

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Tekstrom, Inc.,	:	C.A. No. 03-06-0033
A Delaware Corporation,	:	
	:	
Plaintiff/Counterdefendant,	:	
	:	
vs.	:	
	:	
Sameer K. Savla,	:	
	:	
Defendant/Counterclaimant,	:	
	:	
vs.	:	
	:	
Charan Minhas,	:	
	:	
Individually,	:	
Counterdefendant.	:	

**Decision on application for attorney's fees,  
interest, and costs**

**Submitted: November 21, 2005**

**Decided: November 22, 2005**

**Granted in part and denied in part**

Thad J. Bracegirdle, Esquire, Buchanan Ingersoll, PC, The Nemours Building, 1007 North Orange Street, Suite 1110, Wilmington, Delaware 19801, Attorney for Plaintiff/counterdefendant and Defendant.

John S. Grady, Esquire, Grady & Hampton, LLC, 6 North Bradford Street, Dover, Delaware 19901, Attorney for Defendant/Counterclaimant.

Trader, J.

On September 9, 2005, this court entered judgment in behalf of Savla and against Tekstrom and Minhas for \$91,200.00, plus costs of these proceedings, prejudgment interest, and reasonable attorney fees. The issue of when prejudgment interest begins to run on the violation of Delaware's wage and labor laws and the various tort actions was not decided in that opinion. I also requested an affidavit from Savla's counsel concerning Savla's request for attorney's fees. This is the court's decision on prejudgment interest on the compensatory damages awarded, as well as the award of attorney's fees and other costs of these proceedings.

### **Prejudgment Interest as a Matter of Right**

Prejudgment interest is awarded in Delaware as a matter of right and not of judicial discretion. *Collins v. Throckmorton*, 425 A.2d 146 (Del. 1980). The allowance of interest is in the nature of damages and it is as much of an injured plaintiff's substantive right as a right to damages themselves. *Superior Tube v. Delaware Aircraft Industries*, 60 F. Supp. 573 (D. Del. 1945).

### **Prejudgment Interest for Savla's Claim Under 19 Del. C. Sec. 902**

Under 19 Del. C. Sec. 1103, if the employer fails to pay an employee wages when due, he shall be liable to the employee for the unpaid wages as well as 10% of the unpaid wages for each day such failure continues after the payment is due, or the amount equal to the unpaid wage, whichever is smaller. In the case before me, Savla's unpaid wages from February 15, 2003 to May 25, 2003 is computed to \$11,200.00 and he is entitled to an additional sum of \$11,200.00 in liquidated damages. Where there is no contract rate, the legal interest rate prevailing at the time that interest became due is to be awarded. 6 Del. C. Sec. 2301(a).

6 Del.C. Sec. 2301(a) provides that where there is no expressed contract rate, the legal rate shall be 5% over the Federal Reserve discount rate including any surcharge therein as of the time from which interest is due. The Federal Reserve discount rate in May 2003 was 2.25%. Therefore, interest would be calculated on \$22,400 at 7.25% from May 25, 2003. I conclude Savla is entitled to prejudgment interest on the sum of \$22,400 from May 25, 2003.

### **Prejudgment Interest on Savla's Various Tort Claims**

In tort actions, including fraud and deceit, the general rule is that prejudgment interest is calculated from the date of the alleged wrong. *Stephenson v. Capano Development Co.*, 1985 WL 636429, at \*3 (Del. Super. July 10, 1985). Savla has requested prejudgment interest from January 2004 and the Federal Reserve discount rate was 3.25% on that date. Interest is therefore calculated on \$28,800 at the interest rate of 8.25%. Prejudgment interest is not a proper element of damages in civil actions based on bodily harm or emotional distress. *Rollins v. Environmental Services v. WSMW Industries*, 426 A.2d 1363 (Del. Super. 1980). Prejudgment interest is also not recoverable on punitive damages. 9 A.L.R. 5<sup>th</sup> 63.

### **Assessment of Attorney's Fees**

In the case at bar Savla has filed a civil action to recover unpaid wages and liquidated damages. Under 19 Del. C. Sec. 1113(c) any judgment entered for Savla shall include an award of the costs of this action and reasonable attorney's fees. Since Savla recovered a judgment on his claim for unpaid wage and liquidated damages, he is entitled to reasonable attorney's fees in connection with that civil action.

The general rule is that the law courts may not order the payment of attorney's fees as a part of the costs paid by the losing party unless the payment of such fees is authorized by some provision of statute or contract. *Casson v. Nationwide Ins. Co.*, 455 A.2d 361 (Del. Super. 1981). In the case before me, Savla's counterclaim alleged six claims against Tekstrom and Minhas. He abandoned his claim based on promissory *estoppel* and he was unsuccessful on his claim for a violation of Section 1981. He was successful on the three remaining tort claims and the claim for unpaid wages and liquidated damages.

Savla requests attorney's fees in the amount of \$84,541.50. Savla contends that he is entitled to all of his requested attorney's fees on the basis of the bad faith exception to the American rule. Under the bad faith exception, "the Court would permit attorney's fees to a prevailing party where the Court finds litigation to have been brought in bad faith or finds that a party conducted a litigation process in bad faith, thereby unjustifiably increasing the cost of litigation." *Beck v. Atlantic Coast PLC*, 868 A.2d 840, 851-852 (Del. Ch. 2005). *See also Arbitrium (Cayman Islands) Handels AG v. Johnston*, 705 A.2d 225 (Del. Ch. 1997) and *Cantor Fitzgerald, LP v. Cantor*, 2001 WL 536911 (Del. Ch. May 11, 2001) The application to pre-litigation conduct is described as "quite narrow" and "unusual relief". *Arbitrium*, at 231. Courts of equity point out that "The American Rule would be eviscerated if every decision holding defendants liable for fraud or the like also awarded attorney's fees" *Barrow v. Bowen*, 1994 WL 514868, at \*2 (Del. Ch. Sept. 7, 1994).

All the cases cited by Savla are decisions by the Court of Chancery. He has cited no case in the law courts of this state which would permit the imposition of attorney's fees on the losing party under the bad faith exception. Hence, this contention is rejected.

Savla next contends that under *Hensley v. Eckerhart*, 461 U.S. 424 (1983) that where a plaintiff prevails on some claims, he should recover for attorney's fees on all claims both successful and unsuccessful. In *Hensley* the Court reasoned that "if the plaintiff's general results are 'excellent' and if the services performed in litigating both successful and unsuccessful claims have a common core of facts and the services relating to each cannot be easily allocated, then the plaintiff should recover a full compensatory fee." In re *Mattera*, 128 B.R. 107, 113 (Bankr. E.D. Pa 1991) (citing *Hensley*). It should be noted in the *Hensley* case, *supra*, all of the plaintiff's claims were brought under 42 U.S.C. 1983, but in the case before me there are claims under 42 U.S.C Sec. 1981, common law tort actions, and the claim for unpaid wages under federal and state law. The majority rule appears to be that if the work can be reasonably apportioned between the fee claims and non-fee claims, only the work performed on the fee claims should be compensated. *Baughman v. Wilson Freight Forwarding Co.*, 583 F.2d 1208, 1215 -16 ( 3d Cir. 1978).

Tekstrom and Minhas contend that Savla's award should be limited to one-sixth of Savla's requested attorney's fees. They argue that the award should be limited to Savla's success on the wage collection claim. I disagree. Although there were different legal theories, there was one common set of facts. The claims for intentional infliction of emotional distress, violation of the covenant of fair dealing, and misrepresentation concerning employment arise from the failure to pay wages to Savla. It was necessary

for Savla to defend Tekstrom's claim against him in order for him to prevail on his wage claim. Although it is difficult to apportion the claim for wages from time spent on other legal theories, it is my duty to reasonably apportion the work performed on the different claims.

In awarding the amount of attorney's fees, I will also consider the factors set forth in Rule 1.5 of the Professional Rules of Conduct.

The factors are as follows: (1) the time and labor required, the novelty and difficulty of 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 would 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 circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and the ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

I will consider all the various factors but I will primarily consider factors 1, 3, 4, and 7. This was a complex case with many difficult questions. A considerable amount of time and labor was required in behalf of Savla. Four pretrial motions were fully briefed, and the trial took two days. There were post trial briefs and oral argument. The fee charge by Mr. Grady is a fee customarily charged to the community in which he practices. He is a person with considerable experience in the practice of civil law and he has a good reputation in the county in which he practices. As to the results obtained, Savla was successful on Tekstrom's claim against him and he prevailed on all but one of

Savla's claims against Tekstrom and Minhas. The net result for Savla was a \$91,200.00 judgment, plus prejudgment interest and reasonable attorney's fees and court costs.

Counsel for Savla have submitted a detailed list of all of the services rendered in this case. I have carefully reviewed Savla's attorneys' submissions as well as all of the various briefs and motions filed in this case. I have also considered the testimony of plaintiff's attorneys at the evidentiary hearing. In connections with the affidavits supplied by Laura F. Browning, Esquire I conclude that 43.5 of the 231.85 hours submitted was for work on the unsuccessful claim under Sec. 1981 and the various tort claims. The disallowed hours included .5 hours legal research on 6/10/04, 3 hours legal research on 6/03/04, 2 hours research on Sec. 1981 on 8/23/04, and 8 hours for drafting response to motion to dismiss related to various tort claims from 12/24/04 to 1/15/05, 12 hours for work on pretrial motion from 3/23/05 to 3/30/05, and 18 hours for work in post trial briefs, 5/04/05 to 5/18/05. Therefore, I conclude that she is entitled to an award of attorney's fees for 188.35 hours at \$175.00 an hour and 22.5 hours at \$100.00 an hour as a law clerk, for a total of \$35,211.25.

In connection with the submission of John S. Grady, Esquire, I have disallowed 30.5 hours for services rendered on claims other than the wage and hour claim. The disallowed hours included 3 hours on 11/14/03 for research into promissory estoppel, 1 hour research on 11/21/03, 2 hours work on memorandum on 1/02/05, 2 hours for the response to motion to dismiss from 1/04/05 to 1/05/05, 12.5 hours for motion for reargument on 4/15/05 and 4/18/05, 1 hour review of memorandum on 5/10/05, 1 hour review of brief on 5/24/05, 2 hours for the reply brief on 6/20/05 and 6/22/05, 2 hours preparation for oral argument on 7/18/05 and 7/19/05, and 4 hours research on 9/11/05

and 9/12/05 on Section 1981. Deducting 30.5 hours from the 179 hours submitted, and adding 5 hours for the preparation of the affidavit for attorney's fees, Mr. Grady should be compensated for 154 hours at \$250.00 an hour for a total of \$38,500.00. The total award for Savla's attorneys is \$73,711.25.

Savla also seeks an award of costs in the amount of \$3,418.02. Ordinarily, court costs are allowed to the prevailing party. *Walsh v. Hotel Corp. of Am.*, 231 A.2d 458 (Del. 1967). Awarding court costs is a matter of judicial discretion. *Donovan v. Delaware Water & Air Resources Comm.*, 358 A.2d 717 (Del. 1976). As to any depositions introduced into evidence, I will allow the court costs associated with any transcript introduced into evidence. I will allow the costs of the arbitration, as well as the costs of witnesses subpoenaed for trial. All other costs are disallowed.

In summary I allowed interest on the unpaid wages and liquidated damages at the rate of 7.25% from May, 2003, interest on \$28,800.00 at 8.25% from January 1, 2004, attorney's fees in the amount of \$73,711.25, plus allowable court costs.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**