

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

| | | |
|------------------------------|---|---------------------|
| James M. Kozel, L.L.C. | : | |
| A Delaware Limited Liability | : | |
| Company | : | |
| | : | |
| Plaintiff, | : | C.A. No. 06-11-0166 |
| | : | |
| v. | : | |
| | : | |
| Mulligan's Pizza Inc. | : | |
| A Delaware Corporation, | : | |
| and Joseph Girgis | : | |
| | : | |
| Defendants. | : | |

**Upon Plaintiff's Motion for Relief from Judgment
and Plaintiff's Motion for Attorney's Fees**

Submitted: June 1, 2007

Decided: June 1, 2007

Plaintiff's Motions are granted.

Ronald G. Poliquin, Esq., Young, Malmberg & Howard, P.A., 30 The Green, Dover,
Delaware 19901, Attorney for Plaintiff

Ronald D. Smith, Esq., Hudson, Jones, Jaywork & Fisher, 225 South State Street, Dover,
Delaware, 19901, Attorney for Defendants.

Trader, J.

In this case two motions are before the Court. First, the plaintiff's seeks relief from the judgment of the Court on the grounds that the defendant's credited offset for vending machine receipts represented 100% of the vending machine proceeds, rather than the 50% he was entitled to. See *Kozel v. Mulligan's Pizza et al.* C.A. No. 06-11-0166, Trader J. (Del. CCP March 21, 2007). The plaintiff has also filed a motion requesting attorney's fees based on paragraph 17 of the lease. The plaintiff's motion for relief from judgment is granted and the motion for attorney's fees is also granted at a reduced amount.

The plaintiff first contends that the Court credited the defendant with an offset of \$3,081.31 and that amount is contrary to the testimony of the plaintiff. The plaintiff is correct. The defendant should have been awarded an offset of 50% of the gross receipts in the amount of \$1,540.66. The defendant, however, is entitled to an offset in the amount of \$2,450.00 as a result of equipment sold subject to plaintiff's distress levy. The amount of damages for repairs in connection with the chimney removal is \$400.00 according to the defendant's testimony. The amount of the judgment as adjusted is \$31,520.10.

The plaintiff has filed a motion requesting attorney's fees in the amount of \$6,048.00 based on the total of 28.8 hours work. The award of reasonable attorney's fees involves the exercise of judicial discretion, after consideration of the following factors: (1) 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 lawyers or lawyers performing the services; (8) whether the fee is fixed or contingent; (9) the employer's ability to pay; and (10) whether counsel has received or expects to receive compensation from any other source. *General Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973).

Following a hearing on the plaintiff's application, I will consider the following in connection with each factor: (1) plaintiff's attorney expended a total of 28.8 hours in connection with the case. The facts were not unduly complicated and there were no legal issues of first impression. Based on the defendant's objections to the plaintiff's motion, I conclude that a reasonable amount of time in connection with this case is 24 hours.

(2) The employment of counsel for the plaintiff precluded counsel from representing other clients.

(3) The fees customarily charged in Kent County for general litigation for the period between 2003 and 2007 for attorneys admitted to the bar in 2003 is \$210.00 an hour.

(4) Counsel for the plaintiff prosecuted an alleged claim of \$50,000.00 and obtained a judgment of \$34, 070.34, plus interest and attorney's fees. Of that amount \$18,000.00 was not in dispute.

(5) Because of defendant's default in payment of rent, the plaintiff sought to promptly exercise his remedy for a rent distress.

(6) Counsel for the plaintiff has rendered professional services in connection with this dispute since November 28, 2006.

(7) The experience, reputation and ability of the lawyer performing the services were good.

(8) The fee is not contingent.

(9) The defendant is gainfully employed and has the ability to pay a reasonable award of attorney's fees.

(10) Plaintiff's counsel has received or expects to receive compensation from his client.

After reviewing all of the above factors, I grant the plaintiff's request for attorney's fees in the amount of \$5,040.00. The defendant is also ordered to pay any additional court costs in connection with this case.

IT IS SO ORDERED.

Merrill C. Trader
Judge