

NOT FOR PUBLICATION

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: KINGSHILL

EVANS OLIVER,

Plaintiff,

v.

ABDUL IHWEIL and ISAM YUSUF
d/b/a SAM'S SUPERMARKET,

Defendants.

CIV. NO. 566/1982

ACTION FOR DAMAGES

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SILVERLIGHT, J.

MEMORANDUM OPINION

May 16, 1984)

This matter is before the Court on Plaintiff's application for an award of costs and attorney's fees after Judgment was rendered in a bench trial.

F A C T S

In September of 1981 plaintiff visited Sam's Supermarket to purchase certain items. While waiting in the check-out line and as plaintiff approached the cash register to pay for his selections, defendant Ihweil, an employee of the

supermarket, confronted plaintiff, and in the presence of others accused plaintiff of stealing items from the store. Defendant Ihweil thrust his hand into plaintiff's pocket and retrieved a measuring tape, which belonged to plaintiff. No evidence that anyone else believed the accusation was adduced.

At the conclusion of the trial, upon its merits before the Court, plaintiff was awarded One (\$1.00) Dollar nominal damages and One Hundred (\$100.00) punitive damages.

D I S C U S S I O N

At issue before the Court is the amount of costs and attorney's fees, if any, to be awarded to plaintiff.

5 V.I.C. §541 provides that certain costs may be awarded to the prevailing party in a civil action. Plaintiff has included in the Certificate of Costs a charge of Six (\$6.00) Dollars for "notarizations". We find no authority in §541 for the award of such costs. A notarization is an office expense, and not properly awardable as costs. Plaintiff has also requested reimbursement for witness fees on two (2) separate dates, January 27, 1983 and April 25, 1984. The Court will disallow witness fees for the witness' appearance on January 27, 1983, for on said date a continuance was granted at plaintiff's request. This Court will not tax a cost against

defendant when the continuance was granted to accommodate plaintiff. The other items of costs claimed are authorized by the statute and accordingly, the Court will award to plaintiff costs in the amount of Fifty (\$50.00) Dollars.

The Court next considers plaintiff request for attorney's fees. The criteria for consideration in determining [an award of] attorney's fees are 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 the compensation. Lucerne Investment Company v. Estate Belvedere, Inc., 7 V.I. 242, 411 F.2d 1205 (3rd Cir. 1969). Lindy Bros. Builders, Inc. of Phila. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161 (C.A. 3rd 1973) provides this jurisdiction with guidelines to determine an award of attorneys' fees. One way for the Court to ascertain the value of an attorney's services is to review affidavits submitted by the attorney, containing the amount of time expended in preparation and presentation of the claim. The affidavit submitted by plaintiff's counsel does not set forth with

particularity what services were provided to plaintiff. The affidavit lists 3.917 hours expended in conferences and interviews with the client, but allows us no guidance in determining how plaintiff arrived at this unorthodox figure. Also, the affidavit requests 1.25 hours of reimbursement for a continuance which was requested by and granted for the benefit of plaintiff. 13.75 hours is requested for research and preparation of documents. Since the affidavit is not itemized, the Court must assume that at least some of the time expended in preparation of documents includes interrogatories drafted by plaintiff. Ninety-seven (97) interrogatories were propounded to defendant, most of which contained subparts. Many of the questions addressed issues which were at best collateral to, and at worst totally foreign to the theories of recovery relied upon by plaintiff. The time spent in preparation of many of these questions was simply unnecessary.

The policy behind 5 V.I.C. §541 is not [necessarily] one of total indemnification, but only to award a prevailing party a fair and reasonable portion of his attorney's fees. Bevan v. Triumpho, 17 V.I. 144 (Terr. Ct., Div. St. T and St. J., 1980). Plaintiff concedes that the issues presented in this action were neither novel nor complex. On the basis of the

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foregoing, following the criteria established in Lucerne Investment, supra, and the guidelines set forth in Lindy Bros., supra, this Court feels that an award of Three Hundred Seventy-Five (\$375.00) Dollars for attorney's fees is reasonable.

E N T E R :



IRWIN J. SILVERLIGHT, Judge

DATED: May 16, 1984