

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

KENNETH CHAPA,	)	
	)	CASE NO. ST-12-CV-504
Plaintiff,	)	
	)	
vs.	)	
	)	
CHRISTOPHER SEPE, a/k/a, CHRIS SEPE	)	
and KARRL FOSTER	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Pending before the Court is Plaintiff Chapa's Motion for Attorney's Fees and Costs.¹ For the following reasons, Plaintiff's Motion will be granted in part and denied in part.

STANDARD

Pursuant to 5 V.I.C. § 541(a),² a prevailing party may recover costs, including attorney's fees. Further, 5 V.I.C. § 541(b) defines a prevailing party as "... the one in whose favor a decision or verdict is rendered and a judgment is rendered."³ In considering compensation for attorney's fees, "the amount of . . . fees to be awarded to the prevailing party is intended to be an indemnification for a fair and reasonable portion

¹ Plaintiff moved for attorney's fees and costs at the default judgment hearing on April 22, 2014. Pursuant to a Court Order, Plaintiff supplemented the record on May 12, 2014, with an affidavit accounting the attorney's fees and costs sought.

² 5 V.I.C. § 541(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; [and]
(5) Necessary expense of copying any public record, book, or document used as evidence on the trial . . .").

³ *Melendez v. Rivera*, 24 V.I. 63, 65 (Terr. Ct. 1988).

... and not for the whole amount charged by the attorney.”⁴ Specifically, “[f]or work to be included in the calculation of reasonable attorneys’ fees, the work must be ‘useful and of a type ordinarily necessary’ to secure the final result obtained from the litigation.”⁵ Therefore, in calculating the “lodestar”⁶ amount or “the reasonable number of hours expended at the reasonable hourly rate,”⁷ the Court takes into account

the time and labor required, the novelty and difficulty of the questions involved, the skill requisite properly to conduct the cause, 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.⁸

Duplicative, excessive, or redundant fees are not considered reasonable.⁹ As a result, to aid in the determination of a proper lodestar amount, the document listing the attorney’s fees sought must be sufficiently detailed to permit the Court to discern whether the requested amount is reasonable.¹⁰

⁴ *Trailer Marine Transp. Corp. v. Charley’s Trucking, Inc.* 20 V.I. 286, 290 (Terr. Ct. 1984) (internal citations omitted). Burden is on the movant to show that the requested amount is reasonable. *Id.*

⁵ *Banco Popular de Puerto Rico v. Carew*, 2009 WL 2413675, at *1 (D.V.I. Aug. 3, 2009) (citing *Planned Parenthood v. AG*, 297 F.3d 253, 266 (3d Cir. 2002) (quoting *Pennsylvania v. Del. Valley Citizens’ Council*, 478 U.S. 546, 561 (1986))).

⁶ *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 (3d Cir. 2000) (“[A] court determines the lodestar by multiplying the number of hours counsel reasonably worked on a client’s case by a reasonable hourly billing rate for such services in a given geographical area provided by a lawyer of comparable experience.”).

⁷ *Home Depot, U.S.A. v. Bohlke Int’l Airways*, 2001 WL 569134, at *1 (D.V.I. Apr. 30, 2001) (“In assessing the reasonable number of hours expended, the Court focuses on ‘the significance of the overall relief obtained in relation to the hours reasonably expended on the litigation.’”); see *Hodge v. Superior Court of the Virgin Islands*, 2009 WL 4543629, at *4 (D.V.I. Nov. 25, 2009) (noting requested fees must be based on “counsel’s usual billing rates, which are in accord with customary and prevailing market rates in the Virgin Islands” for legal services).

⁸ *Banco Popular de Puerto Rico*, 2009 WL 2413675 at *1 (citing *Lucerne Inv. Co. v. Estate Belvedere, Inc.*, 411 F.2d 1205, 1207 (3d Cir. 1969)).

⁹ See, e.g., *Wenner v. Government of the V.I.*, 29 V.I. 158, 166 (D.V.I. 1993).

¹⁰ *Id.*; see, e.g., *Lempert v. Singer*, 29 V.I. 169, 173 (D.V.I. 1993).

ANALYSIS

As prevailing parties in this matter, Plaintiff seeks recovery of Twenty-three thousand nine hundred eleven dollars and sixty-two cents (\$23,911.62) in attorney's fees accounting for 95.65 hours spent by attorneys, paralegals, and legal staff in prosecuting this action. Plaintiff also seeks Sixty-nine dollars and fifty-two cents (\$69.52) in costs. As a threshold matter, the Court finds that Plaintiff is the prevailing party in regards to Defendants Sepe and Foster because default judgment was entered against them on April 27, 2014. Nevertheless, the Court shall reduce Plaintiff's overall request significantly because the fees sought are excessive.

First, Plaintiff has provided no argument or case law demonstrating that 5 V.I.C. § 541(b) stands for the proposition that a prevailing party may obtain law clerk or paralegal fees as part of its award of attorney's fees. Other courts in the Virgin Islands have denied similar fees on this basis.¹¹ As a result, the Court shall not grant any fees for paralegals or other supporting legal staff.

Second, Plaintiff seeks a large amount of fees – particularly those incurred before May 31, 2012 – that appear to be either wholly, or in part, related to Plaintiff's separate action in the Department of Labor Hearings and Appeals Unit against FAF St. Thomas, LLC. While FAF St. Thomas, LLC, was originally a Defendant in the present matter, FAF St. Thomas, LLC, was dismissed on March 1, 2013, for Plaintiff's failure to

¹¹ See *Morcher v. Nash*, 32 F.Supp.2d 239, at n. 1 (D.V.I. 1998) (paralegal fees were denied "because no authority [was] advanced for their inclusion"); see also *Coral World (V.I.), Inc. v. Ross*, CIV. 1995-183, 2000 WL 1672610 (D.V.I. 2000). The Court finds that no authority in this jurisdiction exists to grant paralegal fees pursuant to 5 V.I.C § 541 other than one sentence of unsupported *dicta* in the unpublished Supreme Court of the Virgin Islands opinion in *Williams v. United Corp.*, S. Ct. Civ. No. 2007-118, 2009 WL 321339 at *3 (V.I. Jan. 7, 2009).

prosecute. Considering the Court only finds that Plaintiff is the prevailing party against Defendants Sepe and Foster, the fees incurred relating to FAF St. Thomas, LLC, shall not be awarded or considered in the lodestar amount.

Third, reviewing Plaintiff's Application for Attorney's Fees and Costs, the Court notes that counsel in this case charges an hourly rate between Three hundred and ninety-five dollars (\$395.00) and One hundred twenty-five dollars (\$125.00). 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. However, Plaintiff was prosecuting a defamation claim, which generally does not present a particularly novel or complex issue of law. Further, while Defendant Sepe did make a limited appearance before the Court,¹² Defendants Sepe and Foster have largely failed to actively defend against Plaintiff's Complaint resulting in a relatively straightforward default judgment against them.

Fourth, a great number of counsel's billing items are duplicative, unreasonable, or the description of the attorney's fees sought was not sufficiently detailed to permit the Court to discern whether the requested amount is reasonable. For instance, Plaintiff seeks recovery of fees associated with a "Kmart matter," which appears to be unrelated to Plaintiff's defamation case against Defendants Sepe and Foster. Plaintiff's counsel on

¹² Defendant Sepe filed an Answer on October 22, 2012. However, Defendant Sepe's counsel, Nancy D'Anna, Esq., was permitted to withdraw as counsel on March 19, 2013, after which point, Defendant Sepe largely failed to participate in discovery or present a defense in this action.

numerous occasions “confers” with paralegals in the office and other attorneys. While some “conferencing” is permitted, excessive conferencing is not recoverable pursuant to 5 V.I.C. § 541.¹³ Additionally, in some instances, two attorneys charge separately for reviewing the same Memorandum Opinion. Finally, on repeated occasions, Plaintiff seeks fees for “office conference with . . . Chapa” or “[c]orrespondence to Chapa.” While communication with the client is necessary to prosecute a matter, such descriptions are too vague for the Court to discern the reasonableness of the time charged. As a result, considering “the amount of . . . fees to be awarded to the prevailing party [pursuant to 5 V.I.C. § 541] is intended to be an indemnification for a fair and reasonable portion . . . and not for the whole amount charged by the attorney,”¹⁴ the Court reduced the lodestar accordingly.

Finally, Plaintiff seeks Sixty-nine dollars and fifty-two cents (\$69.52) in costs. While a review of Plaintiff’s Application for Attorney’s Fees and Costs demonstrates that Plaintiff paid his counsel for these costs, the Application does not itemize the \$69.52 in costs. Considering 5 V.I.C. § 541 only permits the recovery of certain costs, the Court shall not grant any costs here because Plaintiff does not provide information sufficient for the Court to review whether Plaintiff is entitled to reimbursement.

Considering these above factors, as well as reviewing the Plaintiff’s Application for Attorney’s Fees and Costs, the Court determines a reasonable lodestar amount is 34.05 hours to maintain the action or defenses against Defendants Sepe and Foster. Of those hours, the Court finds that 3.25 hours are appropriate at a billing rate of Three

¹³ See, e.g., *Good Timez, Inc. v. Phoenix Fire & Marine Ins. Co., Ltd.*, 754 F. Supp. 459, 463 (D.V.I. 1991).

¹⁴ *Trailer Marine Transp. Corp.*, 20 V.I. at 290 (internal citations omitted).

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hundred ninety-five dollars (\$395.00) per hour, 0.1 hours are appropriate at a billing rate of Two hundred fifty dollars (\$250.00) per hour, 28.6 hours are appropriate at a billing rate of Two hundred and ninety-five dollars (\$295.00) per hour, and 2.1 hours are appropriate at a billing rate of One hundred and twenty-five dollars (\$125.00) per hour, for a total of Ten thousand eight dollars and twenty-five cents (\$10,008.25) in attorney's fees.

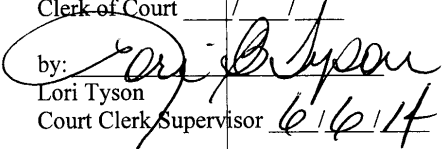
An Order consistent with this Opinion shall follow.


Dated: ~~April~~ JUNE 3, 2013

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by:

Lori Tyson

Court Clerk Supervisor 
6/6/14


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