

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 08-cv-01119-MSK-KLM

TONY'S TAPS, LLC, d/b/a Pagosa Brewing Company, Inc.,

Plaintiff,

v.

PS ENTERPRISES, INC., d/b/a Pagosa Pub Works Brewpub,
FRANK SCHIRO, and
ROBIN SCHIRO,

Defendants.

ORDER AWARDING ATTORNEY FEES

THIS MATTER comes before the Court pursuant to Plaintiff's Counsel's Affidavit in Support of Attorney Fees (**#195**) and accompanying exhibits, to which the Defendants objected (**#196**), and the Plaintiff's counsel replied (**#198**).

Having reviewed the SAME, the Court **FINDS**:

- (1) The Court awarded fees to Plaintiff's counsel incurred with regard to the filing of the Motion for Entry of Default (**#179**), the Motion to Dismiss Counterclaim (**#180**), and Motion for Default Judgment (**#185**), which were occasioned by Defendant PS Enterprises, Inc.'s failure to obtain counsel or to request an extension of time to obtain counsel in accordance with the Court's Order of March 3, 2011 (**#177**);
- (2) Although PS Enterprises, Inc. was seeking replacement counsel, it did not advise

either the Court or Plaintiff's counsel of its intention to retain new counsel or its inability to do so by the date specified in the March 3, 2011 Order (#177);

- (3) Had PS Enterprises, Inc. provided notice to the Court or opposing counsel or requested an extension of time to obtain replacement counsel, the filing of the Motion for Entry of Default (#179), the Motion to Dismiss Counterclaim (#180), and Motion for Default Judgment (#185) would not have been necessary;
- (4) Plaintiff is represented by two attorneys, who divided the work associated with the preparation of these motions;
- (5) No justification has been shown for extensive communication, revision, duplicative research, or review of the work prepared by co-counsel, and, therefore, no allowance is made for same;
- (6) The time spent by Mr. Kenton Freudenberg for preparation of the Motion for Default (#179) is 10 hours, which the Court finds to be reasonable;
- (7) The time spent by Mr. Freudenberg in preparation of the Motion for Default Judgment (#185) is 15.7 hours, which the Court finds to be reasonable;
- (8) There is no objection to Mr. Freudenberg's hourly rate of \$160; thus, the reasonable fees incurred by Mr. Freudenberg are \$4112.00;
- (9) The time spent by Mr. Reid Kelly for preparation of the Motion to Dismiss Counterclaim (#180) is 7 hours, which the Court finds to be reasonable;
- (10) The time spent by Mr. Kelly's paralegal formatting and filing the motions is 3.9 hours, which the Court finds to be reasonable;
- (11) There is no objection to Mr. Kelly's hourly rate of \$175 or the paralegal's hourly

rate of \$60; thus, the reasonable fees incurred by Mr. Kelly and his paralegal are \$1459.00;

- (12) The Court does not find that the charges related to the appearance at a hearing on April 5, 2011 to have been necessitated by these motions, nor did it require the participation of both counsel for the Plaintiff; therefore, no allowance is made.

IT IS THEREFORE ORDERED THAT PS Enterprises, Inc. and Frank and Robin Schiro, who are the owners thereof, shall pay the sum of \$4112.00 to Mr. Freudenberg and the sum of \$1459.00 to Mr. Kelly within twenty (20) days of the date of this Order, failing which the Court will enter a judgment in favor of each attorney and against each defendant, jointly and severally, upon request of the attorneys.

Dated this 21st day of April, 2011

BY THE COURT:

A handwritten signature in black ink that reads "Marcia S. Krieger". The signature is written in a cursive style and is positioned above a horizontal line.

Marcia S. Krieger
United States District Judge