

Stowell v. Action Moving & Storage, Inc., No. S0091-03 Cncv (Katz, J., Nov. 21, 2007)

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STATE OF VERMONT
Chittenden County, ss.:

SUPERIOR COURT
Docket No. S0091-03 CnC

ART STOWELL

v.

ACTION MOVING & STORAGE, INC.

ENTRY

Plaintiff's Motion for Attorney's Fees and Costs

Plaintiff is entitled to costs and reasonable attorneys fees. Plaintiff requests \$40,946.21, but Defendant asserts that this amount is excessive in light of the issues at stake, the limited work involved, and the \$5,481.44 verdict. Plaintiff responds that the many motions, defendant's changes in theory of the case, the complex bookkeeping issues in the suit, and the appeal merited the hours invested, justifying an award of all fees and costs.

The fixing of reasonable attorney's fees is a matter ordinarily within the sound discretion of the trial court. 20 Am. Jur. 2d Costs § 60 n.2 (collecting cases). Many factors bear on what constitute reasonable fees in

any given case, including “the amount involved and the results obtained.” Hensley v. Echerhart, 461 U.S. 424, 429-430 n.3 (1983). “Indeed, the most critical factor in determining the reasonableness of a fee award is the degree of success obtained.” Farrar v. Hobby, 506 U.S. 103, 114 (1992) (reducing \$280,000 attorney’s fees award to zero where plaintiff’s demanded \$17,000,000 for civil rights violations but won only nominal damages). The court should consider the amount of damages awarded as compared to the amount sought. Id. The court must determine through a “measured exercise of discretion” what is justified by the facts of each case, and may lawfully award low fees or no fees in light of the amount and nature of damages awarded. See id.

Plaintiff in this case was successful. \$5,481.44 is certainly more than the token damages in Farrar. We do not think the Plaintiff’s lawyer’s claimed hourly rate of \$150 is unreasonable, or have any reason to doubt the hours expended by the attorney.

However, there is a disparity between the fees requested and the amount in controversy. The claimed fees and costs outstrip the verdict by more than a factor of seven. This is excessive. In a traditional contingency arrangement, Plaintiff’s counsel would receive compensation of one-third of the damages awarded. Statutory attorney’s fees are intended to encourage Plaintiffs to enforce their rights, but are not intended to create a windfall for the attorneys. See id. at 116. Defendant also suggests that Plaintiff was not wholly successful in light of his initial demand. We would find the requested fees excessive even if \$5,481.44 represented a complete victory.

In our discretion, considering all the circumstances of the case, we award \$15,000 as reasonable fees and costs.

Done at Burlington, Vermont, _____, 20__.

M. I. Katz, Judge