

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2017 CA 0994

LISA SEAL FRIGON, AS THE ADMINISTRATRIX OF
THE ESTATE OF ADLER BERRIMAN SEAL

VERSUS

UNIVERSAL PICTURES, INC., DEBORAH DUBOIS SEAL, AARON SEAL,
CHRISTINA SEAL WARMACK, AND DEAN BERRIMAN SEAL

Judgment Rendered: JUN 21 2018

On appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 643,044

Honorable Donald R. Johnson, Judge Presiding

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BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

2018
PETTIGREW, J. concurs in part and Dissents in Part, and assigns Reasons

GUIDRY, J.

The appellant, Lisa Seal Frigon, as administratrix of the estate of Adler Berriman Seal, appeals an April 17, 2017 judgment of the trial court wherein the court awarded Universal City Studios, LLC, \$50,772.82 in attorney fees and costs as the prevailing party on a special motion to strike, despite the trial court having expressly denied the motion. Deborah Dubois Seal, Dean Berriman Seal, Aaron Christopher Seal, and Christina Seal Warmack (collectively "the Seal defendants") filed an answer to the appeal, requesting that the April 17, 2017 judgment "be corrected, revised, or reversed in part to award them reasonable attorney's fees and costs." They also request that the additional attorney fees and costs incurred by them for this appeal be assessed against Ms. Frigon.

In a related appeal rendered this same date, we reversed, in part, the August 30, 2016 judgment of the trial court that denied the special motions to strike filed by Universal and the Seal defendants and rendered judgment granting their respective motions. See Frigon v. Universal Pictures, Inc., 17-0993 (La. App. 1st Cir. __/__/18), ___ So. 3d __. Based on our ruling in the companion appeal, we pretermitted as moot Ms. Frigon's first assignment of error herein, wherein she argues that the trial court improperly awarded Universal attorney fees and costs when it was not the prevailing party on its special motion to strike.

In her second assignment of error, Ms. Frigon alternatively argues that the attorney fees and costs the trial court awarded Universal were "erroneous and excessive" based on the evidence presented.

The trial court has much discretion in fixing an award of attorney fees, and its award will not be modified on appeal absent a showing of an abuse of discretion. Silwad Two, L.L.C. v. I Zenith, Inc., 12-0282, p. 8 (La. App. 1st Cir. 12/21/12), 111 So. 3d 405, 411. Factors to be taken into consideration in determining the reasonableness of attorney fees include: (1) the ultimate result

obtained; (2) the responsibility incurred; (3) the importance of the litigation; (4) amount of money involved; (5) extent and character of the work performed; (6) legal knowledge, attainment, and skill of the attorneys; (7) number of appearances made; (8) intricacies of the facts involved; (9) diligence and skill of counsel; and (10) the court's own knowledge. Silwad, 12-0282 at p. 7, 111 So. 3d at 411; see Rule 1.5(a) of the Rules of Professional Conduct.

In support of her second assignment of error, Ms. Frigon first argues that it is unclear from the evidence that the work listed in the itemized billing submitted by Universal was only for work performed relative to the special motion to strike. There are numerous redactions from the itemized billing records submitted by Universal, and all of the unredacted portions appear to relate to the special motion to strike. We recognize that several of the descriptions in the unredacted portions jointly refer to the peremptory exception raising the objection of no cause of action that Universal filed at the same time it filed the special motion to strike; however, the issues presented in the special motion to strike and in the peremptory exception were almost identical. Thus, we do not find the joint references to the peremptory exception along with the special motion to strike in the unredacted portions of the itemized billing to be improper or proof of excessiveness.

Additionally, Ms. Frigon argues that amounts billed for the work performed by Universal's Louisiana counsel are "duplicative and therefore not reasonable." The Louisiana attorneys that represent Universal stated in their respective affidavits that the amounts billed in the redacted itemized statements were reflective of the time they individually spent on the special motion to strike. Moreover, we reject the implication that Universal's decision to be represented by a team of attorneys is excessive. The underlying case dealt with overlapping issues of intellectual property, media law, constitutional law, and further a *res nova* issue

wherein the plaintiff sought to have a right of publicity recognized as a viable cause of action under Louisiana law.

In light of the multiple fronts on which Ms. Frigon aimed her litigation at Universal, an out-of-state defendant, we cannot say that it was improper nor excessive for the client to seek team representation in litigating this matter. As Universal notes in its appellee's brief: "Both firms are deeply experienced in First Amendment matters, with Phelps Dunbar adding its expertise in Louisiana law and procedure and Davis Wright Tremaine contributing its experience in entertainment industry matters." And for these same reasons, we find no abuse of the trial court's discretion in awarding Universal a portion of the attorney fees sought for its representation by out-of-state counsel.¹ Compare Tubbs v. Daryl Flood Relocation, Inc., 51,008, p. 4 (La. App. 2d Cir. 11/30/16), 210 So. 3d 847, 848 (2016 WL 9736163) (wherein the trial court declined to include the costs of out-of-state counsel in its award of attorney fees to the prevailing party on a special motion to strike. The appellate court affirmed, observing that the costs of the out-of-state counsel could be rejected as being duplicative of the efforts of Louisiana counsel).

Finally, with respect to the Seal defendants' answer to the appeal, at the April 17, 2017 hearing, counsel for the Seal defendants indicated that he would proffer evidence regarding the costs and attorney fees the Seal defendants incurred in litigating their special motion to strike. The trial court, over objection, agreed to admit the proffer, but no such evidence is in the record before us. Additionally, the index of the hearing transcript indicates that no exhibits were submitted at the hearing.

¹ The trial court awarded Universal 25 percent of the total amount requested for representation by Universal's California counsel.

The trial court has discretion to determine the amount of attorney fees based upon the court's own knowledge, the evidence, and the court's observation of the case and the record. Specific evidence of the hours worked or hourly rates charged is not required, because the trial court often knows or has a good idea of the time spent on pre-trial issues and the record indicates the services rendered by counsel. Monster Rentals, LLC v. Coonass Construction of Acadiana, LLC, 14-1200, pp. 6-7 (La. App. 3d Cir. 4/1/15), 162 So. 3d 1264, 1268.

The trial court in this matter, however, did not determine an amount of attorney fees to award the Seal defendants, because it failed to recognize the Seal defendants as the prevailing party on their special motion to strike. Therefore, as we granted the Seal defendants' special motion to strike in the related appeal, hence making them the prevailing party on the special motion to strike, we will remand this matter to the trial court to determine reasonable attorney fees and costs to award the Seal defendants as the prevailing party on their special motion to strike. See Shelton v. Pavon, 17-0482, p. 14 (La. 10/18/17), 236 So. 3d 1233, 1242. We decline, however, to grant the Seal defendants' request for additional attorney fees for litigating this appeal.

CONCLUSION

For the foregoing reasons, we affirm the award of attorney fees and costs to Universal City Studios, LLC as the prevailing party on its special motion to strike. We remand this matter to trial court to likewise award reasonable attorney fees and costs to the Seal defendants as the prevailing party on their special motion to strike. All costs of this appeal are cast to the appellant, Lisa Seal Frigon, as administratrix of the estate of Adler Berriman Seal.

AFFIRMED AND REMANDED.

LISA SEAL FRIGON, AS THE ADMINISTRATRIX
OF THE ESTATE OF ADLER BERRIMAN SEAL

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BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

PETTIGREW, J., CONCURS IN PART AND DISSENTS IN PART, AND ASSIGNS REASONS.

I concur with the majority except for the amount of attorney fees awarded Universal City Studios, LLC. I find that the attorney fees awarded to Universal are excessive.

Louisiana Code of Civil Procedure art. 971 provides that the prevailing party on a special motion to strike shall be awarded reasonable attorney fees and costs. Moreover, in this case, attorney fees are not available in connection with the filing of an exception raising the objection of no cause of action.

In the appellee's description of the billing submitted as evidence, there are multiple instances of billing for work done on both the no cause of action objection and the motion to strike. I am of the opinion this was an improper combination of the two. I also question the reasonableness of the hourly rate charged for this locality.

For these reasons, I would vacate the award of attorney fees in favor of Universal and remand to the district court for a proper determination of an award of reasonable attorney fees for the work done on the motion to strike.

In all other respects, I concur with the majority.