

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

ISMAIL SHAHATA,	) CIVIL NO. 09-00231 ACK-KSC
	)
Plaintiff,	) REPORT OF SPECIAL MASTER
	) RECOMMENDING THAT THE
vs.	) MOTION OF R. STEVEN
	) GESHELL FOR AN AWARD OF
W STEAK WAIKIKI, LLC, a	) ATTORNEY'S FEES, COSTS AND
Hawaii limited liability	) LIEN FOR REPRESENTING
company,	) PLAINTIFF BE GRANTED IN
	) PART AND DENIED IN PART
Defendant.	)
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REPORT OF SPECIAL MASTER RECOMMENDING THAT THE  
MOTION OF R. STEVEN GESHELL FOR AN AWARD OF  
ATTORNEY'S FEES, COSTS AND LIEN FOR REPRESENTING  
PLAINTIFF BE GRANTED IN PART AND DENIED IN PART

Before the Court is the Motion of R. Steven Geshell For an Award of Attorney's Fees, Costs, and Lien for Representing Plaintiff ("Motion"), filed November 10, 2009. As directed by the Court, Mr. Geshell filed a supplemental memorandum on November 16, 2009. On November 24, 2009, Defendant W Steak Waikiki, LLC ("Defendant") filed a Statement of No Position. On December 15, 2009, Plaintiff Ismail Shahata ("Plaintiff") filed an Objection to the Motion. Mr. Geshell filed a Reply on December 17, 2009.

This matter came on for hearing on December 29,

2009. Mr. Geshell appeared; Plaintiff appeared by phone *pro se*;<sup>1</sup> and Hope Bennett, Esq., appeared on behalf of Defendant. After carefully reviewing the Motion, the supporting and opposing memoranda, and the relevant case law, the Court FINDS and RECOMMENDS that the Motion be GRANTED IN PART AND DENIED IN PART for the reasons set forth below.

#### BACKGROUND

Plaintiff commenced this action on May 21, 2009. By way of document titled "Attorney Substitution" dated October 27, 2009, and received by the Court on October 29, 2009, Plaintiff informed the Court that he had relieved his attorney, Mr. Geshell. On November 2, 2009, Mr. Geshell filed a Motion to Withdraw as Attorney for Plaintiff, which the Court granted.

#### DISCUSSION

Mr. Geshell requests fees and costs in the amount of \$2,350.21 due to his premature discharge

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<sup>1</sup> At the hearing, Plaintiff requested that he be allowed to use an interpreter, Mohamed Tarakji, and the Court so permitted.

without cause. Plaintiff asserts that at no time was he satisfied with Mr. Geshell's services. Although disputed by Mr. Geshell, Plaintiff claims that he enlisted the assistance of a third party to advise Mr. Geshell about how to proceed with the case, and whose assistance resulted in the commencement of this action.

Because the basis of jurisdiction in this case is diversity, the Court looks to Hawaii law in assessing Mr. Geshell's entitlement to attorneys' fees. In Hawaii, it is established that

[w]hen an attorney who is employed on a contingent fee contract is discharged without fault on his part before the happening of the contingency, the contingent fee contract is ended and the attorney is entitled to an award of the reasonable value of his services as agreed upon or as determined by the court under the guidelines of Sharp v. Hui Wahine, Inc., 49 Haw. 241, 413 P.2d 242 (1966), but in the exercise of its discretion.

Hoddick, Reinwald, O'Connor & Marrack v. Lotsof, 6 Haw. App. 296, 303, 719 P.2d 1107, 1113 (1986) (citing Booker v. Midpac Lumber Co., Ltd., 65 Haw. 166, 649 P.2d 376 (1982)).

Here, the Court finds that Mr. Geshell is

entitled to an award of reasonable attorneys' fees and costs for his services from the commencement of the attorney-client relationship to the time of his termination. Based on the record before the Court, it appears that Mr. Geshell was terminated without fault, despite Plaintiff's allegations to the contrary.

At the hearing, Plaintiff, through his interpreter Mohamed Tarakji, presented arguments not included in his Objections to the Motion. Consequently, the arguments carry little to no weight. The Court instead finds that Mr. Geshell's actions, upon which Plaintiff justifies his discharge, were appropriate and consistent with the practice in this Court.

First, Mr. Geshell properly filed the Complaint in this Court,<sup>2</sup> and successfully obtained in forma pauperis status for Plaintiff. Plaintiff takes issue with a purported contradiction in the amount of damages Mr. Geshell represented he would seek and those

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<sup>2</sup> Plaintiff erroneously believes that Mr. Geshell improperly filed the Complaint here and should have instead commenced the action in Virginia.

specifically requested in the Complaint. There is no contradiction. The Complaint includes certain special damage amounts, but also prays for special, general, and punitive damages in amounts to be proven at trial. Significantly, while Plaintiff now voices his protestation, contained in the Complaint is his verification that he read the Complaint, knew the contents thereof, and that the contents were true. See Verified Compl. At the hearing, Mr. Tarakji confirmed that at the time the Complaint was filed, he had translated the substance of the Complaint for Plaintiff.

Second, Plaintiff's concerns about Mr. Geshell's alleged improper scheduling are unfounded. The dates and deadlines set forth in the Rule 16 Scheduling Order are Court-imposed. Mr. Geshell did not have the power to expedite this action, nor was he in a position to control the Court's calendar.

Third, the fact that Mr. Geshell did not file a motion for summary judgment prior to conducting and receiving requisite discovery from Defendant, does not

demonstrate or establish any inadequacy or incompetence in his representation of Plaintiff such that discharge with fault would be justified. Plaintiff maintains that Mr. Geshell was supposed to file a motion for summary judgment. However, under the Scheduling Order, the deadline for dispositive motions is March 17, 2010. Attorneys ordinarily and regularly file dispositive motions, such as motions for summary judgment, on the deadline. In fact, it is rather uncommon for attorneys to file motions for summary judgment months in advance of the deadline and before the parties have conducted formal discovery.

Having determined that Plaintiff discharged Mr. Geshell without fault, the Court must now assess the reasonableness of the fees and costs requested. After careful review of Mr. Geshell's timesheet and Declaration, the Court finds that his hourly rate of \$250 is manifestly reasonable, and is consistent with and even below the prevailing rates in the community for similar services performed by attorneys of comparable experience, skill and reputation. In

addition, the Court finds that Mr. Geshell reasonably and necessarily expended 8.9 hours on this action. Accordingly, the Court recommends that he be awarded \$2,328.91 in attorneys' fees and tax.<sup>3</sup>

With respect to Mr. Geshell's request for costs, the Court recommends denial without prejudice. Insofar as Mr. Geshell did not provide the Court with supporting documentation for his request, as required by Local Rule 54.2(f)(4), the Court is unable to determine whether the request is reasonable. Mr. Geshell may renew his request. However, any renewed request for costs should be supported with appropriate documentation and should comply with the applicable Local Rules.

Finally, the Court recommends that the district court impose a lien for the recommended \$2,328.91 award of fees, pursuant to both Hoddick, Reinwald, O'Connor & Marrack v. Lotsof and the Contingency Fee Contract

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<sup>3</sup> This award is reasonable despite Plaintiff's in forma pauperis status, as Mr. Geshell only seeks to recover the fees from any judgment or settlement that Plaintiff may obtain.

("Contract") executed by Mr. Geshell and Plaintiff on February 25, 2009. Under the terms of the Contract, Plaintiff "expressly assigns to Counsel, to the extent of the amounts payable under Paragraphs 2 and 3 hereof, the right to receive any sum(s) realized by way of settlement or judgment and grants a lien to Counsel as to such sum(s)." Mot., Ex. 1 at ¶ 5. Plaintiff has not argued, nor is there evidence to suggest, that the Contract is unenforceable.<sup>4</sup>

Even if Plaintiff had not contractually granted a lien, or the Contract was unenforceable, Hawaii recognizes the right of a discharged attorney who served under a contingent fee agreement to "assert a charging lien for costs advanced and reasonable attorney fees against his former client's recovery in the case." Hoddick, 6 Haw. App. at 304, 719 P.2d at 1114 (citing Carroll v. Miyashiro, 50 Haw. 413, 441

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<sup>4</sup> At the hearing, Plaintiff argued that he signed a retainer without understanding it or reviewing it. It is unclear whether the retainer and the Contract are the same document. For the purposes of this Motion, it is irrelevant because there is an independent legal basis for the imposition of a lien.



P.2d 638 (1968)). Thus, the Court finds that the imposition of a lien for the amount of the aforementioned attorneys' fees (as well as any costs that may be taxed against Plaintiff in the future) is appropriate.


#### CONCLUSION

Based on the foregoing, this Court, acting as Special Master, FINDS and RECOMMENDS that the Motion of R. Steven Geshell For an Award of Attorney's Fees, Costs, and Lien for Representing Plaintiff, filed November 10, 2009, be GRANTED IN PART AND DENIED IN PART. The Court recommends that the Motion be granted with respect to 1) the request for attorneys' fees and that the district court award Mr. Geshell \$2,328.91 in attorneys' fees and tax and 2) the imposition of a lien for said amount. The Court recommends that the Motion be denied without prejudice as to the request for costs.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, December 30, 2009.



  
Kevin S.C. Chang  
United States Magistrate Judge

SHAHATA V. W STEAK WAIKIKI, LLC; CIVIL NO. 09-00231 ACK-KSC; REPORT OF SPECIAL MASTER RECOMMENDING THAT MOTION OF R. STEVEN GESHELL FOR AN AWARD OF ATTORNEY'S FEES, COSTS AND LIEN FOR REPRESENTING PLAINTIFF BE GRANTED IN PART AND DENIED IN PART