

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

**DOMINIC'S RESTAURANT OF DAYTON,
INC., et al.,**

Plaintiffs,

Case No. 3:09-cv-131

Judge Thomas M. Rose

-v-

CHRISTIE L. MANTIA, et al.,

Defendants.

**ENTRY AND ORDER GRANTING PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES AND COSTS IN THE AMOUNT OF \$19,725 (Doc.
#61.)**

The Court issued a Temporary Restraining Order ("TRO") in this matter on April 20, 2009, essentially restraining all of the Defendants from the use of the "Dominic's" name. (Doc. #14.) On May 14, 2009, in response to Plaintiffs' Amended Motion To Show Cause and Application for Order of Contempt, the Court issued a new and different Temporary Restraining Order ("TRO2") that includes the same provisions as the TRO plus a provision increasing the bond to be posted by the Plaintiffs from \$10,000 to \$30,000 and a provision requiring Reece Powers, III ("Powers"), Harry Lee ("Lee") and Dominics Restaurant, Inc. ("DRI") to immediately cease operation of the restaurant located at 630 East Dixie Drive in West Carrollton, Ohio. (Doc. #29.) The May 14th Order also found that Defendants Powers, Lee and DRI were in contempt of the TRO and thus liable for the Plaintiffs' attorneys' fees and costs associated with Plaintiffs' Amended Motion To Show Cause and Application for Order of Contempt.

On May 20, 2009, the Court overruled Powers', Lee's and DRI's (collectively the

“Restaurant Defendants”) Motion To Stay TRO2. (Doc. #44.) On June 8, 2009, the Court overruled the Restaurant Defendants’ Motion To Modify TRO2. (Doc. #60.)

Following agreed time extensions and a hearing on the matter, the Court then issued a Preliminary Injunction. (Doc. #65.) The Preliminary Injunction, issued on June 24, 2009, permitted the restaurant to reopen using a menu submitted by the Restaurant Defendants unless the Court subsequently approves a different menu that is agreed to by the Parties. Powers, Lee and DRI have appealed this Preliminary Injunction pro se.¹ (Doc. #70.)

Thus, this Court has, among other things, already awarded attorneys’ fees for Plaintiffs’ Amended Motion To Show Cause and Application for Order of Contempt. What remains is to determine the amount.

Now before the Court is Plaintiffs’ Verified Motion for Attorneys’ Fees and Costs. (Doc. #61.) This Motion was filed on June 15, 2009. At that time, the Restaurant Defendants were represented by counsel and the Motion was served on that counsel. A response to the Motion was due not later than July 10, 2009. The Restaurant Defendants were represented by the same counsel during and at the end of that time period. A response has yet to be filed. Therefore, Plaintiffs’ Verified Motion for Attorneys’ Fees and Costs is unopposed and now ripe for decision.

¹Attorneys Kevin W. Kirsch and Lance Gildner, of the firm of Taft Stettinius & Hollister, initially appeared for the Restaurant Defendants. (Doc. #6.) On April 30, 2009, Kirsch and Gildner withdrew and Charles C. Ashdown, of the firm of Strauss and Troy appeared for the Restaurant Defendants. (Doc. #17.) On May 9, 2009, Ashdown withdrew and attorney Dennis Lieberman, of the firm of Flannagan, Lieberman, Hoffman and Swaim appeared for the Restaurant Defendants. (Doc. #26.) On May 21, 2009, Lieberman withdrew and attorneys Steven Dankoff and Thomas J. Intili of the firm of Skilken, Lowe and Dankoff appeared for the Restaurant Defendants. (Doc. #47.) On July 21, 2008, Dankoff and Intili were granted permission to withdraw. (Doc. #69.) The Restaurant Defendants have since proceeded pre se.

Plaintiffs seek a fee award in the amount of \$19,725 for having to prosecute their Amended Motion To Show Cause and Application for Order of Contempt. Plaintiffs also seek an enhancement to this amount as to be determined by the Court.

Plaintiffs' Verified Motion seeks a *Lodestar* amount of \$19,725 based upon 52.6 hours worked at an hourly rate of \$375. Further, Plaintiffs have submitted the Affirmation of Don Schelling who affirms that both this hourly rate and this number of hours worked are reasonable. (Affirmation of Don Schelling ¶¶ 11-18 June 12, 2009.)

Plaintiffs also argue that the *Lodestar* amount should be adjusted upward in this case because of the quality and type of service provided, because of the wilful violations of the TRO exhibited by the Restaurant Defendants, and because of the extensive efforts by Plaintiffs' counsel to assure no such wilful violations. However, the Court declines to adjust the *Lodestar* amount upward.

Plaintiffs Motion for Attorneys' Fees and Costs (doc. #61) is GRANTED. Plaintiffs' are hereby awarded \$19,725 in attorneys' fees and costs for having to prosecute Plaintiffs' Amended Motion To Show Cause and Application for Order of Contempt. Defendants Reece Powers, III, Harry Lee and Dominic's Restaurant, Inc. are jointly and severally liable for this amount.

The Defendants must serve a copy of any documents that they submit for consideration by the Court on the Plaintiffs' attorney. The original is to be filed with the Court.

The Defendants must include a certificate of service on any documents submitted for consideration by the Court. The Certificate of Service must state the date and state that the Defendants have mailed a true and accurate copy of the document to the Plaintiffs' attorney. Any document that has not been filed with the Clerk of Court or that fails to include a proper

Certificate of Service will be disregarded by the Court.

Finally, if one or all of the Defendants retain new counsel, the new counsel must immediately inform the Court. Also, the Defendants must promptly inform the Clerk of Court of any changes of address.

DONE and **ORDERED** in Dayton, Ohio this 12th day of August, 2009.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

copies furnished to:

counsel of record

Mr. Harry Lee, *pro se*
165 North Pelham Drive
Dayton, OH 45429

Mr. Reece Powers III, *pro se*
7142 St. Ives Place
West Chester, OH 45069

Dominic's Restaurant, Inc.
7142 St. Ives Place
West Chester, OH 45069

Ms. Christie L. Mantia
165 North Pelham Drive
Dayton, OH 45429