

Hing v Abreu
2016 NY Slip Op 32615(U)
December 22, 2016
Supreme Court, Queens County
Docket Number: 14083/09
Judge: Howard G. Lane
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MEMORANDUM

SUPREME COURT - QUEENS COUNTY
IA PART 6

WILLIAM HING and LEONORA HING,

BY: **LANE, J.**

Plaintiffs,

DATED: December 22, 2016

-against-

INDEX NO.: 14083/09

ROMAN ABREU a/k/a ROMAN A. ABREU,
JR., a/k/a ROMAN ABREU, JR., et al.,

MOTION DATE:
November 2, 2015

Defendants.

MOTION SEQ. NO.: 5

This action was commenced by plaintiffs against defendants for, inter alia, breach of contract, breach of implied warranty, fraud and violation of New York General Business Law §§§ 349 and 772. In an order dated November 5, 2015, plaintiff was granted a default judgment as to liability against defendant, Dependable Field Services Corp. On May 23, 2016, an inquest on damages was held upon written submission. In a decision and order dated June 13, 2016, the court found in favor of the plaintiffs, awarded damages and ordered a hearing on assessment of reasonable attorney fees, costs and disbursements. On September 27, 2016, the hearing was held. At the hearing, plaintiffs' counsel submitted papers in support of an award of attorney's fees in the amount of \$5,032.00, which is comprised of 59.20 legal work hours at the rate of \$85.00 per hour for a law

student intern.

FINDING OF FACTS

In this case, plaintiffs were represented by the St. Vincent DePaul Legal Program, Inc., a not-for-profit on campus public interest law firm of St. John's University School of Law that consists of three (3) clinical programs, including the Consumer Justice for the Elderly Litigation Clinic (the "Clinic"). The Clinic is a one-semester, in-house clinical program. The Clinic represents low income Queens citizens in various areas including consumer debt and home improvement contractor fraud. The Clinic affords students the opportunity to develop essential legal skills and practical legal knowledge while serving the community. The clinic is staffed by second and third year law students who work under the supervision of licensed attorneys.

At the hearing, counsel for plaintiffs offered into evidence (Plaintiffs' Ex. 4) the Affirmation of Ann L. Goldweber, Esq. in which she affirmed in ¶ 43 "Although I closely supervised Clinic students in their representation of Mr. Hing, I am not seeking any attorney's fees for my time. The Clinic is making this application for the time expended on preparing the written submission for the Inquest on Damages. Despite expending numerous hours in drafting pleadings, motions, discovery, and preparation of the case as a whole, the Clinic has only applied

for attorneys fees for the hours spent working on the inquest submission". Plaintiffs' counsel also submitted and was admitted into evidence the time sheets of the three (3) law students who worked on the case. The time sheets reflect the dates, descriptions of legal services performed and the amount of time expended (see, Plaintiffs' Exhibits 1, 2, and 3). In addition, the three (3) law students each testified under oath, attesting to their time records and legal services performed.

CONCLUSIONS OF LAW

Under the "American Rule", followed by New York State courts, parties are generally liable for their own attorney's fees unless a statute provides otherwise (see, *Hopper Associates v. AGS Computers*, 74 NY2d 487, 491 [NY 1989][citing *Matter of A.G. Ship Maintenance Corp. v. Lezak*, 69 NY2d 1, 5; *Mighty Midgets v. Centennial Ins. Co.*, 47 NY2d 12, 21-22; *City of Buffalo v. Clement co.*, 28 NY2d 241). "The courts may not create a right to recover attorney's fees; the right must be statutory or contractual." (*Greco v. GSL Enterprises, Inc.*, 137 Misc2d 714, 715 [Civ Ct, NY County 1987]).

In this case, two statutes provide the basis for an award of attorney's fees to Mr. Hing: General Business Law §§ 349 and 772. The court found in favor of the plaintiff on both of these statutory claims (see, Exhibit 4).

New York General Business Law § 349(a) renders unlawful

"[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state...". Under New York General Business Law § 349(h), "the court may award reasonable attorney's fees to a prevailing plaintiff."

Additionally, plaintiff is entitled to attorney's fees pursuant to New York General Business Law § 772, which states "[a]ny owner who is induced to contract for a home improvement, in reliance on false or fraudulent written representations or false written statements, may sue and recover from such contractor a penalty of five hundred dollars plus reasonable attorney's fees...".

The statute does not provide any express guidance as to what is to be considered in awarding an attorney's fee. However, a reasonable attorney's fee is commonly understood to be a fee which represents the reasonable value of the services rendered. In general, factors to be considered include: (1) the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; (2) the lawyer's experience, ability, and reputation; (3) the amount involved and benefit resulting to the client from the services; (4) the customary fee charged for similar services; (5) the contingency or certainty of compensation; (6) the results obtained; and (7) the responsibility involved (citations omitted) (*Diaz v. Audi of*

Am., Inc., 57 AD3d 828, 829 [2d Dept 2008]; see also, *Padilla v. Sansivieri*, 31 AD3d 64 [2d Dept 2006]). (In determining the reasonableness of a fee, several factors are to be considered other than the time and labor expended, including skill required in the case, complexity of the matter, the attorney's experience, his ability and reputation, the client's benefit from services and the fee usually charge by other attorneys for similar services).

Generally, the "reasonable hourly rate [for an attorney] should be based on the customary fee charged for similar services by lawyers in the community with like experience and of comparable reputation to those by whom the prevailing party was represented." (*Gamache v. Steinhaus*, 7AD3d 525, 526 [2d Dept 2004][citing *Getty Petroleum Corp. v. G.M. Triple S. Corp.*, 187 AD2d 483 [2d Dept 1992])).

The fact that the Clinic represents Mr. Hing *pro bono* and is a non-profit organization does not impact its ability to recover reasonable attorneys' fees (*Humphrey v. Gross*, 135 AD2d 634, 635 [2d Dept 1987][holding that prevailing market rates for attorneys' fees are "fully applicable to fee awards to nonprofit organizations"]).

In *Francis v. Atlantic Infiniti, Ltd.*, 34 Misc3d 1221(a), 6 (Queens Sup Ct 2012, J. Lane) (Lemon Law case), the court found that the "hourly rate of \$300.00 per hour is

reasonable for the Queens County community for an experienced attorney of 10 to 15 years; \$250.00 per hour for 5 to 10 years; \$225.00 per hour for 5 or less years and \$85.00 per hour for a paralegal.”

Recently, the New York State Bar Association Committee on Professional Ethics released an opinion discussing recommendations for billing clients for work performed by law students. The opinion Topic: Billing Client for Work Performed by an Unpaid Student-Intern, stated, “A law firm may bill a client for work performed by a student-intern despite the fact that the law firm does not pay the intern, because the intern receives academic credit for the work, as long as (i) the internship program complies with applicable law, (ii) the educational institution does not object to the client charges, and (iii) the charge is not excessive.” NY Eth Op 1090 (N.Y. St. Bar Assn. Comm. Prof. Eth.), 2016 WL 1533286 [Mar. 31, 2016]).

DISCUSSION

1. Time Records

The court finds that plaintiffs’ counsel’s time records and supporting affirmations are sufficient to determine the hours reasonably expended in litigating this case on behalf of the plaintiffs (*see, generally NY State Asso. For Retarded Children, Inc. v. Carey*, 711 F2d 1136, 1147-48 [2d Cir 1983] [holding that an application for attorney’s fees must be supported by detailed,

contemporaneous time records indicating the attorney who performed the work, the date, the hours expended and the nature of the work done]). In reviewing plaintiffs' counsel submissions, the court finds that counsel has sufficiently documented both the number of hours spent on the matter and the nature of the work performed and that total number of hours expended by the student interns is 59.20 hours.

2. Reasonable Hourly Rate

Based on the standard set forth in *Francis v. Atlantic Infiniti, Ltd., supra*, and the recent opinion published by the NYSBA, \$85.00 is a reasonable hourly rate for the services provided by the Clinic interns, and is consistent with the rate charged for the work of paralegals.

Plaintiffs contend and the court agrees that the hourly rates requested for a legal intern at the rate of \$85.00 per hour is reasonable. Therefore, the court will use this prevailing rate in calculating an award of attorneys' fees.

CONCLUSION

Accordingly, plaintiffs' counsel's application for attorney fees, costs and expenses is granted to the extent that plaintiffs' counsel is awarded \$5,032.00 for attorneys fees, and plaintiffs' counsel shall have judgment therefore.

Plaintiffs' counsel is directed to submit a judgment to

the clerk of Part 6, courtroom 24, on notice to defendants within thirty (30) days of the date of this memorandum which sets forth the attorneys' fees award.

A courtesy copy of this order is being mailed to counsel for plaintiffs.

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HOWARD G. LANE, J.S.C.