the arbitrator's award. After Judge Christian's retirement and the recusals of the Hon. James S. Carroll, III, and the Hon. Renee Gumbs Carty, the undersigned entered an Order on October 26, 2016, confirming the arbitrator's award granting Defendant attorney's fees. Moreover, following Plaintiff's appeal, the Virgin Islands Supreme Court affirmed that Order in its July 20, 2017, Opinion and Order. Thus, it is clear that Defendant is already entitled to the \$6,517.50 in attorney's fees awarded by the arbitrator.

Moreover, it is beyond cavil that Defendant is the prevailing party in this action, and the Court specifically so finds. Plaintiff filed the instant Complaint in an effort to overturn the arbitrator's award. That effort was unsuccessful, and Defendant obtained the relief it sought in presenting its defense – a confirmation of the arbitrator's award. The grant of that relief to Defendant has now been affirmed on appeal. 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

²¹ *Rainey v. Hermon*, 55 V.I. 875 (V.I. 2011).

²² 5 V.I.C. § 542.

discretion may fix by way of indemnity for attorney's fees incurred in maintaining the action or defenses thereto". To suggest that the Court cannot award attorney's fees beyond those that Defendant won in arbitration four years ago, after Plaintiff has forced Defendant to defend not only this action but the appeal of the Court's decision, invites the Court to visit an injustice upon Defendant and permit Plaintiff to delay Defendant's collection of the awarded funds with impunity. The Court is empowered to, and will, award attorney's fees to Defendant for the defense of this case.

Once the Court has determined that a party is entitled to attorney's fees, the question becomes whether the fees sought are reasonable.²³ 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. § 541.²⁴ Defendant seeks recovery for 34.7 hours "worked in this matter" at the rate of \$275.00 per hour, for a total of \$9,542.50. Plaintiff claims that the application contains time spent in prosecuting the arbitration, for which the arbitrator has already made an award. The Court notes that Plaintiff's Complaint was filed September 26, 2013, but the Affidavit submitted in support of the application includes a request for some 22 hours for work performed in 2009. Permitting Defendant to recover for hours incurred in 2009 while the arbitration was pending, which hours Defendant could have (and may have) presented to the arbitrator, would be akin to condoning "double dipping", or, at the least, a

²³ 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).

²⁴ 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").

“second bite at the apple”, and the Court declines to do so. Thus, the Court will not consider the 22 hours for work performed in 2009.

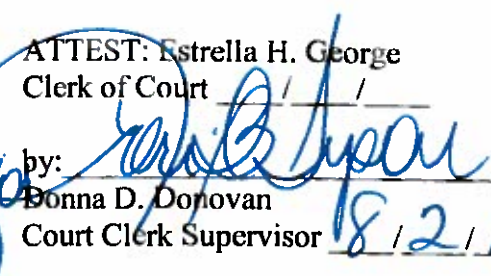
Beginning in December 2013, the Affidavit details 12.7 hours spent in the defense of this case. Ordinarily, in the interests of justice, the Court must decline reimbursing Plaintiff in full, since to hold otherwise is usually considered contrary to the purpose of the award, to insure substantial justice to *both* parties.²⁵ However, in this instance, a total of 12.7 hours for the preparation of pleadings, presentation of oral argument, 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. The Court finds the amount requested represents a more than fair figure for the actual, necessary and reasonable expenses for essential services in defending this action.

And, Plaintiff requests reimbursement for attorney’s fees generated by Attorney Williams at an hourly rated of \$275.00, a rate that is in line with the customary and prevailing market rates for attorneys in the Virgin Islands, especially one with the experience possessed by Attorney Williams.

Consequently, applying the factors employed in calculating the “lodestar”, the Court finds that reimbursement for 12.7 hours at \$275.00 per hour, or \$3,492.50, is reasonable. For clarity, the Court reiterates that this award is in addition to the attorney’s fees awarded by the arbitrator. An Order consistent with this Opinion shall follow.

Dated: August 1, 2017.

ATTEST: Estrella H. George
Clerk of Court

by: 
Donna D. Donovan
Court Clerk Supervisor


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

²⁵ See *Caribbean Jewelry Corp.*, *supra*, 16 V.I. at 165 (citations omitted).