The Western Kentucky Royalty Trust v. Armstrong Coal Reserves, Inc. et al Doc. 123

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

CIVIL ACTION NO. 4:11-CV-00114-M

WESTERN KENTUCKY ROYALTY TRUST **PLAINTIFF**

V.

ARMSTRONG COAL RESERVES, INC., et al. **DEFENDANTS**

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Plaintiff's Motion for Attorney's Fees and Supporting Legal Memorandum [DNs 109, 110]. Fully briefed, this matter is ripe for decision. For the following reasons, Plaintiff's motion is **GRANTED**. Plaintiff is entitled to an award of $273,366.

I. BACKGROUND

This dispute arose due to the parties' differing interpretations of a Settlement Agreement and certain Royalty Agreements. Specifically, the parties disputed: (1) whether Plaintiff is entitled to dual royalties for certain coal that was mined or extracted and subsequently sold from the Agreements' included properties; and (2) whether, under any circumstances, Plaintiff is entitled to royalties when the coal reserves mined or extracted were acquired by Defendants after July 25, 2008. The parties filed cross-motions for summary judgment on these issues.

On November 28, 2012, this Court entered a Memorandum Opinion and Order, granting in part and denying in part the parties' respective motions for summary judgment. The Court held that: (1) Plaintiff is entitled to a dual royalty when certain listed coal reserves are "extracted" from "real property" (i.e. when the reserves are extracted from a listed surface-tract); and (2) Plaintiff is not entitled to a royalty for subsequently-acquired coal (i.e. coal acquired by Defendants after July 25, 2008). (Mem. Op. & Order [DN 82].) On February 21, 2013, this Court entered another

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Memorandum Opinion and Order, denying Plaintiff's claim for additional royalties on coal removed by the strip-mining method and again denying Plaintiff's claim for surface royalties on subsequently-acquired coal that is extracted from a listed surface-tract. The Court also held that under the Royalty Agreements, Plaintiff is entitled to some measure of attorney's fees. (Mem. Op. & Order [DN 103].)

Plaintiff has now moved for an order awarding it "all of its costs and expenses, including attorney's fees, incurred by WKRT in . . . protecting and preserving its rights under [the 2008 Royalty Agreements]." (See Armstrong Royalty Agreement [DN 110-1] § 11.3; Ceralvo Royalty Agreement [DN 110-2] § 9.3.) Specifically, Plaintiff seeks: (1) $243,456 in attorney's fees and $6,146 in costs billed to it by Frost Brown Todd LLC; (2) $15,097 in attorney's fees and $112 in costs billed to it by Sullivan Mountjoy; (3) $3,555 in attorney's fees and costs incurred by Steve Crone, Esq.; and (4) $5,000 in fees for the prosecution of its Motion for Attorney's Fees.[1] (See Mot. for Attorney's Fees & Supp. Legal Mem. [DNs 109, 110] 1–2.) Defendants do not challenge the amount of attorney's fees and costs billed to Plaintiff by Frost Brown Todd LLC; Sullivan Mountjoy; or Steve Crone, Esq. on the grounds that the total number of hours devoted or the hourly rates charged were unreasonable. (Resp. to Pl. WKRT's Mot. for Attorney's Fees & Supp. Legal Mem. [DNs 113, 115] 4.) Instead, Defendants ask the Court to adjust downward the fees based on the "limited scope of relief obtained by WKRT in relation to its efforts to obtain additional royalties." (Id. at 5.)

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[1] Plaintiff initially sought an additional award of $74,200 for Trustee Samuel S. Francis's time spent in connection with the case. (See Mot. for Attorney's Fees & Supp. Legal Mem. [DNs 109, 110] 2.) However, the parties have stipulated that this request is withdrawn. (See Stipulations [DN 112] ¶ 1.) Due to this stipulation, Plaintiff's request has been denied with prejudice as moot. (See Order [DN 119] ¶ 1.) The Court will not address it in this Memorandum Opinion & Order.

II. DISCUSSION

In diversity cases, an attorney's entitlement to fees is governed by state law. See Hometown Folks, LLC v. S & B. Wilson, Inc., 643 F.3d 520, 533 (6th Cir. 2011) (citation omitted). Under Kentucky law, when an attorney seeks to recover fees from an opposing party, the issue of what fee is reasonable is an issue of law to be decided by the court. See Inn-Gp. Mgmt. Servs., Inc. v. Greer, 71 S.W.3d 125, 130 (Ky. App. 2002). Kentucky has adopted the "lodestar" method used by the U.S. Supreme Court in Hensley v. Eckerhart, 461 U.S. 424, 433 (1983), as a starting point in calculating attorneys' fee claims. See Meyers v. Chapman Printing Co., 840 S.W.2d 814, 826 (Ky. 1992).

Under the lodestar method, a lodestar figure is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. See Hensley, 461 U.S. at 433. The lodestar figure may then be adjusted based upon certain factors. See Meyers, 840 S.W.2d at 826. In Kentucky, courts consider the following: "(1) amount and character of services rendered; (2) labor, time, and trouble involved; (3) nature and importance of the litigation in which the services were rendered; (4) responsibility imposed; (5) the amount of money or value of the property affected by the controversy, or involved in the employment; (6) skill, experience, professional character, and standing of the attorneys; and (7) the results secured." See GATX Corp. v. Appalachian Fuels, LLC, 2011 WL 3104070, at *5 (E.D. Ky. July 8, 2011) (citing Boden v. Boden, 268 S.W.2d 632, 633 (Ky. 1954)). In this case, Defendants do not dispute the reasonableness of the $268,366[2] that constitutes Plaintiff's claimed attorney's fees and costs. Instead, Defendants argue that a downward adjustment

[2] This total includes the following amounts sought by Plaintiff: (1) $243,456 in attorney's fees and $6,146 in costs billed to it by Frost Brown Todd LLC; (2) $15,097 in attorney's fees and $112 in costs billed to it by Sullivan Mountjoy; and (3) $3,555 in attorney's fees and costs incurred by Steve Crone, Esq. ($243,456 + 6,146 + 15,097 + 112 + 3,555 = $268,366)

of this amount is appropriate due to Plaintiff's "limited success." (Defs.' Resp. [DNs 113, 115] 6.) Plaintiff maintains that no adjustment is necessary.

In support of their respective positions, both parties heavily rely on the U.S. Supreme Court's decision in Hensley. In that case, the Court held that when a plaintiff presents "distinctly different claims for relief that are based on different facts and legal theories . . . no fee may be awarded for services on the unsuccessful claim." 461 U.S. at 435. By contrast, when a plaintiff's claims "involve a common core of facts or [are] based on related legal theories," the district court "should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." Id. Here, the Court finds that this case should be construed as falling into the latter category, as Plaintiff's claims each related to interpreting the parties' Royalty Agreements and Settlement Agreement—and to deciphering the interplay between the documents. See id. (noting that in some cases, counsel's time will be "devoted generally to the litigation as a whole, making it difficult to divide the hours expended"). As such, the Court will "focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." Id.

With respect to the significance of the relief obtained, the parties take divergent approaches. Plaintiff begins by arguing that it won "substantial relief" and that it "should not have [its] attorney's fee reduced simply because the district court did not adopt each contention raised." See id. at 440. Plaintiff highlights that solely with respect to the Western Diamond surface tracts listed at Section 1(vii) of the 2008 Armstrong Royalty Agreement, Defendants have mined 2,479,272.98 tons of Ceralvo coal reserves between August 2011 and February 2013—for which Plaintiff is entitled to a surface royalty of $549,479.02. (Accounting [DN 109-1].) Further, since there is approximately

47,350,000 saleable tons of coal projected to be extracted from those surface tracts, (Confidential Info. Mem. [DN 109-2] 15), Plaintiff anticipates that approximately $13,000,000 of royalties will become due over the next thirteen or fourteen years. Plaintiff contends that this is clearly "substantial relief," as the recovery constitutes the majority, in dollar amount, of the royalties that were sought in this action. According to Plaintiff's calculations, it recovered approximately 63% of the royalties sought. (WKRT's Reply in Supp. of its Mot. for Attorney's Fees [DNs 116, 118] 8.)

Defendants counter that in this case, Plaintiff "has achieved only partial or limited success," and that "the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate [is] an excessive amount." Hensley, 461 U.S. at 436. Defendants' argument is primarily based on the fact that Plaintiff raised several unsuccessful claims during this litigation, including claims for: (1) royalties associated with coal processed and shipped from a listed surface-tract; (2) royalties associated with coal "sold" from a listed surface-tract; and (3) royalties associated with coal "located under" a listed surface-tract. (Resp. [DNs 113, 115] 11.) Defendants suggest that it would be reasonable for the Court to value each of these unsuccessful claims as approximately equal to the value of Plaintiff's successful claim for royalties associated with coal "extracted" from "real property," leaving a situation where Plaintiff would be deemed to have obtained approximately 25% of the requested relief. Defendants then argue that a proportionate downward adjustment of the claimed award amount is appropriate. Further, Defendants argue that the Court should additionally adjust the claimed award amount downward to 15% due to the fact that Plaintiff's other requests for relief, seeking royalty amounts totaling at least $338,480.89, were either denied or withdrawn.[3]

[3] These requests include Plaintiff's claims for: (1) royalties associated with coal that is surface-mined from a listed surface property; (2) royalties associated with subsequently-acquired coal that is extracted through a portal located on a listed surface property; and (3) royalties associated with

The Court finds that Plaintiff's approach is more appropriate. In this case, after considering numerous pages of briefing and the parties' respective arguments, the Court found that Plaintiff is entitled to a dual royalty when certain listed coal reserves are "extracted" from "real property." Based on the parties' latest accounting, these royalties total $549,479.02. Moreover, Plaintiff anticipates that approximately $13,000,000 of royalties will become due over the next thirteen or fourteen years. The Court finds that this recovery is clearly "substantial relief," as it constitutes a significant amount of the royalties that were sought in this action.

It cannot be denied that Plaintiff's counsel devoted much time to pursuing its successful claim. The numerous pages that were devoted to this claim in Plaintiff's briefing indicates as much. (See WKRT's Reply in Supp. of its Mot. for Attorney's Fees [DNs 116, 118] 3–4 (noting that 19 of 28 pages of its summary judgment memorandum, 10 of 15 pages of its summary judgment reply, 20 of 26 pages of the oral argument transcript, 19 of 29 pages of its opposition papers, and 13 of 16 of Plaintiff's disputed facts addressed this claim).) Likewise, it cannot be denied that the claim on which Plaintiff prevailed was one of the most vigorously contested claims in the case.[4] As the Court noted in Hensley, "[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. . . . [T]he fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit." 461 U.S. at 435.

The Court notes that while "the most critical factor is the degree of success obtained," id. at

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subsequently-acquired coal that is mined from subsequently-acquired surface property. (Resp. [DNs 113, 115] 12.)

[4] The Court notes that to prevail on this claim, Plaintiff had to make numerous successful arguments that were related to construing the parties' Settlement Agreement with their Royalty Agreements, including whether the Settlement Agreement's general language precluded Plaintiff's entitlement to a surface royalty based on the more specific language in the Royalty Agreements. (See Mem. Op. & Order [DN 82] 11–13.)

436, the Supreme Court has explained that there is "[a] strong presumption that the lodestar figure . . . represents a 'reasonable' fee." Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986). Moreover, the Sixth Circuit has stated that a reduction in attorney fees is to be applied only in rare and exceptional cases where specific evidence in the record requires it. Adcock–Ladd v. Sec'y of Treasury, 227 F.3d 343, 349–50 (6th Cir. 2000). Here, the Court finds that this is not a rare and exceptional case. While Plaintiff did not prevail on every contention that it raised, the Court finds that there is nevertheless a reasonable relationship between the extent of Plaintiff's success and the amount of the fee award. Additionally, the Court finds that other factors point to allowing Plaintiff its full recovery. This case itself was a complex contract interpretation matter that had a significant amount of money at stake and required much skill and experience from the parties' counsel. The parties' counsel spent a significant amount of labor and time in the case, both writing briefs and attending oral arguments for the Court. While Plaintiff did not prevail on every contention, the Court still found in its favor on the important issue of whether Plaintiff was entitled to a dual royalty when certain listed coal reserves are "extracted" from "real property"—and doing so has entitled Plaintiff to millions of dollars in future royalties. The Court must take these factors into account.

The Court also notes that Defendants' proposed approach of adjusting the award downward to 15% of Plaintiff's claimed fees and costs is flawed. Defendants' approach is based on Defendants' comparison of the total number of claims raised by Plaintiff to the single successful claim. It is also based on Defendants' estimation that Plaintiff's unsuccessful claims are likely comparable in value to Plaintiff's successful claim. The Court agrees with Plaintiff that this approach fails to account for the time and effort that is attributable to each of Plaintiff's claims. In Hensley, the U.S. Supreme

Court rejected a "mathematical approach comparing the total number of issues in the case with those actually prevailed upon." 461 U.S. at 435 n.11. The Sixth Circuit has made similar holdings. See Thurman v. Yellow Freight Sys., Inc., 90 F.3d 1160, 1169 (6th Cir. 1996) (recognizing that "a court should not reduce attorney fees based on a simple ratio of successful claims to claims raised"). In this case, the Court likewise refuses to adopt Defendants' mathematical approach. This is especially true because some of the claims that Defendants give weight were not actively pursued by Plaintiff (i.e. the allegation that Plaintiff was entitled to a royalty on coal "sold from" a listed surface-tract) or did not consume a significant portion of the parties' time (i.e. the allegation that Plaintiff should receive a royalty on coal "located under" a listed surface-tract). Indeed, in consideration of the factors discussed above, the Court finds that it would be reasonable to award Plaintiff the entire amount of its claimed attorney's fees and costs. Therefore, Plaintiff is entitled to $268,366. The Court is of the opinion that this adequately compensates Plaintiff for the reasonable number of hours it spent.

Next, the Court must address Plaintiff's claim for $5,000 in fees for the prosecution of this motion. Defendants cite to Coulter v. State of Tennessee, 805 F.2d 146, 151 (6th Cir. 1986), to argue that the Court should limit the amount of fees awarded to Plaintiff for the prosecution of this motion to 3% of the fees awarded to Plaintiff in litigating its claims for royalties. Plaintiff counters that the $5,000 amount should not be reduced because the hours spent to produce the requested $5,000 amount are well below 3% of the hours spent in the main case.

In Coulter, the Sixth Circuit recognized that "[a]lthough time spent in preparing, presenting, and trying attorney fee applications is compensable; some guidelines and limitations must be placed on the size of these fees." Id. Accordingly, the Court held that:

> In the absence of unusual circumstances, the hours allowed for preparing and litigating the attorney fee case should not exceed 3% of the hours in the main case

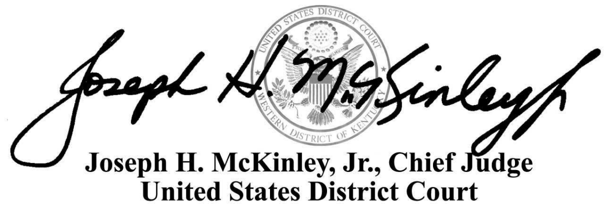
> when the issue is submitted on the papers without a trial and should not exceed 5% of the hours in the main case when a trial is necessary. Such guidelines and limitations are necessary to insure that the compensation from the attorney fee case will not be out of proportion to the main case and encourage protracted litigation.

Id. Case law from the Sixth Circuit suggests that attorney's fees for the prosecution of a fee motion should be limited to 3% of the amount actually awarded, not 3% of the amount originally sought. See Gonter v. Hunt Valve Co., 510 F.3d 610, 621 (6th Cir. 2007) (applying the 3% rule to the district court's lodestar award, which was calculated using an hourly billing rate that "effectively reduced the lodestar by twenty percent" from the original lodestar amount sought).

As discussed above, the Court has found that a reasonable award in this case is $268,366. Three percent of this amount is $8.050.98. Plaintiff has only requested $5,000 for the prosecution of this motion. This is below the 3% threshold and the Court finds that it is reasonable. As such, Plaintiff is awarded an additional $5,000. In total, then, Plaintiff is entitled to $273,366. This amount represents $268,366 in attorney's fees and costs, and $5,000 for the prosecution of this motion.

IV. CONCLUSION

For the reasons set forth above, **IT IS HEREBY ORDERED** that Plaintiff's Motion for Attorney's Fees and Supporting Legal Memorandum [DNs 109, 110] is **GRANTED**. Plaintiff is entitled to an award of $273,366.



Joseph H. McKinley, Jr., Chief Judge
United States District Court

June 5, 2013

cc: counsel of record