

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

**ASHLEY B. THOMPSON** )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
**MIR WAIS, ROOZIA** )  
**SAHIBZADA, AND SHIELD** )  
**HOMES, LLC** )  
 )  
 Defendants. )  
 )

**C.A. No.: CPU4-19-003543**

Submitted: May 31, 2022  
Decided: July 29, 2022

Steven D. Rosen, Esq.  
The Rosen Law Firm, LLC  
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Wilmington, DE 19809  
*Attorney for Plaintiff*

Chandra J. Williams, Esq.  
Rhodunda Williams & Kondraschow  
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Wilmington, DE 19803  
*Attorney for Defendants*

**DECISION ON ATTORNEY FEES**

This is a breach of contract action and fraud action in which Ashley B. Thompson (“Plaintiff”) alleged Mir Wais, Roozia Sahibzada, and Shield Homes, LLC (“Defendants”) breached their contractual obligation to professionally repair or replace the roof of the property Plaintiff purchased and falsely represented material facts to induce Plaintiff to proceed with the settlement of such property. A one-day trial was held on February 24, 2022. After a full trial on the merits, this Court found in favor of Plaintiff on the breach of

contract claim in the amount of \$9,171.08, including pre- and post- judgment interest at the legal rate and reasonable attorney's fees. The Court found in favor of the Defendants regarding the fraud claims.

On May 12, 2022, Mr. Rosen submitted his Application for Attorney's Fees to the Court requesting \$40,725.00 in attorney's fees for work performed in this case from November 2017 to February 2022, plus Court costs of \$162.50 and process server fees of \$195.00, pre- and post- judgment interest at the legal rate through May 2022 of \$2,277.09, totaling \$43,359.59.<sup>1</sup>

On May 27, 2022, Ms. Williams submitted a response to Plaintiff's Application asserting Mr. Rosen's request of fees in the amount of \$40,725 for a one-day trial relating to a fairly simple matter is unreasonable and must be denied.<sup>2</sup> On May 31, 2022, Plaintiff filed a reply.<sup>3</sup>

### **PARTIES' POSITIONS**

It is Plaintiff's position that his Application for Attorney's Fees is reasonable and that the Court should award attorney's fees in the amount of \$40,725.00 plus interest and costs. Defendants argue Mr. Rosen's request for attorney's fees is unreasonable on two grounds. First, pursuant to Delaware Lawyers' Rules of Professional Conduct Rule 1.5(1), Defendant argues Rule 1.5(4), Defendants argue Mr. Rosen's attorney's fees request is so disproportionate to the judgment award that the request must be closely scrutinized, and that Plaintiff did not obtain an "excellent result" entitling her to 100% of her fees.

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<sup>1</sup> Plaintiff's Application for Attorney's Fees (hereinafter "Plaintiff's Application").

<sup>2</sup> Defendant's Response to Plaintiff's Application for Attorney's Fees (hereinafter "Defendant's Response").

<sup>3</sup> Plaintiff's Rely to Defendant's Letter of May 27 (hereinafter "Plaintiff's Reply").

Defendants did not make any additional argument regarding the other factors outlined in Rule 1.5.

### **DISCUSSION**

In Delaware, courts adhere to the American rule, which provides that each party is responsible for its own costs and attorney's fees unless there is a contractual or statutory basis for the award of such fees.<sup>4</sup> In this case Mr. Rosen has a contractual right to collect attorney's fees and litigation costs. Therefore, the remaining issue is whether the attorney's fees requested in Mr. Rosen's application are reasonable under Delaware law.

Defendants' contention is the fee requested was grossly disproportional to the award, the plaintiff disagrees. A fee award which exceeds the damages awarded is not a novel concept in Delaware.<sup>5</sup> In cases in which the amount in dispute is relatively small it is not unusual for an attorney to have more time invested than the value of the case.

The determination of whether attorney's fees requested in a particular case are reasonable is within the discretion of the Court.<sup>6</sup> For guidance, this Court relies on the Delaware Lawyers' Rules of Professional Conduct, Rule 1.5, which provides factors that this Court should consider in determining the reasonableness of attorney's fees. "These factors are not exclusive, nor will each factor be relevant in assessing the reasonableness of attorney's fees."<sup>7</sup> Pursuant to Rule 1.5, this Court will consider the following:

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<sup>4</sup> *Dixon v. Council of the Cliff House Condominium*, 2009 WL 5455537 at \*3 (Del. Com. Pl. Dec. 8, 2009).

<sup>5</sup> *Shoppes of Mount Pleasant, LLC v. J.M.L., Inc.*, 2015 WL 4755491, at \*4 (Del. Com. Pl. Aug. 4, 2015).

<sup>6</sup> *Maple Hill Homeowner Ass'n v. Newton*, 2015 WL 1205283 at \*3 (Del. Com. Pl. Mar. 9, 2015).

<sup>7</sup> *Saunders-Gomez v. Rutledge Maintenance Corporation*, 2016 WL 764123 at \*1 (Del. Com. Pl. Feb. 25, 2016) citing to Del. Lawyers' R. Prof'l. Conduct 1.5(a) cmt.

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the substance of the particular employment will preclude other employment by the lawyer;
- (3) The fees 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 the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers to perform the services;
- (8) Whether the fee is fixed or contingent;
- (9) The employer's ability to pay; and
- (10) Whether claimant's counsel has received or expects to receive compensation from any other source.<sup>8</sup>

Further, this Court must also consider whether the number of hours charged are “excessive, redundant, duplicative or otherwise unnecessary.”<sup>9</sup> The defense does not claim any of the hours billed are redundant, duplicative, or unnecessary. The independent review by the Court does not reveal any redundant, duplicative, or unnecessary charges. Therefore, the only basis to restrict the Plaintiff’s fees is if the Plaintiff’s claim that the fees are excessive finds support in the analysis.

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<sup>8</sup> *New Castle Auto Auction & Consignments, Inc. v. Riley*, 2017 WL 2676966, at \*1-2 (Del. Com. Pl. Apr. 17, 2017) (Welch, J.) (footnotes omitted) (quoting *Dixon v. Council of Cliff House Condo.*, 2009 WL 5455537, at \*4 (Del. Com. Pl. Dec. 8, 2009)).

<sup>9</sup> *Mahani v. Edix Media Group, Inc.*, 935 A.2d 242, 247 (Del. 2007).



This Court finds the following upon application of the aforementioned factors:

***1. Time & Novelty Factor***

Plaintiff's claim was not a straightforward breach of contract claim. This matter involved a dispute over the meaning of contractual language to establish a breach of contract as well as two fraud claims. Neither was it an overly complex case. The crux of the case was the contractual claim, which required the testimony of multiple experts.

***2. Employment Preclusion Factor***

No information was submitted to the Court regarding this prong; however, this was not an overly complex matter that would likely prevent Mr. Rosen from simultaneously handling other matters.

***3. Customary Fees Factor***

Mr. Rosen's hourly rate is not excessive or unheard of in this community. In this community, this Court has noted that an hourly rate of \$400 is "entirely reasonable for a partner in a firm in Delaware and is at or below the hourly rates charged by similarly situated partners in firms."<sup>10</sup> Here, Mr. Rosen's calculation of attorney's fees is based on an hourly rate of \$250 per hour. Mr. Rosen has been practicing law in this community for over two decades, \$250 an hour is not unreasonable for such an experienced attorney.

***4. Amount and Results Factor***

Plaintiff did not prevail on two of three claims. However, on the contractual claim, Plaintiff requested \$8,421.51 plus costs, interest, and fees. The Court awarded \$9,171,08

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<sup>10</sup> *Shoppes of Mount Pleasant, LLC v. J.M.L., Inc.*, 2015 WL 4755491, at \*4 (Del. Com. Pl. Aug. 4, 2015).

plus costs, interest, and fees. The granted relief exceeded the Plaintiff's demand. Thus, in terms of results obtained, Plaintiff succeeded.<sup>11</sup> In fact, the Court concludes the Plaintiff achieved an excellent result.

**5. *Time Limitations Factor***

The Court will not attribute weight to this prong, as it does not appear to be an issue in this case.

**6. *Professional Relationship Factor***

The Court will not attribute weight to this factor. The Court possesses no knowledge as to the nature and length of the professional relationship present here.

**7. *Attorney's Ability Prong***

Mr. Rosen is an experienced member of the Delaware Bar and has been licensed to practice law for over 22 years. His preparation and presentation of the case was both professional and appropriate.

**8. *Fixed or Contingent Fee Prong***

The fee was based on an hourly rate in this case. After reviewing Mr. Rosen's affidavit, this Court finds the time billed appropriate for this case.

**9. *Employer's Ability to Pay Prong***

The Court will not attribute weight to this prong, as it is inapplicable.

**10. *Other Source Compensation Prong***

The Court will not attribute weight to this prong, as it is inapplicable.

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<sup>11</sup> *Id.* (concluding Plaintiff succeeded in terms of results obtained because the demand in the Complaint was \$26,286.75 together with costs, interest, and fees and the Court awarded Plaintiff \$21,984.80).

The Court has reviewed the fee request pursuant to its “independent duty to award a fair and reasonable fee”.<sup>12</sup> On the basis of the factors listed above, the Court concludes that the time billed on non-administrative matters to be reasonable. The Court must then address the administrative or clerical tasks Mr. Rosen has included in his application. “While those tasks are recoverable as part of attorney’s fees, they are not recoverable at the same rate.”<sup>13</sup> The Court does find that administrative or clerical tasks were incorrectly charged at Mr. Rosen’s hourly rate.<sup>14</sup>

“Purely clerical or secretarial tasks” should not be billed at the same rate as time entries that require a professional-level skill.<sup>15</sup> It is reasonably inferable from the face of the entries that a portion of the services performed involved work that appears to have been administrative in nature.<sup>16</sup> After an independent review of Mr. Rosen’s affidavit, the Court identified 112 time entries—which add up to \$5,200—entries that appear to be “purely clerical or secretarial tasks” based on the descriptions.<sup>17</sup> The Court concludes that the fees in question should be reduced by 20% or \$1,040.<sup>18</sup>

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<sup>12</sup> Mayhorn v. Talley-Siders, 2018 WL 1801267, at \*4 (Del. Com. Pl. April 2, 2018).

<sup>13</sup> Lamourine v. Mazda Motor of America, Inc., 2008 WL 8058954, at \*2 (Del. Super. Dec. 29, 2008).

<sup>14</sup> *Id.* (finding that Plaintiff’s counsel was free to operate his practice in whatever manner he chose, but it was not reasonable for Defendants to pay an attorney’s rate for administrative or clerical tasks).

<sup>15</sup> In re TransPerfect Global, Inc., 2021 WL 1811797, at \*32 (Del. Ch. Ct. April 30, 2021).

<sup>16</sup> Examples of such entries the Court has deemed administrative include “Court Email 2021 re CIVIL TRIAL RESCHEDULED FOR JUNE 22 & JUNE 23, 2021, or “Court Emails [Year]”.

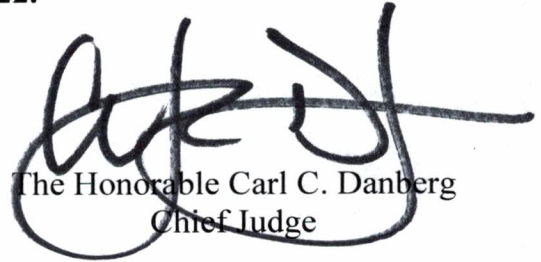
<sup>17</sup> In re TransPerfect Global, Inc., 2021 WL 1811797, at \*32 (Del. Ch. Ct. April 30, 2021).

<sup>18</sup> *Id.* (concluding that 31-time entries would be reduced by 20% because it was reasonably inferable from the face of the entries that only a small portion of the services performed involved work that appeared to be administrative in nature).

**CONCLUSION**

Therefore, this Court awards Plaintiff reasonable attorney's fees in the amount of \$39,685, plus court costs of \$162.50 and process server fees of \$195.00, and pre and post judgment interest rate through May 2022 of \$2,277.09, totaling \$42,319.59.

**IT IS SO ORDERED this 29<sup>th</sup> day of July 2022.**



The Honorable Carl C. Danberg  
Chief Judge

cc: Patricia Thomas, Judicial Case Manager



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